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

Proceeding	92061571
Party	Defendant Ivo N Njabe
Correspondence Address	IVO N NJABE 3255 JUSTINA TERRACE, APT #7 JACKSONVILLE, FL 32277 UNITED STATES njabe2002@yahoo.ca
Submission	Motion to Compel Discovery
Filer's Name	Ivo Njabe
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Signature	/Ivo Njabe/
Date	01/11/2016
Attachments	Initial Request for documents and things.pdf(162653 bytes)

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

GESTION DIANE LANCTÔT LTÉE,

Petitioner,

In the matter Trademark
Registration Number 4299998

Vs.

For the mark NIVO (Stylized)
Registered on March 12, 2013

N. IVO NJABE,

Cancellation Number 92061571

Registrant.

**REGISTRANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF
DOCUMENTS AND THINGS TO PETITIONER**

Registrant, Ivo N. Njabe (hereinafter "Registrant"), request the Petitioner GESTION DIANE LANCTÔT LTÉE (hereinafter "Petitioner"), to produce for inspection and/or copying by Registrant the following documents and things in the possession, custody, or

control of Petitioner and/or the agents, directors, officers, employees, or attorneys of Petitioner. In accordance with

Rules 29 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark

Rules of Practice, the production is requested to be made on or before January 8, 2016, at 3255 Justina Terrace, #7, Jacksonville, Florida 32277. To the extent Petitioner desires an alternative arrangement for the production of documents, the parties can meet and confer on the issue.

Instructions

- 1.** For the convenience of counsel, the Trademark Trial and Appeal Board, and as suggested by TBMP § 407.02, it is requested that each numbered interrogatory or request be answered by repeating in its entirety and then providing the corresponding response.
- 2.** It is expected that any additional information that becomes known to Petitioner or counsel up to and including the time of trial will be provided pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.
- 3.** Petitioner shall set forth an answer to each interrogatory or request separately and fully. Each separately numbered or lettered sub-part of each interrogatory requires a separate answer thereto. As to any interrogatory or request that Petitioner refuses to answer in whole or in part for any reason, state each ground for Petitioner's refusal to answer. Where Petitioner believes that a complete answer to a particular interrogatory or request, or part thereof, is not

possible, answer to the extent possible and provide an explanation for Petitioner's inability to answer further.

4. If Petitioner objects or refuses to answer, in whole or in part, any interrogatