ESTTA Tracking number: **ESTTA674816**
Filing date: **05/28/2015**

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

Proceeding	92060249
Party	Plaintiff Mya Saray, LLC
Correspondence Address	M KEITH BLANKENSHIP DA VINCI'S NOTEBOOK LLC 10302 BRISTOW CENTER DRIVE , NO 52 BRISTOW, VA 20136 UNITED STATES keith@dnotebook.com
Submission	Motion to Compel Discovery
Filer's Name	M. Keith Blankenship
Filer's e-mail	keith@dnotebook.com
Signature	/M. Keith Blankenship/
Date	05/28/2015
Attachments	DNMYA-0053_Exhibits_filled_REDACTED.pdf(2851778 bytes) Motion to Compel_DNMYA-0053_Brief_FINAL2_REDACTED.pdf(867946 bytes) Motion to Compel_DNMYA-0053_Motion.pdf(56725 bytes)

Exhibits

Exhibit 1

REDACTED IN ITS ENTIRETY

Exhibit 2

REDACTED IN ITS ENTIRETY

Exhibit 3

Table 3.1

Interrogatory Responses Challenged in this Motion

INTERROGATORIES			
NO.	**CHALLENGED?**	**ADDRESSED IN BRIEF AT §**	**SUBJECT MATTER**
1	Y	I(B)(1)	Rationale of Trademark Choice
2	Y	I(B)(2)	Consideration of Alternatives
3	Y	I(B)(3)	The Existence of Companion Brands
4	Y	I(B)(3)	The Significance of Companion Brands
5	N		
6	N		
7	Y	I(B)(4)	Identification of U.S. Retailers and Distributors.
8	Y	I(B)(5)	Identification of Hookahs sold under AMY brand.
9	Y	I(B)(6)	Hookah Distribution Pricing and MSRP
10	Y	I(B)(7)	Hookah Sales Quantity
11	N		
12	Y	I(B)(8)	Trademark Search Results
13	N		
14	N		
15	N		
16	Y	I(B)(9)	Inquiries regarding Mya Saray
17	Y	I(B)(10)	Trade Shows Where Dabes Markets Products
18	Y	I(B)(11)	Instances of Actual Confusion
19	N		
20	N		
21	N		
22	N		
23	N		
24	Y	I(B)(12)	Trade Channels
25	Y	I(B)(13)	Sales and Advertising Literature
26	N		
27	Y	I(B)(14)	Sales and Advertsing Budget
28	Y	I(B)(15)	Sales by Product by Year
29	N		
30	Y	I(B)(16)	Counterfeit Hookahs
31	Y	I(B)(16)	Counterfeit Hookahs
32	Y	I(B)(16)	Counterfeit Hookahs
33	Y	I(B)(16)	Counterfeit Hookahs
34	Y	I(B)(16)	Counterfeit Hookahs
35	Y	I(B)(17)	Lost or Destroyed Documents
36	N		
37	Y	I(B)(18)	Trademark Validation

Table 3.2

Document Request Responses Challenged in this Motion

INTERROGATORIES			
NO.	**CHALLENGED?**	**ADDRESSED IN BRIEF AT §**	**SUBJECT MATTER**
1	N		
2	N		
3	Y	I(B)(16)	Counterfeit Hookahs: Sales to Distributors
4	Y	I(B)(16)	Counterfeit Hookahs: Sales to Retailers
5	Y	I(B)(16)	Counterfeit Hookahs: Sales under TM to Distributors
6	Y	I(B)(16)	Counterfeit Hookahs: Sales under TM to Retailers
7	Y	I(B)(4)	Documents that Reflect Distributor Sales
8	Y	I(B)(4)	Documents that Reflect Retail Sales
9	Y	I(B)(19)	Physical Specimens of Counterfeits
10	N		
11	N		
12	N		
13	Y	I(B)(20)	Creation of Packaging
14	Y	I(B)(20)	Creation and Design of Counterfeits
15	Y	I(B)(1)	Rationale of Trademark Choice
16	Y	I(B)(2)	Rationale of AMY Brand Choice
17	Y	I(B)(16)	Design Difference between Counterfeits and Mya Products
18	Y	I(B)(16)	Design of Counterfeits
19	Y	I(B)(11)	Consumer Complaints
20	Y	I(B)(16)	Marketing of Defendant Products and Counterfeits
21	Y	I(B)(16)	Marketing of Defendant Products and Counterfeits
22	Y	I(B)(16)	Marketing of Defendant Products and Counterfeits in U.S.
23	Y	I(B)(2)	Schematics and Proofs of AMY Logo
24	Y	I(B)(11)	Instances of Actual Confusion
25	Y	I(B)(9)	References to Mya Saray internally
26	Y	I(B)(16)	Mechanism for ordering Counterfeits
27	Y	I(B)(21)	Agency Approvals for trademark and Counterfeits
28	Y	I(B)(16)	Ordering of Materials for the Counterfeits
29	N		
30	Y	I(B)(4)	Organization Dabes Company and Existence of Affiliates
31	Y	I(B)(17)	Document Retention Policy
32	N		
33	N		
34	N		
35	N		
36	N		
37	N		
38	N		
39	N		
40	N		

Exhibit 4

REDACTED IN ITS ENTIRETY

Exhibit 5

REDACTED IN ITS ENTIRETY

Exhibit 6

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

MYA SARAY, LLC, Plaintiff, v. DABES, IBRAHIM Defendant.	Proceeding No. 92060249

PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT DABES

Plaintiff Mya Saray, LLC ("Plaintiff"), by its attorneys and pursuant to Fed. R. Civ. P. 33(a), requests Defendant Ibrahim Dabes to answer the following Interrogatories in writing and under oath or affirmation within thirty (30) days from the date of service. If any interrogatory cannot be answered in full after exercising due diligence to secure the information, please so state and answer the interrogatory to the extent possible, specifying the reason for any inability to answer the remainder of any such interrogatory and stating whatever information or knowledge presently is available concerning the unanswered portion of said interrogatory.

INSTRUCTIONS AND DEFINITION OF TERMS

The following instructions and definitions are to be utilized in complying with these requests:

A. "Defendant" or "you" designate the named Defendant in this action, Ibrahim Dabes, including his counsel, agents, representatives, and other persons acting on their behalf, as well as all businesses operated by him.

B. These Interrogatories are addressed to Defendant and any and all of their agents, representatives, attorneys, and other persons acting on their behalf. If the requested information or documents are known by Defendant to exist or are not in the possession, custody or control of Defendant, its agents, representatives, attorneys, or other persons acting on their behalf, Defendant should so indicate and provide the name of the person or entity maintaining the documents or possessing the information. Each discovery request not only calls for the knowledge of the Defendant but also for all knowledge or documentation that is available to the Defendant through reasonable inquiry, including inquiry of your representatives and agents.

C. "Persons" shall mean and include a natural person, individual, partnership, firm, corporation or any kind of business or legal entity, its agents or employees.

D. The term "document" is used herein with its customary broad meaning and thus includes, by way of illustration and not limitation, the following, whether written, printed, reproduced by any process including recordings, or

produced by hand, and whether or not claimed to be privileged or otherwise excludable from discovery: tapes; notes; analyses; computer printouts; information maintained on computer disks or hard drives; correspondence; emails; video, audio, stenographic, magnetic, electronic digital or analog recordings or data; communications of any nature; recordings or transcriptions of voice mail messages; telegrams; letters; memoranda; notebooks of any character; summaries or records of personal conversations; diaries; routing slips or memoranda; reports; publications; photographs; minutes or records or tapes of meetings; transcripts of oral testimony or statements; reports and/or summaries of interviews; reports and/or summaries of investigations; agreements and contracts, including all modifications or revisions thereof; reports and/or summaries of negotiations; court papers; brochures; pamphlets; press releases; drafts, revisions or drafts; translations; tape recordings; documents, files or data download or retrieved from the Internet or from or through any online service or sever, and reports and dictation belts. Any document with any marks on any sheet or side thereof, including by way of illustration and not limitation, initials, stamped indicia, comments or notations of any character, not a part of the original text, or any reproduction thereof, is to be considered a separate document for purposes of this request. "Document" or "documents" include documents prepared by, for or at the direction of Defendants (or those acting or purporting to act on their behalf) and documents prepared by, for or at the direction of others.

E. When referring to a natural person, "identify" means that you shall state the person's full name, present or last known address, home and business

telephone numbers, and position of employment at the time in question. When referring to a company, "identify" means that you shall state the company's full name, legal status by type and state (e.g., a Delaware Corporation), present or last known address, business telephone and facsimile numbers.

F. When referring to a document, "identify" means that you shall state the general nature of the document, the author or the originator, each addressee, all individuals designated to receive or who otherwise have received a copy of the document, date, title and general subject matter, present custodian of each copy and last known address of each such custodian.

G. When referring to an oral statement or conversation, "identify" means that you shall state the date and place the oral statement or conversation was made or took place, the identity of each person who made, participated in, or heard any part of the oral statement or conversation, the substance of what was said by each person who made or participated in the oral statement or conversation, and the identity and present custodian of any written or any mechanical, electrical or computerized recording that recorded, summarized, or confirmed such oral statement or conversation.

H. As used herein:

1. The terms "reflect," "refer" or "relate to" are intended to have the broadest possible meaning, and include any logical or factual connection with the matters discussed.

2. The term "or" means "and/or".

3. Any word written in the singular shall include the plural and vice versa.

4. The term "any" means "each, any and all."

5. When appropriate, the use of the masculine also includes the feminine, and vice versa.

I. Any other words used herein shall be defined according to standard American usage, as shown in a dictionary of the English language.

J. If any documents responsive to any interrogatory have been lost, mutilated or destroyed, so state and identify each such document, and state to which interrogatory the document would have been responsive.

K. If the Defendant lacks possession, custody or control of one or more documents that are responsive to a particular interrogatory, so state in response to such interrogatory.

L. If you contend that you are entitled to withhold any information requested herein on the basis of the attorney-client privilege, the work-product doctrine, or some other ground, for each item information so withheld, state the basis upon which you contend you are entitled to withhold the information.

M. These Interrogatories are continuing in nature so as to require you to provide supplemental information as set forth in F.R.C.P. 26(e).

SPECIFIC INSTRUCTIONS AND DEFINITIONS

1. Defendant. Defendant means not only Ibrahim Dabes but also his agents, officers, employees, representatives and attorneys, and any predecessors, subsidiaries, controlled, controlling and affiliated

companies, and their agents, officers, employees, representatives and attorneys, to the fullest extent the context permits.

2. United States. The United States means the United States of America, and its territories and possessions.

3. AMY Brand. The AMY Brand includes the word "amy" applied by Defendant to a product or service, and all of the derivatives, including pictorial depictions, spoken versions, and logos including the word amy.

4. AMY Logo. The AMY Logo includes the brand that is the subject of U.S. Trademark Reg. No. 4,536,391.

5. Logo Design Elements. The Logo Design Elements include those attributes of the AMY Logo other than the word "amy."

6. Defendant Products. The Defendant Products include tobacco and smoking articles, including cigarettes, cigars, smoking pipes, and shishas.

7. MYA Trademarks. The term MYA Trademarks includes the trademarks described in the Notice of Opposition for this action, and includes U.S. Trademark Regs. No. 3031439; 3031440; 3684312; 3684311; 3840577; 3845276, as well as the Plaintiff's mark as depicted in Exhibit 1 of this document, Plaintiff's First Set Of Interrogatories To Defendant Dabes.

8. MYA Products. MYA Products includes hookahs, components of hookahs, tobacco for hookah smoking, and accessories related to the use of hookahs.

9. Retailer. A Retailer includes an entity that vends, sells, leases, or provides a product directly to an end user of that product.

10. Distributor. A Distributor includes an entity vends, sells, leases, or provides products in quantity to Retailers.

11. Subject Hookahs. The Subject Hookahs include the hookah of Exhibit 2 labeled as "AMY-018" and the hookah of Exhibit 3 labeled as "Jinn."

INTERROGATORIES

INTERROGATORY NO. 1. Explain why (including the inspiration, significance, and meaning) Defendant selected the designation "AMY" as a brand for Defendant Products.

INTERROGATORY NO. 2. Explain the rationale for adopting the designation "AMY" in connection with Defendant's Products and why "AMY" was selected over alternative designations, with specific reference to those designations.

INTERROGATORY NO. 3. If Defendant utilizes alternative brand designations in connection with Defendant Products, identify such alternative brand designations by its literal elements (e.g. words) and design elements (e.g., illustrated components).

INTERROGATORY NO. 4. Explain other inspiration and meaning of the alternative brand designations responsive to INTERROGATORY NO. 3 how the Products for such other alternative brand designations relate to Defendant Products sold under the AMY Brand with specific reference to Defendant Product quality, Defendant Product quantity (generally at this time), Defendant Product manufacturing source, the characteristics of prospective purchasers of the Defendant Products, and other significant criteria.

INTERROGATORY NO. 5. Identify the manufacturing source of the Defendant Products under the AMY Brand, (i) if manufactured by a third party, by name and location, and (ii) if manufactured by Defendant, by address and manager of factory?

INTERROGATORY NO. 6. Describe the importation of Defendant's Products into the United States with specific reference to the:

a. identities of customs brokers, warehousing, transport and shipping parties, handlers, and delivery agents;

b. dates of importation, by arrival into the United States;

c. quantities of Products divided into categories thereof (e.g., hookahs, hookah tobacco, etc.)

INTERROGATORY NO. 7. Identify each Distributor and Retailer known to Defendant authorized to sell Defendant Products in the United States. For each Distributor, include the geographic area, if any, to which the Distributor is permitted to distribute. (To the extent that the answer to this questions calls for the identification of more than 20 retailers, then Defendant need only list the 20 highest volume retailers)

INTERROGATORY NO. 8. Identify each hookah sold under the AMY Brand (including all internal names, code names, marketing names, and any other unique designations) and each hookah's date of first sale anywhere in the world, and its date of first sale under the AMY Brand, if different.

INTERROGATORY NO. 9. Identify the average distribution price and manufacture's suggested retail price, if any, of each hookah of INTERROGATORY NO. 8.

INTERROGATORY NO. 10. Identify the sales quantity in the United States of each hookah of INTERROGATORY NO. 8 by year.

INTERROGATORY NO. 11. Did you consider the affects of using the name AMY on Defendant Products notwithstanding Plaintiff's use of MYA with Plaintiff Products, and if so, what factors did you consider to be related to dispelling confusion?

INTERROGATORY NO. 12. Describe the extent to which Defendant searched for marks that might impede the use or registration of any AMY Brand for Defendant Products.

INTERROGATORY NO. 13. Identify the individuals most knowledgeable about the advertising, marketing, and/or promotion of each hookah of INTERROGATORY NO. 8.

INTERROGATORY NO. 14. Identify the individual most knowledgeable about the appearance and aesthetic properties of each hookah of INTERROGATORY NO. 8.

INTERROGATORY NO. 15. Describe in detail the date and circumstances under which Defendant first learned of each of the MYA Trademarks, including but not limited to, the persons that became aware of each of the MYA Trademarks, and all steps and actions taken, with respect to the design, development, offer for sale, and sales of Defendant Products identified in response to INTERROGATORY NO. 8, including any efforts by Defendant to avoid confusion between MYA Trademarks and the AMY Brand.

INTERROGATORY NO. 16. Identify each and every person with knowledge of any and all instances where Defendant received mail, orders, deliveries, telephone calls, bill, payments, invoices, or any other communications referring to or inquiring about either Plaintiff or the MYA Trademarks.

INTERROGATORY NO. 17. Identify all trade shows attended by Defendant, including name of trade show, date, and location, within the past four (4) years in which Defendant marketed Defendant Products.

INTERROGATORY NO. 18. Identify each and every person with knowledge of any and all instances where Defendant obtained any knowledge or information regarding any confusion whatsoever on the part of any person about the source,

affiliation, or sponsoring of any of Plaintiff Product and the source, affiliation, or sponsoring of Defendant Products.

INTERROGATORY NO. 19. State in detail all facts upon which Defendant bases its denial of likelihood of confusion of any of the MYA Trademarks and provide the identity of all individuals with knowledge of any such facts, and the identity of documents, communications, and thins relating to any such facts, including information that refutes Defendant's denial.

INTERROGATORY NO. 20. State in detail all facts upon which Defendant bases any defense raised by Defendant in this action and provide the identity of all individuals with knowledge of any such facts, and the identity of documents, communications, and thins relating to any such facts, including information that refutes Defendant's denial.

INTERROGATORY NO. 21. State the exact date(s) on which Defendant will rely as to when its use of the AMY Logo commenced in connection with the sale or distribution of each constituent (e.g., cigarettes) of the Products.

INTERROGATORY NO. 22. Identify all documents, purchase orders, invoices, labels, flyers, brochures, other advertising or any writing whatsoever that Defendant will rely upon to establish the date(s) specified in answer to INTERROGATORY NO. 21.

INTERROGATORY NO. 23. With respect to the first use(s) of the marks of the AMY Logo in connection with the sale of each product and/or service identified in above INTERROGATORY NO. 21, state:

(a) Each manner in which the applied-for designation was used, e.g. by affixing to containers, labels, or in newspaper advertising or fliers;

(b) If the applied-for designation was printed on containers for the product or on labels, the name and address of the person(s) or organization(s) which printed them;

(c) If the applied-for designation was used in brochures or fliers, the name and address of the person(s) or organization(s) which printed them;

(d) If the applied-for designation was used in media advertising, the name and address of the person(s) or organization(s) which advertised them;

(e) Whether the product and/or service was sold;

(f) Whether the product and/or service was offered free of charge;

(g) The name and address of the person(s) or organization(s) to whom the

product and/or service was sold; and

(h) Whether the sale of each product under the applied-for designation has been continuous from each date specified in above INTERROGATORY NO. 21 to the present.

INTERROGATORY NO. 24. Describe and identify the channels of trade in the United States of each Product.

INTERROGATORY NO. 25. Identify each item of sales literature, including brochures and fliers produced by or for Applicant for distribution in the United States to advertise each of the Products.

INTERROGATORY NO. 26. List all geographic areas (by city and state) in which Applicant sells each of the Products.

INTERROGATORY NO. 27. List all other media, not already identified, where Applicant has advertised each of the Products, state the amount expended by Defendant in the United States in the advertisement of each Product.

INTERROGATORY NO. 28. For each calendar year since commencement of use the AMY Brand or applied-for .designation in connection with the sale of each of the Products, state the amount of sales by Defendant in the United States of each of the Products.

INTERROGATORY NO. 29. Identify the Defendant's predecessors-in-interest, and all of its subsidiaries and affiliated companies, and the officers, directors, employees, agents and representatives thereof.

INTERROGATORY NO. 30. Identify all persons, businesses, and entities involved in the proliferation of each Subject Hookah categorized by each Subject Hookah and by the following stages of development:

a. the creation of each Subject Hookah, including its conception;
b. the design of each Subject Hookah;
c. the development of each Subject Hookah;
d. the production of each Subject Hookah;
e. the manufacture of each Subject Hookah, including quantities manufactured for Defendant;
f. the transfer of each Subject Hookah to any property owned, leased, controlled, or accessed for commercial purposes by the Defendant; and
g. the marketing and advertisement of each Subject Hookah.

INTERROGATORY NO. 31 Identify each source, quantity, and dollar amount of each Subject Hookah sold by Defendant in the United States arranged with reference to each Subject Hookah and each transaction.

INTERROGATORY NO. 32 Identify each commercial purchaser, the total quantity, and total dollar amount of each Subject Hookah vended by Defendant in the United States, arranged with reference to each Subject Hookah and commercial purchaser (together with a single "catch-all" category titled "direct consumer purchases").

INTERROGATORY NO. 33. Describe each product design difference perceptible to Defendant between the Subject Hookah labeled as AMY-018 and the Econo-MYA QT depicted in Exhibit 4.

INTERROGATORY NO. 34. Describe each product design difference perceptible to Defendant between the Subject Hookah labeled as Jinn and the MYA QT depicted in Exhibit 5.

INTERROGATORY NO. 35. Identify any and all documents responsive to the foregoing interrogatories or other Document Request issued by Plaintiff in this action which are lost or unavailable and identify 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.

INTERROGATORY NO. 36. Identify all persons who participated in any way in the preparation of the answers or responses to these interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person (excluding only Applicant's lawyers or their representatives).

INTERROGATORY NO. 37. Identify any study, research, focus group, testing or similar validation procedure employed by Defendant or any person or entity at Defendant's request or on behalf of Defendant to determine the presence and/or absence of any confusion between Plaintiff's Products and the Defendant's Products when offered under the applied-for designations or AMY Brand generally.

DATED: January 20, 2015.

_____

M. Keith Blankenship (VSB #70027)
Attorney for Plaintiff
Da Vinci's Notebook, LLC
10302 Bristow Center Dr. No. 52
Bristow, VA 20136
Phone: (703) 581-9562
keith@dnotebook.com

Exhibit 1

Exhibit 2

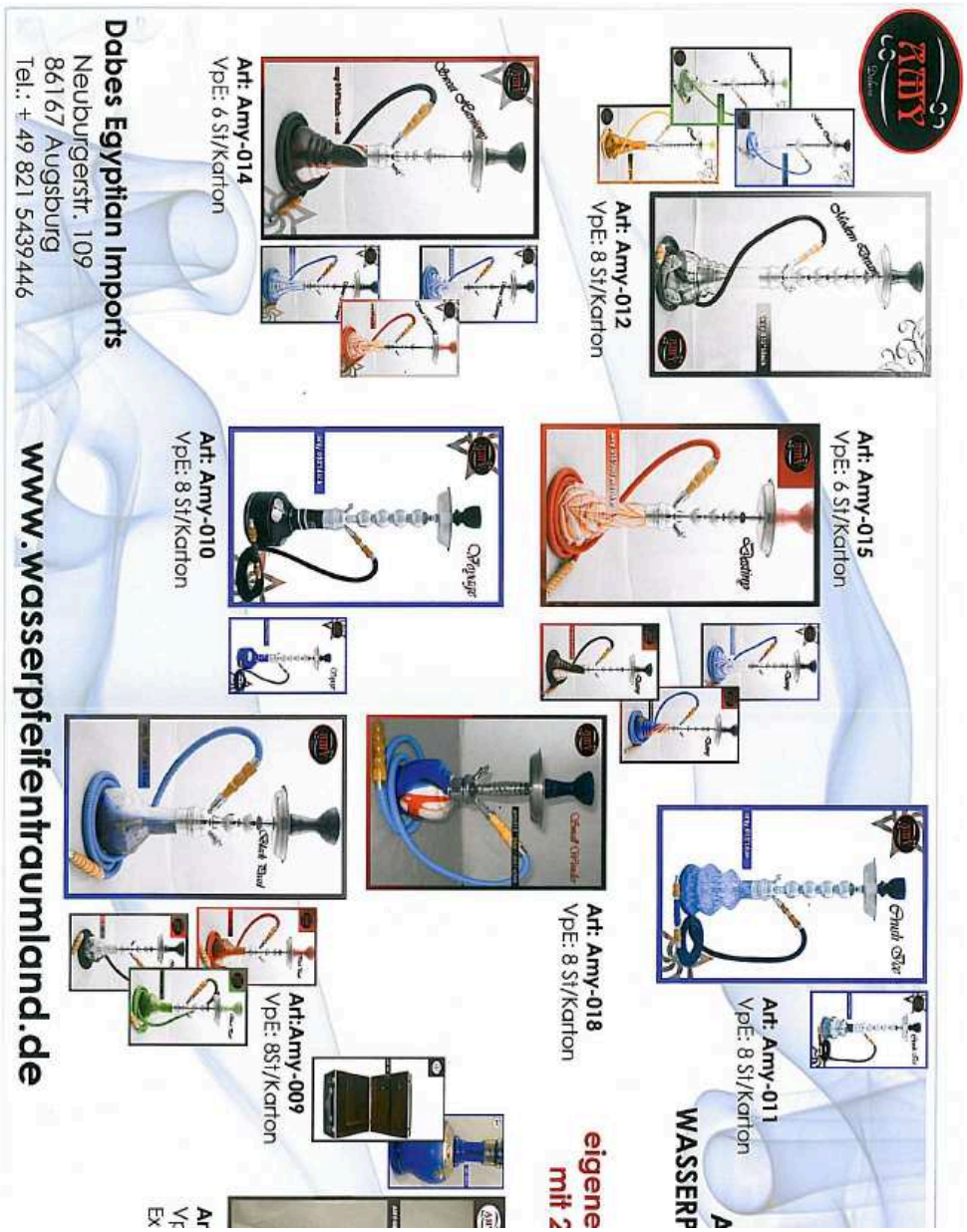
Art: Amy-015
VpE: 6 St/Karton
Art: Amy-012
VpE: 8 St/Karton
Art: Amy-014
VpE: 6 St/Karton
Art: Amy-010
VpE: 8 St/Karton
Art: Amy-018
VpE: 8 St/Karton
Art: Amy-011
VpE: 8 St/Karton
Art:Amy-009
VpE: 8St/Karton
Dabes Egyptian Imports
Neuburgerstr. 109
86167 Augsburg
Tel.: + 49 821 5439446
www.wasserpfeifentraumland.de

Exhibit 3

Name: _____
Anschrift: _____
Telefon: _____
Datum: _____

Dabes Egyptian Imports
Neuburgerstr. 109
86167 Augsburg
Tel: +49 821 5439446

DABES HOOKAHS

Preisliste /Bestellformular

- gilt für Intertabac 2011 -

Wasserpfeifen

DABES HOOKAH

Jinn		Bestellnr.qt-0003	Preis/ ab 1 Kart.	Preis /3 Kart.
rot	schwarz			
grün	amber		13,50 €	12,00 €
violett	blau			

Crazy Dots		Bestellnr.id760-1	Preis/ ab 1 Kart.	Preis /3 Kart.
	blau			
auch mit Koffer	schwarz		15,00 €	12,50 €
	grün		20,00 €	15,50 €
	amber		(mit Koffer)	(mit Koffer)

Crazy Dots Special Art		Bestellnr. id760a-1	Preis/ ab 1 Kart.	Preis /3 Kart.
amber	red white		16,00 €	14,00 €
blue white	green blue			

Memory		Bestellnr. id580-1	Preis/ ab 1 Kart.	Preis /3 Kart.
blue white				
red white	blue line		28,00 €	26,00 €
red line	black green			
black blue				

Nargile		Bestellnr.id950/id950-2	Preis/ ab 1 Kart.	Preis /3 Kart.
blau				
schwarz	rot		28,00 €	26,00 €
gelb	weiß			
grün				

Joey		Bestellnr. id980	Preis/ ab 1 Kart.	Preis /3 Kart.
	schwarz		28,00 €	26,00 €
	blau			
	rot			

Jamie		Bestellnr. Id990	Preis/ ab 1 Kart.	Preis /3 Kart.
	blau		28,00 €	26,00 €
	braun			
	schwarz			

Wallah		Bestellnr. egs-0058_n	Preis/ ab 1 Kart.	Preis /3 Kart.
blau	grün		13,50 €	12,50 €
schwarz	amber			
rot				

Baghira		Bestellnr	Preis/ ab 1 Kart.	Preis /3 Kart.
auch mit Koffer				
silber-blau	kupfer-rot	wp100-1	34,50 €	31,00 €
silber-grün	kupfer-transparent	wp100-2	37,50 €	34,00 €

Exhibit 4

Exhibit 5

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the forgoing PLAINTIFF'S FIRST SET OF INTERROGATORIES TO DEFENDANT DABES has been served on counsel for Applicant by mailing said copy via First Class Mail, postage prepaid to:

Paul D. Bianco
Fleit Gibbons Gutman Bongini & Bianco PL
21355 E Dixie Hwy Ste 115
Miami, Florida 33180-1244
United States

This 20th day of January 2015.

By : _____
M. Keith Blankenship

Exhibit 7

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

MYA SARAY, LLC, Plaintiff, v. DABES, IBRAHIM Defendant.	Proceeding No. 92060249

PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANT DABES

Plaintiff Mya Saray, LLC ("Plaintiff"), by its attorneys and pursuant to Fed. R. Civ. P. 26 and 34, requests Defendant Ibrahim Dabes ("Dabes") to respond to the following Requests for Production within thirty (30) days from the date of service. Responsive documents should be produced at Da Vinci's Notebook, LLC at 10302 Bristow Center Dr., No. 52; Bristow, VA 20136. These Requests are continuing in nature, so as to require the filing of supplemental responses if additional or different information is obtained before trial.

DEFINITIONS

Unless the terms of a particular Request specifically indicate otherwise, the following definitions are applicable throughout these Requests and are incorporated into each specific Request for Production:

1. "Defendant" or "you" designated as the named Defendant in this action, Ibrahim Dabes, including his counsel, agents, representatives, and other persons acting on their behalf, as well as all businesses operated by him.

2. "Plaintiff" means/refers to Mya Saray, LLC, including each and every one of its divisions, subsidiaries, affiliates, predecessors and successors, and all of its current or former officers, employees, directors, representatives, contractors or agents, attorneys and all persons acting for or on its behalf.

3. The term "this action" means/refers to the litigation styled *Mya Saray, LLC v. Dabes, Ibrahim*, Proceeding No. 92060249, pending in the Trademark Trial and Appeal Board.

4. "Complaint" means the Notice of Cancellation filed by Plaintiff in the litigation referenced in Paragraph 3 above.

5. "Person" or "persons" shall mean any natural person, sole proprietorship, corporation, partnership, limited partnership, limited liability company, association, group, organization, federal, state or local government or governmental entity and their parent entities, subsidiaries, affiliates, divisions, predecessors and successors in interest and present and former directors, officers, executives, partners, members, employees, agents or representatives.

6. The term "document" should be understood in its broadest permissible scope under the Federal Rules of Civil Procedure, and includes, by way of illustration and not limitation, the following, whether written, printed, reproduced by any process including recordings, or produced by hand, and whether or not claimed to be privileged or otherwise excludable from discovery: tapes;

notes; analyses; computer printouts; information maintained on computer disks or hard drives; correspondence; emails; video, audio, stenographic, magnetic, electronic digital or analog recordings or data; communications of any nature; recordings or transcriptions of voice mail messages; telegrams; letters; memoranda; notebooks of any character; summaries or records of personal conversations; diaries; routing slips or memoranda; reports; publications; photographs; minutes or records or tapes of meetings; transcripts of oral testimony or statements; reports and/or summaries of interviews; reports and/or summaries of investigations; agreements and contracts, including all modifications or revisions thereof; reports and/or summaries of negotiations; court papers; brochures; pamphlets; press releases; drafts, revisions or drafts; translations; tape recordings; documents, files or data download or retrieved from the Internet or from or through any online service or sever, and reports and dictation belts. Any document with any marks on any sheet or side thereof, including by way of illustration and not limitation, initials, stamped indicia, comments or notations of any character, not a part of the original text, or any reproduction thereof, is to be considered a separate document for purposes of this request. "Document" or "documents" include documents prepared by, for or at the direction of Defendant (or those acting or purporting to act on Defendant's behalf) and documents prepared by, for or at the direction of others.

7. "Communication" means any statement, question, command or interjection, whether made orally, visually, in writing, or by mechanical device, and whether for internal or external use.

8. "Asset" or "Property" refers to any interest in real or personal property. Real property means real estate. Personal Property means, but is not limited to, automobiles, furniture, antiques, cash value insurance, securities, bonds, patents and loans or contract rights owed to you. It also includes, but is not limited to, any interest in a pension, profit-sharing, stock option, stock grant, or retirement plan, whether vested or not, as well as bank accounts, credit union accounts, brokerage accounts, stock, bonds, mutual funds, Employee Savings Plans or any other rights or claims.

9. "Income" means money from any source, whether wages, self-employment, dividends, interest, capital gains, support, state aid, etc., whether or not taxable. It also includes overtime and bonuses.

10. "Investments" means such things as stocks, bonds options, precious metals or gems, antiques, collectibles or interests in businesses.

11. When referring to a natural person, "identify" means state the person's full name, present or last known address and place of employment, home and business telephone numbers, and position of employment/job title. When referring to a company, "identify" means state the company's full name, legal status by type and state (e.g., a Michigan Corporation), present or last known address, business telephone and facsimile numbers.

12. When referring to a document, "identify" means state the general nature and subject matter of the document; the exact name and title by which you refer to it; the author or the originator; each addressee; all individuals designated to receive or who otherwise have received a copy of the document, date and all serial

or identifying numbers, if any; the location and identity of the present custodian of each copy and last known address of each such custodian.

13. When referring to an oral statement or conversation, "identify" means state the date and place the oral statement or conversation was made or took place, the identity of each person who made, participated in, or heard any part of the oral statement or conversation, the substance of what was said by each person who made or participated in the oral statement or conversation, and the identity and present custodian of any written or any mechanical, electrical or computerized recording that recorded, summarized, or confirmed such oral statement or conversation.

14. As used herein:

a. The terms "reflect," "refer" or "relate to" are intended to have the broadest possible meaning, and include any logical or factual connection with the matters discussed.

b. The term "or" means "and/or".

c. Any word written in the singular shall include the plural and vice versa.

d. The term "any" means "each, any and all."

e. When appropriate, the use of the masculine also includes the feminine, and vice versa.

f. Any other words used herein shall be defined according to standard American usage, as shown in a dictionary of the English language.

15. If any documents responsive to any request have been lost, mutilated or destroyed, so state and identify each such document, and state to which request the document would have been responsive.

16. If the Defendant lacks possession, custody or control of one or more documents that are responsive to a particular request, so state in response to such request.

17. If you contend that you are entitled to withhold any information requested herein on the basis of the attorney-client privilege, the work-product doctrine, or some other ground, for each item information so withheld, state the basis upon which you contend you are entitled to withhold the information.

SPECIFIC DEFINITIONS

1. Defendant. Defendant means not only Ibrahim Dabes but also his agents, officers, employees, representatives and attorneys, and any predecessors, subsidiaries, controlled, controlling and affiliated companies, and their agents, officers, employees, representatives and attorneys, to the fullest extent the context permits.

2. United States. The United States means the United States of America, and its territories and possessions.

3. AMY Brand. The AMY Brand includes the word "amy" applied by Defendant to a product or service, and all of the derivatives, including pictorial depictions, spoken versions, and logos including the word amy.

4. AMY Logo. The AMY Logo includes the brand that is the subject of U.S. Trademark Reg. No. 4,536,391.

5. Logo Design Elements. The Logo Design Elements include those attributes of the AMY Logo other than the word "amy."

6. Defendant Products. The Defendant Products include tobacco and smoking articles, including cigarettes, cigars, smoking pipes, and shishas.

7. MYA Trademarks. The term MYA Trademarks includes the trademarks described in the Notice of Opposition for this action, and includes U.S. Trademark Regs. No. 3031439; 3031440; 3684312; 3684311; 3840577; 3845276, as well as the Plaintiff's mark as depicted in Exhibit 1 of this document, Plaintiff's First Set of Requests for Production to Defendant Dabes.

8. MYA Products. MYA Products includes hookahs, components of hookahs, tobacco for hookah smoking, and accessories related to the use of hookahs.

9. Retailer. A Retailer includes an entity that vends, sells, leases, or provides a product directly to an end user of that product.

10. Distributor. A Distributor includes an entity vends, sells, leases, or provides products in quantity to Retailer.

11. Subject Hookahs. The Subject Hookahs include the hookah of Exhibit 2 labeled as "AMY-018" and the hookah of Exhibit 3 labeled as "Jinn."

INSTRUCTIONS

These Requests for Production are addressed to Defendant Ibrahim Dabes and any and all of his agents, representatives, attorneys, and other persons acting on his behalf. If the requested information or documents are known by Defendant to exist but are not in the possession, custody or control of Defendant, his agents, representatives, attorneys, or other persons acting on his behalf, Defendant should so indicate and provide the name of the person or entity maintaining the documents or possessing the information. Each discovery request not only calls for the knowledge of the Defendant but also for all knowledge or documentation that is available to the Defendant through reasonable inquiry, including inquiry of your representatives and agents. If any documents responsive to any request have been lost, mutilated or destroyed, so state and identify each such document, and state to which request(s) the document would have been responsive. If the Defendant lacks possession, custody or control of one or more documents that are responsive to a particular request, so state in response to such request.

If you contend that you are entitled to withhold any information requested herein on the basis of the attorney-client privilege, the work-product doctrine, or some other ground, for each item of information so withheld, state the basis upon which you contend you are entitled to withhold the information. All responsive documents or tangible items should be sequentially paginated (a/k/a Bates Stamp

Numbered). These Requests for Production are continuing in nature so as to require you to provide supplemental information as set forth in F.R.C.P. 26(e).

DOCUMENT REQUESTS

REQUEST NO. 1: All documents that are identified in, or should have been identified in, or concern or relate to your answers to Plaintiff's First Set of Interrogatories to Defendant Dabes, including but not limited to, any documents you used or referred to in answering the Interrogatories.

REQUEST NO. 2: All licenses or other documents provided to you constituting permission from a government entity or subdivision – federal, state or local – to perform acts in commerce, including those related to buying/selling of tobacco and related products, permissions for importation of goods, zoning variances, etc.

REQUEST NO. 3 All documents that reflect or reference a sale of any Subject Hookah to any Distributor in the United States.

REQUEST NO. 4 All documents that reflect or reference a sale of any Subject Hookah to any Retailer in the United States.

REQUEST NO. 5 All documents that reflect or reference a sale of any of Defendants Products with the AMY Brand to any Distributor in the United States.

REQUEST NO. 6 All documents that reflect or reference a sale of any of Defendants Products with the AMY Brand to any Retailer in the United States.

REQUEST NO. 7 All documents that reflect or reference a sale of any of Defendants Products with the AMY Logo to any Distributor in the United States.

REQUEST NO. 8 All documents that reflect or reference a sale of any of Defendants Products with the AMY Logo to any Retailer in the United States.

REQUEST NO. 9 A physical specimen of each Subject Hookah.

REQUEST NO. 10 All documents and things that relate or refer to, or describe Defendant's inventory of hookah products physically located in the United States.

REQUEST NO. 11 All documents that relate or refer to, or describe, the locations for physical storage or warehousing of Defendant Products or packaging for Defendant Products in the United States.

REQUEST NO. 12 All documents that relate or refer to, or result from, the Defendant's importation of Defendant Products into the United States since the adoption of the AMY Brand or commercialization of the Subject Hookahs (whichever is earlier). This will include correspondence, invoices, and any other documents from manufacturers, importers, freight forwarders, customs agents, and others involved in the importation process.

REQUEST NO. 13 All documents and things that refer or relate to the purchase or ordering of packaging with the AMY Logo or AMY Brand.

REQUEST NO. 14 All documents and things that refer or relate to the creation, design, and appearance of the Subject Hookahs, including the creation design and appearance of alternatives.

REQUEST NO. 15 All documents and things that refer or relate to the creation, design, and appearance of the AMY Logo, including the creation design and appearance of alternatives.

REQUEST NO. 16 All documents and things that refer or relate to the creation, design, and appearance of the AMY Brand, including the creation design and appearance of alternatives.

REQUEST NO. 17 All documents and things relating or referring to design differences between the Subject Hookahs and any Plaintiff hookah.

REQUEST NO. 18 All documents and things that refer or relate to communications between the Defendant and between any person involved in the design, production, shipping, or storage of the Subject Hookahs.

REQUEST NO. 19 All documents and things that refer or relate to any complaint from any consumer, Retailer, or Distributor regarding any Subject Hookah or Defendant Product bearing the AMY Logo or AMY Brand.

REQUEST NO. 20 All documents and things related to the advertising, publicity, or marketing of the Subject Hookahs and Defendant Products.

REQUEST NO. 21 All documents and things related to the advertising, publicity, or marketing of the Subject Hookahs and Defendant Products in which the Defendant depicted either the AMY Brand or Subject Hookahs.

REQUEST NO. 22 All documents and things related to the advertising, publicity, or marketing of the Subject Hookahs and Defendant Products in which the Defendant depicted either the AMY Brand or Subject Hookahs in the United States.

REQUEST NO. 23 All invoices, media, schematics, proofs, drafts, and other documents related to the creation of the AMY Logo or the AMY Brand, including any trademark clearance opinions or contracts with third party branding consultants.

REQUEST NO. 24 All documents characterizing any belief by a third party that a MYA Product or a Defendant Product are from a common source (including, believing a MYA Product to be a Defendant Product, vice versa, believing that Plaintiff and Defendant share a common manufacturing source, etc.).

REQUEST NO. 25 All documents characterizing a design of a MYA Product or MYA Trademark.

REQUEST NO. 26 All documents and things related to the ability of a Retailer or Distributor or end-user to order the Subject Hookahs and Defendant Products (e.g., catalogues, product specifications, etc.).

REQUEST NO. 27 All documents and things that refer or relate to the submission, review, clearance, rejection, approval, or registration with any governmental agency or supplier of any aspect of the Subject Hookahs or the AMY Brand or AMY Logo.

REQUEST NO. 28 All documents and things that refer or relate to the costs of manufacturing, acquiring parts and materials for, and Defendant's purchase (if any) of the Subject Hookahs.

REQUEST NO. 29 All documents and things relating to visits and communications to any store, retail outlet, or other business engaged in the sale of Defendant Products in the United States visited by any employee, representative, agent, official, executive and/or director of the Defendant for purposes relating to creating or continuing sales of Defendant Products.

REQUEST NO. 30 All Documents and things that describe, illustrate, or depict Your corporate or organizational structure, or any group assignment, including, but not limited to, organizational charts.

REQUEST NO. 31 Documents and things concerning your document retention policies.

REQUEST NO. 32 All documents constituting or concerning reports prepared by any expert whom you expect to call at trial, including draft reports.

REQUEST NO. 33 All documents provided by you to any expert witness retained by you for this action.

REQUEST NO. 34 Any and all statements taken of any person regarding any aspect of Plaintiff's claims or the allegations in this action or any defense to those claims or allegations.

REQUEST NO. 35 All documents that relate to, reflect, evidence, or constitute the factual and/or legal explanation, ground, or rationale for your First Affirmative Defense (Failure to State a Claim).

REQUEST NO. 36 All documents that relate to, reflect, evidence, or constitute the factual and/or legal explanation, ground, or rationale for your Second Affirmative Defense (Absence of Likelihood of Confusion).

REQUEST NO. 37 All documents that relate to, reflect, evidence, or constitute the factual and/or legal explanation, ground, or rationale for your Third Affirmative Defense (Lack of Damages).

REQUEST NO. 38 All documents that relate to, reflect, evidence, or constitute the factual and/or legal explanation, ground, or rationale for your Fourth Affirmative Defense (Estoppel).

REQUEST NO. 39 All documents that relate to, reflect, evidence, or constitute the factual and/or legal explanation, ground, or rationale for your Fifth Affirmative Defense (Laches).

REQUEST NO. 40 All documents that relate to, reflect, evidence, or constitute the factual and/or legal explanation, ground, or rationale for your Sixth Affirmative Defense (Acquiescence).

DATED: January 20, 2015.

_____

M. Keith Blankenship (VSB #70027)
Attorney for Plaintiff
Da Vinci's Notebook, LLC
10302 Bristow Center Dr. No. 52
Bristow, VA 20136
Phone: (703) 581-9562
keith@dnotebook.com

Exhibit 1

Exhibit 2

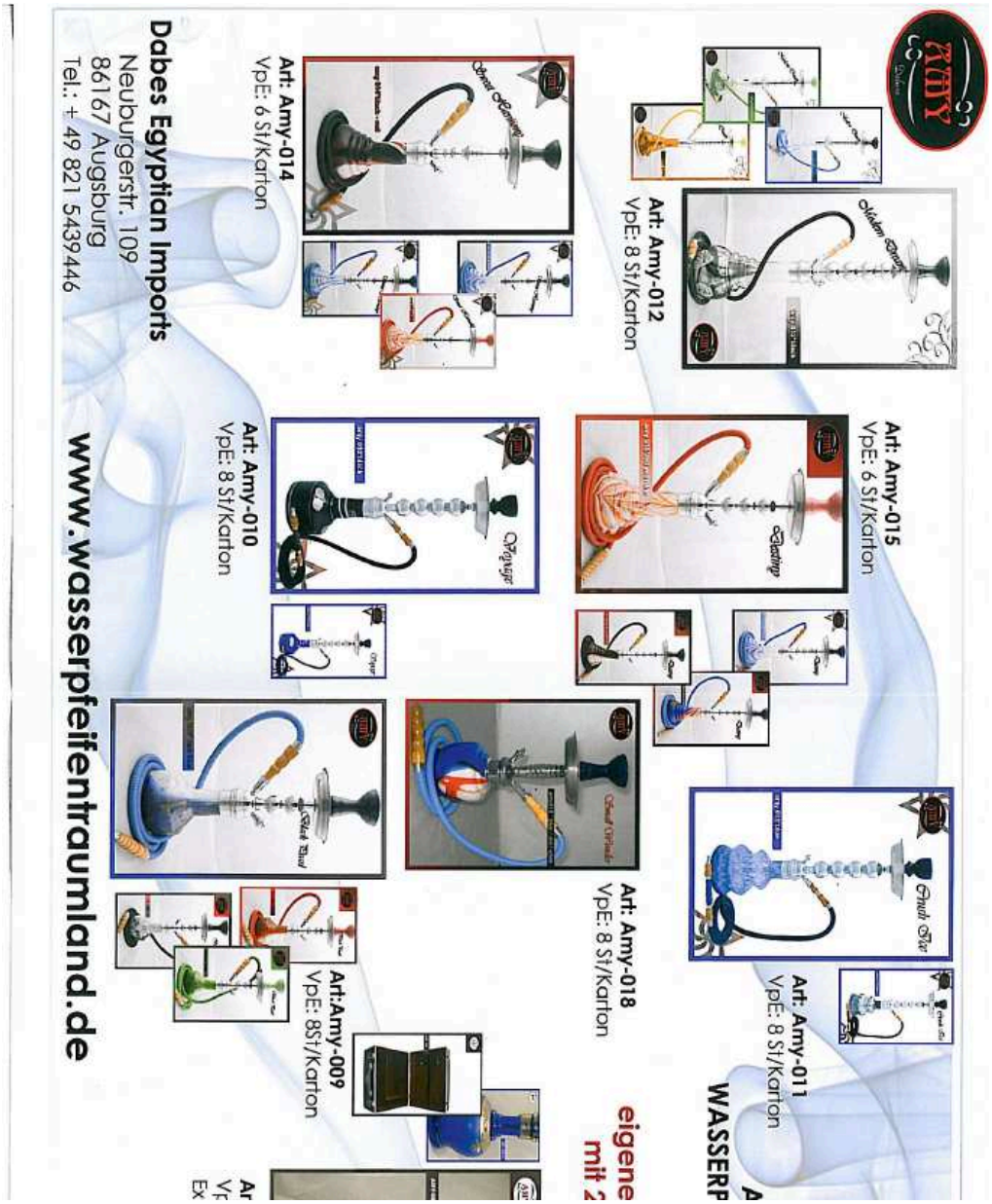
Art: Amy-015
VpE: 6 St/Karton
Art: Amy-012
VpE: 8 St/Karton
Art: Amy-011
VpE: 8 St/Karton
Art: Amy-018
VpE: 8 St/Karton
Art: Amy-014
VpE: 6 St/Karton
Art: Amy-010
VpE: 8 St/Karton
Art:Amy-009
VpE: 8St/Karton
Dabes Egyptian Imports
Neuburgerstr. 109
86167 Augsburg
Tel.: + 49 821 5439446
www.wasserpfeifentraumland.de

Exhibit 3

Name: _____
Anschrift: _____
Telefon: _____
Datum: _____

Dabes Egyptian Imports
Neuburgerstr. 109
86167 Augsburg
Tel: +49 821 5439446

DABES HOOKAHS

Preisliste /Bestellformular

- gilt für Intertabac 2011 -

Wasserpfeifen

DABES HOOKAH

Jinn		Bestellnr.qt-0003	Preis/ ab 1 Kart.	Preis /3 Kart.
rot	schwarz			
grün	amber		13,50 €	12,00 €
violett	blau			

Crazy Dots		Bestellnr.id760-1	Preis/ ab 1 Kart.	Preis /3 Kart.
	blau			
auch mit Koffer	schwarz		15,00 €	12,50 €
	grün		20,00 €	15,50 €
	amber		(mit Koffer)	(mit Koffer)

Crazy Dots Special Art		Bestellnr. id760a-1	Preis/ ab 1 Kart.	Preis /3 Kart.
amber	red white		16,00 €	14,00 €
blue white	green blue			

Memory		Bestellnr. id580-1	Preis/ ab 1 Kart.	Preis /3 Kart.
blue white				
red white	blue line		28,00 €	26,00 €
red line	black green			
black blue				

Nargile		Bestellnr.id950/id950-2	Preis/ ab 1 Kart.	Preis /3 Kart.
blau				
schwarz	rot		28,00 €	26,00 €
gelb	weiß			
grün				

Joey		Bestellnr. id980	Preis/ ab 1 Kart.	Preis /3 Kart.
	schwarz		28,00 €	26,00 €
	blau			
	rot			

Jamie		Bestellnr. id990	Preis/ ab 1 Kart.	Preis /3 Kart.
	blau		28,00 €	26,00 €
	braun			
	schwarz			

Wallah		Bestellnr. egs-0058_n	Preis/ ab 1 Kart.	Preis /3 Kart.
blau	grün		13,50 €	12,50 €
schwarz	amber			
rot				

Baghira		Bestellnr	Preis/ ab 1 Kart.	Preis /3 Kart.
auch mit Koffer				
silber-blau	kupfer-rot	wp100-1	34,50 €	31,00 €
silber-grün	kupfer-transparent	wp100-2	37,50 €	34,00 €

Exhibit 4

Exhibit 5

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the forgoing PLAINTIFF'S FIRST SET OF REQUESTS FOR PRODUCTION TO DEFENDANT DABES has been served on counsel for Applicant by mailing said copy via First Class Mail, postage prepaid to:

Paul D. Bianco
Fleit Gibbons Gutman Bongini & Bianco PL
21355 E Dixie Hwy Ste 115
Miami, Florida 33180-1244
United States

This 20th day of January 2015.

By : _____
M. Keith Blankenship

ORIGINAL FILED UNDER SEAL REDACTED FOR PUBLIC DISPLAY

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

In the Matter of U.S. Trademark Reg. No. 4,536,391
Registered on May 27, 2014

MYA SARAY, LLC, Plaintiff, v. DABES, IBRAHIM Defendant.	Proceeding No. 92060249

PLAINTIFF'S BRIEF IN SUPPORT OF ITS FIRST MOTION TO COMPEL

INTRODUCTION AND FACTUAL BACKGROUND

Cancellation-Plaintiff Mya Saray, LLC ("Mya Saray") is a premier hookah manufacturing and distribution company. Cancellation-Defendant Ibrahim Dabes ("Dabes") operates a German hookah distribution company that recently decided to apply the term AMY to its hookahs and hookah accessories. Mya Saray believes that Dabes use of AMY generally and as particularly as stylized causes confusion with Mya Saray's well-known MYA brand of hookahs and hookah accessories.

Mya Saray is not so enamored with its present litigation position to believe that a pure comparison between its mark, MYA, and Dabes' designation AMY (as stylized) will propel its case unaided through final judgment. Fortunately, the issue before this Board demands an analysis of many factors probative of the story of the marketplace in which MYA and AMY compete, presently or prospectively. *See In re E.I. du Pont de Nemours & Co.*, 476 F.2d 1357 (CCPA 1973)(lists factors of analysis). A market's setting can provide context that turns a plausible story of likelihood of confusion into a convincing one; and a convincing story into a damning one. By objecting to discovery ostensibly to all *DuPont* factors other than comparison of the designations, Dabes' present discovery tactics seem calculated to block this story.

Mya Saray owns powerful trademarks in the hookah and hookah tobacco industry. Mya Saray is old, respected, and universal; these are the traits that an up-and-comer seeks to associate with its products. Mya Saray's words and phrases are often slavishly copied. *See e.g., Mya Saray v. Al-Amir, Inc, et. al.*, 831 F.Supp.2d 922 (E.D.Va 2011)(Counterfeiter held to counterfeit Mya Saray's word marks and product designs). Mya Saray's products are often slavishly copied. *See e.g., Mya Saray v. Zahrah Corp., et. al.*, Civil Action No. 8:13-cv-01828 (C.D.Ca 2013)(Permanent injunction against copyists of product designs and patent infringers). Free riders are rarely only copyists; free riders can blend duplicated brands and products with

non-duplicates in a symbiotic way. Both the *Zahrah* and *Al-Amir* case mentioned include companies that intermingled copied products and brands with original products and brands to increase the consumer's view and purchase of the latter. Counterfeiters are common for marquee brands like MYA, and Mya Saray seeks the opportunity to show this Board that the AMY name may just be the latest attempt to free ride off of Mya Saray.

Free riders need not be heavy-handed. AMY and AMY (as stylized) are already close enough to MYA (and its stylized sibling marks) to confuse consumers. If Mya Saray can successfully show this Board that Dabes selected AMY and its accompanying stylizations to confuse consumers, then this would be convincing evidence of likelihood of confusion. This evidence may be drawn from the products supplied by Dabes. However, Dabes blocked access to discovery of Dabes' products, excepting production of one catalogue. Evidence of likelihood of confusion may be drawn from instances of actual confusion. Dabes blocked access to discovery of Dabes' records detailing instances of actual confusion. Evidence of likelihood of confusion may be drawn from records of the design of a product identical to one of Mya Saray's products – or that there were no design documents at all, potentially because Dabes purchased products from an existing pipeline of counterfeits. There are other obstructions to rightful discovery, as well as other peculiarities such as a blanket application of "commercially sensitive" to all discovery production – *even encompassing answers of "no" or "none*." Furthermore, if Dabes' discovery were taken at face value, it would have this Board believe that Dabes has not one drop of correspondence with third parties or internally.

To aid the reader an index of discovery challenged, its subject matter, and where it is discussed in this brief is presented in Exhibit 3. Mya Saray's original discovery requests are available as Exhibits 4-5.

ARGUMENT

I. DEFENDANT'S DISCOVERY RESPONSES ARE UNRESPONSIVE AND DEFENDANT'S OBJECTIONS SEEK TO IMPERMISSIBLY NARROW THE SCOPE OF DISCOVERY.

A. Standards of Law

1. Overly Broad

Rule 34 provides that a request must describe with reasonable particularity each item or category of items to be inspected. Fed.R.Civ.P. 34(b)(1)(A). Courts may find that a request is overly broad when it is couched in such broad language as to make deciding which of numerous documents may conceivably fall within its scope to be an unreasonably arduous task. *General Elec. Capital Corp. v. Lear Corp.*, 215 F.R.D. 637, 641 (D.Kan. 2003). A party resisting discovery on the basis that a request is overly broad has the burden to support its objection, unless the request is overly broad on its face. *Id*. at 640. "Mere recitation of the familiar litany that an interrogatory or a document production request is 'overly broad, burdensome, oppressive and irrelevant' will not suffice." *Momah v. Albert Einstein Medical Center*, 164 F.R.D. 412, 417 (E.D.Pa. 1996)(citations omitted).

2. Ambiguity

Rule 34 states that a document request "must describe with reasonable particularity each item or category of items to be inspected." Fed.R.Civ.P. 34(b)(1)(A). The test for reasonable particularity is whether the request places the party upon reasonable notice of what is called for and what is not. *Kidwiler v. Progressive Paloverde Ins. Co.*, 192 F.R.D. 193, 202 (N.D.W.V.2000). Therefore, the party requesting the production of documents must provide sufficient information to enable the party to whom the request is directed to identify responsive documents. *Id.* (*citing Parsons v. Jefferson-Pilot Corp.*, 141 F.R.D. 408, 412 (M.D.N.C.1992)). A party that objects to discovery as vague or ambiguous has the burden to

show such vagueness or ambiguity. *Payless Shoesource Worldwide, Inc. v. Target Corp.*, 237 F.R.D. 666, 674 (D.Kan. 2006). A party responding to discovery requests should exercise reason and common sense to attribute ordinary definitions to terms and phrases, and if necessary to clarify its answers, and may include any reasonable definition of the term or phrase at issue. *Id*. at 674-75. A respondent that does not seek clarification or indicate the unclear aspects of the requests waives its objection. *DL v. District of Columbia*, 251 F.R.D. 38, 47 (D.D.C. 2008).

3. Relevance

Discovery under the Federal Rules of Civil Procedure is broad in scope and freely permitted. *Carefirst Of Maryland, Inc. v. Carefirst Pregnancy Centers, Inc.*, 334 F.3d 390, 402 (4th Cir. 2003). Discovery need not be confined to matters of admissible evidence but may encompass that which "appears reasonably calculated to lead to the discovery of admissible evidence." Fed.R.Civ.P. 26(b)(1); *Marker v. Union Fidelity Life Ins. Co.*, 125 F.R.D. 121, 124 (M.D.N.C. 1989). The scope of discovery must be broad in order to provide both sides with all the information necessary for proper and full litigation of all the relevant issues, as well as to eliminate surprise and to facilitate settlement. *Hickman v. Taylor*, 329 U.S. 495, 507-508 (1947).

Rule 26(b)(1) provides, in part, that discovery may be obtained "regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action." *Buffington v. Gillette Co.*, 101 F.R.D. 400, 401 (D.C.Okl. 1980). Relevancy is broadly construed at the discovery stage of litigation and a request for discovery should be considered relevant if there is any possibility that the information sought may be relevant to the subject matter of the action. *Id.*; *Miller v. Doctor's General Hospital*, 76 F.R.D. 136 (W.D.Okl. 1977); *Biliske v. American Live Stock Insurance Co.*, 73 F.R.D. 124 (W.D.Okl. 1977); *Detweiler Bros. Inc. v. John Graham & Co.*, 412 F.Supp. 416 (E.D.Wash. 1976); *U.S. v. Int'l Business Machines Corp.*, 66 F.R.D. 215

(S.D.N.Y.1974). Discovery rules are to be accorded a broad and liberal treatment. *Schlagenhauf v. Holder*, 379 U.S. 104 (1964); *Hickman v. Taylor*, 329 U.S. 495 (1947); *Barnett v. Sears, Roebuck and Co.*, 80 F.R.D. 662 (W.D.Okl. 1978). Discovery should ordinarily be allowed under the concept of relevancy unless it is clear that the information sought can have no possible bearing upon the subject matter of the action. *Miller v. Doctor's General Hospital, supra*; *Marshall v. Electric Hose and Rubber Co.*, 68 F.R.D. 287 (D.Del. 1975).

4. Interrogatory Answers

Each interrogatory must be answered separately and fully in writing under oath. In the interest of narrowing the issues and ascertaining the facts relevant thereto, a court should not permit answers to interrogatories that are incomplete, inexplicit, and unresponsive. *Miller v. Doctor's General Hospital*, 76 F.R.D. 136, 140 (D.C.Okl. 1977). If the answering party lacks necessary information to make a full, fair and specific answer to an interrogatory, it should so state under oath and should set forth in detail the efforts made to obtain the information. *Int'l Fertilizer & Chemical Corp. v. Brasileiro*, 21 F.R.D. 193, 194 (S.D.N.Y. 1957) (*citing* 3 Moore, Federal Practice, Par. 33.26 at p. 2331 (2d ed. 1950)). Dependent upon the circumstances, "evasive or incomplete answers are tantamount to no answer at all." *Cf. Airtex Corp. v. Shelley Radiant Ceiling Co.*, 536 F.2d 145, 155 (7th Cir. 1976); *see also Minnesota Mining & Mfg. Co. v. Eco Chem, Inc.*, 757 F.2d 1256, 1260 (Fed.Cir. 1985) (rejecting the argument that interrogatory answers stating "unable to respond" was a response by which the party could avoid the sanction provisions of Rule 37(d)). Furthermore, a party may not make unilateral decisions to narrow the scope of discovery from the scope defined by the seeker of discovery. *Wagner v. Dryvit Systems, Inc.*, 208 F.R.D. 606, 611 (D.Neb. 2001) (*citing Laker Airways Ltd. v. Pan American World Airways*, 103 F.R.D. 42, 45-6 (D.D.C. 1984)).

B. Defendant's Discovery Objections and Answers Are Not Supportable.

1. The Rationale and Documents Relating to Dabes' Selection of Its AMY Logo (as stylized) is Appropriate Discovery.

Mya Saray asked for answers and documents related to Dabes' selection of the AMY (as stylized) mark. Subject matter for this topic is covered in Interrogatory No. 1 (Exhibit 1[1], pg. 2; Exhibit 4[2], pg. 1) and Document Request No. 15 (Exhibit 2, pg. 6; Exhibit 5, pg. 6). Dabes objected to the relevance of the Interrogatory, and without explanation, to the breadth and burdensome nature of the Document Request.

Dabes' intent in selecting AMY is at the focus of this litigation. This board may consider any factor probative of likelihood of confusion, including intent. *DuPont*, 476 F.2d at 1361 and *see Nautilus Group, Inc. v. ICON Health and Fitness, Inc.*, 372 F.3d 1330, 1334-35 (Fed. Cir. 2004)(Intent is probabitive of likelihood of confusion). Wrongful intent is "easy to infer where [a] defendant knew of the plaintiff's mark, had freedom to choose any mark, and 'just happened' to choose a mark confusingly similar to plaintiff's mark." *Dreyfus Fund, Inc. v. Royal Bank of Canada*, 525 F. Supp. 1108, 1121 (S.D.N.Y. 1981) citing 2 J. McCarthy, Trademarks and Unfair Competition § 23:33, at 107 (1973). When a defendant has freedom of choice with full knowledge of a senior user's mark, a court "can readily read into a defendant's choice of a confusingly similar mark the intent to get a free ride upon the reputation of a well known mark." *Id.* This topic is relevant to this proceeding, and Dabes' fails to explain his other bases for his other objections.

Although Dabes answers the Interrogatory with a facially satisfactory response, he should be made to answer the Interrogatory without objection or reserve information.

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[1] Dabes original responses to discovery are depicted in Exhibits 1-2.
[2] Counsel for Mya Saray and Dabes, prior to the filing of this brief, conversed to discuss deficiencies of Dabes initial responses. The result of that conference was Dabes' supplemental responses depicted in Exhibits 4-5.

2. Discovery of the Rationale and Documents Relating to Dabes' Selection of Its AMY Logo (as stylized) Over Other Alternatives is Appropriate Discovery.

Mya Saray asked for answers and documents related to Dabes' selection of the AMY (as stylized) mark over other trademarks. Subject matter for this topic is covered in Interrogatory No. 2 (Exhibit 1, pg. 3)[3] and Document Request No. 15 and 23 (Exhibit 2, pgs. 6 and 8). Dabes objects on the basis that the information sought is not relevant to the subject matter of the pending proceeding. This topic is relevant for the same reasons as Interrogatory No. 1, discussed in Subsection I(B)(1). The difference here is that Mya Saray now seeks the specific alternatives that may have been rejected. If there was only one, or if the alternatives were all variations of A-M-Y, then certainly Dabes' intent would be more questionable.

Dabes does not render any satisfactory response at all. Instead, he unilaterally narrows the scope of the question and simply repeats his answer to Interrogatory No. 1. Dabes produced no responsive documents.

3. Discovery of Companion Brands Associated with Dabes' Use of its AMY Brand is Appropriate Discovery.

Mya Saray asked for answers and documents related to Dabes' use of other brands in connection with its products, as identified in his trademark application. Subject matter for this topic is covered in Interrogatories No. 3-4 (Exhibit 1, pg. 3). Interrogatory No. 4 goes into greater detail when it further asks the characteristics of purchasers and manufacturing source of products provided under the other Dabes brands. Dabes objects to Interrogatories No. 3 and 4 on the basis that the information sought is not relevant to the subject matter of the pending

[3] Where there is no substantive change between Dabes' original and supplemental answers, no parallel citation will be provided, notwithstanding, for example as here, a supplemental response to Interrogatory No. 2 at Exhibit 4, pg. 2.

proceeding, and then to Interrogatory 4 on the basis of being vague, ambiguous, and unduly burdensome.

A factor of likelihood of confusion is the proximity of goods. *DuPont*, 476 F.2d at 1361. Dabes admittedly uses at least two brands. It is common that discrete brands represent goods with different qualities. Mya Saray's MYA brand is a high-end brand; and if Dabes uses his AMY brand to differentiate products from products offered under his original Dabes' brand, then the difference may be material. *See e.g., Cuisinarts, Inc. v. John Boos & Co.*, 622 F.Supp. 1168 (S.D.N.Y. 1985)(The fact that plaintiff and defendant used similar designations for high-end brands weighed in favor of likelihood of confusion).

If Dabes did indeed fully answer Interrogatory No. 3 without reservation of information, then Mya Saray considers this answer fairly answered. However, there is no attempt to describe in response to Interrogatory No. 4 the characteristics of product quality or prospective purchasers of the alternative brands cited in the Dabes catalogue (which appears to be the only responsive document). Also, Dabes should be made to cite the specific documents, by Bates number, it considers responsive to this Interrogatory.

4. The Identification of Dabes' U.S. Distributors and Retailers of Its Products and Its Employees Is Appropriately Discoverable.

[redacted]

[4] Mya Saray, whose U.S. retailer list is immense, empathizes with producing parties asked to produce mass quantities of information; consequently, Mya Saray asked that Dabes reveal no more than its 20 highest volume retailers, to the extent that the number exceeded 20. (Exhibit 1, pg. 5)

[redacted]

5. Hookahs Sold Under The AMY Brand and Their Attributes Are Proper Subjects of Discovery.

Mya Saray asked Dabes to identify the hookahs sold under its AMY brand, including internal names, code names, marketing names, etc., as well as each hookah's first date of sale – and its first date of sale under the AMY brand, if different. Subject matter for this topic is covered in Interrogatory No. 8 (Exhibit 1, pg. 5). Dabes objects on the basis that the information sought is not relevant to the subject matter of the pending proceeding, and further that it is unduly burdensome.

In a curious objection, Dabes declared that the names and attributes of specific hookahs sold under the AMY Brand are irrelevant to the present action. Mya Saray, as does any other trademark litigant, has some investigation ahead of it. A starting point of the investigation is the attributes of the products sold under Dabes trademarks, and Mya Saray needs to know the product names. Once the product names are established Mya Saray can determine such facts as:

1. The price points of the products;
2. The quality attributes of the products;
3. Whether the products have attributes (e.g., use of MYA proprietary coloring) that aid in further confusing consumers into believing that AMY brand products are MYA brand products.
4. The location of the products; and
5. Criticism of the products;

This comprises a simple list of the information that can be obtained from knowledge of the specific products utilized by Dabes. Furthermore, Mya Saray intends to prove that Dabes is a habitual freerider of Mya Saray's goodwill. The comparison of Dabes product sales history, in the *very abbreviated* form requested by Mya Saray, may demonstrate that he achieves greater sales success with those products that imitate those of Mya Saray.

6. Distribution Pricing and MSRP are Appropriately Discoverable.

Mya Saray asked Dabes to identify the Manufacturer's Suggested Retail Price and distribution price for its hookahs. Subject matter for this topic is covered in Interrogatory No. 9 (Exhibit 1, pg. 6; Exhibit 4, pg. 3). Dabes objects on the basis that the information sought is not relevant to the subject matter of the pending proceeding, and further that it is unduly burdensome.

The price point of an infringing product is always relevant to a likelihood of confusion analysis. Once again, Dabes cites the unduly burdensome nature of Mya Saray's request for information without bothering to explain the basis. Here, Dabes takes exception to Mya Saray's

request for the distribution prices and MSRP of its hookahs. Mya Saray is puzzled as to how this is burdensome, or even unduly so; it is a standard practice in the distribution of any good to provide an MSRP to the retailer and have (and track) standard distribution pricing.

Dabes purports to answer this Interrogatory by reference to produced documents. Mya Saray cannot ascertain which documents these might be; none include MSRP pricing. Dabes should be made to cite the materials by Bates numbers.

7. U.S. Sales Quantity of Dabes' Hookahs is Appropriately Discoverable.

Mya Saray asked Dabes to provide the sales quantities of its hookahs by year. Subject matter for this topic is covered in Interrogatory No. 10 (Exhibit 1, pg. 6). Dabes objects on the basis that the information sought is not relevant to the subject matter of the pending proceeding, and further that it is unduly burdensome.

Again Dabes objects to relevance and burden without the slightest explanation. With modern bookkeeping programs, a suitable report is seemingly a few keystokes away. Dabes' abbreviated sales history of his hookahs, provides circumstantial evidence of his intent, and indicates his level of success in copying Mya Saray. Dabes purports to answer this question via document production, but again, Mya Saray can find no such documents. Again, Dabes provides no Bates reference

8. The Extent of Trademark Search by Dabes' May Be Appropriately Discoverable.

Mya Saray asked Dabes to describe the extent to which it searched for trademarks that might impede its use of AMY (as stylized). Subject matter for this topic is covered in Interrogatory No. 12 (Exhibit 1, pgs. 6-7). Dabes objects based on relevancy and privilege and/or attorney work product. Although Mya Saray understands that the substance of a report may be subject to privilege, that privilege is waived if Dabes intends to use the substance of the

report as a defense in this action. The relevance of any report or search, however, is unquestionable. Mya Saray requests an instruction from this Board that if Dabes intends to use any search of existing trademarks, that he disclose its contents in discovery.

9. Information Received by Dabes Referring to or Inquiring about Mya Saray is Properly Discoverable.

[redacted]

10. Trade Shows Attended by Dabes Where Dabes Marketed His Products is Properly Discoverable and His U.S. Visits to Retailers/Distributors.

Mya Saray asked Dabes to identify the trade shows that he has attended within the last four years where he marketed the products of his trademark application, and any retailers or distributors in the U.S. that he has visited. Subject matter for this topic is covered in Interrogatory No. 17 (Exhibit 1, pg. 8) and Document Request No. 29 (Exhibit 2, pg. 9). Dabes objects to the Document Request and Interrogatory on the basis that the information sought is not relevant to the subject matter of the pending proceeding, and further to the Documents Request based on breadth and burden. The channels of trade and media through which a defendant markets its products is not only relevant, but a prominent factor of likelihood of infringement. If by his objection, Dabes provides an incomplete answer he will work a substantial injustice in this litigation. *See Freedom Card, Inc. v. JPMorgan Chase & Co.*, 432 F.3d 463, 471 (3d Cir.2005)(Whether goods are marketed through the same channels of trade and advertised through the same media is probative of likelihood of confusion.). Dabes answered the Interrogatory; however, the objections should nonetheless be struck to ensure a forthright and complete reply. Dabes suggests that no documents are responsive to Request No. 29, which is facially implausible; to think that a supplier ships thousands of a product to a foreign land without a smidgeon of correspondence is not credible.

11. Instances and Reports of Actual Confusion Known to Dabes Are Properly Discoverable.

[redacted]

[redacted]

12. The Nature of Dabes' Trade Channels is Properly Discoverable.

Mya Saray asks Dabes to describe the trade channels of his AMY brand products. Subject matter for this topic is covered in Interrogatory No. 24 (Exhibit 1, pg. 11-12). Dabes objects on the basis that the information sought is not relevant to the subject matter of the pending proceeding, and further that it is unduly burdensome.

The channels of trade and media through which a defendant markets its products is not only relevant, but a prominent factor of likelihood of infringement. If by his objection, Dabes provides an incomplete answer he will work a substantial injustice in this litigation. "The similarity or dissimilarity of established, likely-to-continue trade channels" is a factor in any

analysis of likelihood of confusion. *DuPont*, 476 F.2d at 1361. Dabes answered, but again, did so under reservation of objection.

13. Dabes' Sales and Advertising Literature is Properly Discoverable.

[redacted]

14. Dabes' Sales and Advertising Budget is Properly Discoverable.

[redacted]

15. Dabes' Sales for Each Product Sold under His AMY Brand is Properly Discoverable.

Mya Saray asks Dabes to list by product his sales in the United States under his AMY brand. Subject matter for this topic is covered in Interrogatory No. 28 (Exhibit 1, pgs. 12-13). Dabes objects on the basis that the information sought is not relevant to the subject matter of the pending proceeding, and further that it is unduly burdensome and vague.

Dabes states that the Interrogatory is vague, but fails to explain which part is vague. Dabes uses product identifiers approved by this U.S. Patent and Trademark Office and the terms "sales" and "by year" and "United States" seem facially self-explanatory. Furthermore, Dabes states the Interrogatory is unduly burdensome, but this again seems like one of the questions that can be answered by most bookkeeping programs with a few keystrokes. Dabes discloses in answering Mya Saray's document requests a handful of import documents evidencing imports into the U.S. In response to Dabes' objection of the relevance of this Interrogatory to the subject matter of this litigation, it is important to understand the sales footprint of Dabes listed products in determining the existence of actual confusion and other issues (e.g., variety of goods).

Dabes answers by reference to disclosed documents, generally but fails to reference any documents specifically, e.g. by Bates number.

16. Dabes' Use of Counterfeit Hookahs is Strongly Indicative of his Bad Intent and Properly Discoverable.

[redacted]

[redacted]

[redacted]

[redacted]

17. Dabes' Lost and Unavailable Documents are Properly Discoverable.

When in Interrogatory No. 35, (Exhibit 1, pg. 15) Mya Saray requested the identity of lost documents or unavailable documents that would have otherwise have been produced in response to one of the other Interrogatories, Dabes objected generally, that they might be the basis of work product and/or attorney-client privilege. The general objections should be stricken for reasons described elsewhere in this brief. The objections as to work product and/or attorney-client privilege on the other hand are perplexing. Defendant should be made to explain why the documents that it does not have cannot be viewed for reasons of work product or attorney-client privilege.

Furthermore, Dabes objects strongly to the Mya Saray's Document Request No. 31 (Exhibit 2, pg. 31), which seeks documents concerning Dabes document retention policies.

[5] Specifically the QT hookah. The QT hookah has achieved such sales prominence that it supports its own trademark for its product configuration. See U.S. Trademark Reg. No. 3,845,276.

[6] The catalogue was not produced by Dabes in its discovery responses, although Mya Saray asked for his sales literature. Instead, Mya Saray discovered the catalogue when one of its distributors alerted it to the fact that Dabes was attempted to sell its counterfeits in the U.S. This withholding of evidence epitomizes the danger in allowing Dabes to unilaterally alter the scope of proper discovery requests, and answers conditioned on ongoing objections.

Document retention policies are appropriate targets of discovery. *Huthnance v. District of Columbia*, 255 F.R.D. 285, 287 (D.D.C.2008). Dabes' objections should be struck.

18. Dabes' Attempts to Validate its Trademarks is Properly Discoverable.

In Interrogatory No. 37 (Exhibit 1, pg. 16), Mya Saray seeks information on focus group testing, research, or other types of sophisticated analysis of the potential for confusion between the AMY and MYA brands. Defendant objected on the basis that such analysis would be irrelevant. Attempts to discern confusion through focus groups, studies, etc. can be highly probably of likelihood of confusion. *Edina Realty, Inc. v. TheMLSonline.com*, 80 U.S.P.Q.2d 1039, 2006 WL 737064 (D. Minn. 2006) (court denied motion to exclude evidence based on "consumer behavior and marketing" based on focus groups, empirical studies on general Internet usage, and statistics tracking consumer use of defendant's sponsored link).

19. Physical Specimens of Dabes are Appropriately Discoverable.

[redacted]

[redacted]

20. The Creation of Dabes' Packaging for Its AMY Brand is Properly Discoverable.

In Document Request No. 13 (Exhibit 2, pg. 5), Mya Saray asks for documents and things related to the purchase and ordering of packaging with the AMY Logo or AMY Brand. Without providing a basis, Dabes states that this Request is overly broad and unduly burdensome. Whether Dabes acquires his packaging from foreign third-party manufacturers in the business of organized counterfeiting, or from U.S. or German brand designers is highly probative of likelihood of confusion.

Although Dabes claims to have submitted documents responsive to this Request, Mya Saray cannot ascertain with any reliability that Dabes disclosed any such documents.

21. Submission, Review, and Registration Documents of AMY Trademarks or the Subject Hookahs are Appropriately Discoverable

[redacted]

II. CONCLUSION

Dabes discovery disclosures are riddled with facially unsupportable objections, and in some instances perplexing objections and objections immediately contradicted by the answer.

Dabes frequently answers questions not asked. Dabes seems to have decided that this case should be decided by a single inquiry, a comparison of AMY to MYA, and has refused to answer any interrogatories applicable to any other *DuPont* factor. Furthermore, there is not a single explanation for any objection. This Board should grant Mya Saray's motion to compel and require Dabes to respond to its discovery.

DATED: 5/28/2015

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the forgoing PLAINTIFF'S BRIEF IN SUPPORT OF ITS FIRST MOTION TO COMPEL has been served on counsel for Applicant by mailing said copy via First Class Mail, postage prepaid to:

Paul D. Bianco
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This 28th day of May 2015.

By : M. Keith Blankenship
M. Keith Blankenship

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

In the Matter of U.S. Trademark Reg. No. 4,536,391
Registered on May 27, 2014

MYA SARAY, LLC, Plaintiff, v. DABES, IBRAHIM Defendant.	Proceeding No. 92060249

PLAINTIFF'S FIRST MOTION TO COMPEL

Pursuant to Federal Rules of Civil Procedure 33, 34, and 37, Cancellation-Plaintiff Mya Saray, LLC ("Plaintiff") respectfully moves this Court for an Order (1) compelling Registrant-Defendant ("Defendant") Dabes to provide full and accurate responses to Plaintiff's First Set of Interrogatories and Requests for Production. Plaintiff certifies that it has made a good faith effort, by telephonic conference and correspondence, to resolve with the Defendant the issues presented in the motion and has been unable to reach agreement. In support of its Motion, Plaintiff refers the Court to Plaintiff's accompanying Brief of Law in Support of its First Motion to Compel.

Plaintiff request that this Board:

1. ORDER Defendant to provide full and accurate responses to Plaintiff's First Set of Interrogatories and Requests for Production generally;

2. STRIKE Defendant's Objections to Plaintiff's First Set of Interrogatories No. 1-4, 7-10, 12, 16-18, 24-25, 27-28, 30-35, and 37 and Plaintiff's First Set of Requests for Production No. 3-9, 13-28, and 30-31;

3. ORDER Defendant to correlate which documents are responsive to specific interrogatories and document requests;

4. RESET discovery dates to ameliorate the effects of Defendant's improper discovery production; and

5. PROVIDE such other relief as this Board may deem just and proper.

DATED: 5/28/2015

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the forgoing FIRST MOTION TO COMPEL has been served on counsel for Applicant by mailing said copy via First Class Mail, postage prepaid to:

Paul D. Bianco
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21355 E Dixie Hwy Ste 115
Miami, Florida 33180-1244
United States

This 28th day of May 2015.

By : M. Keith Blankenship
M. Keith Blankenship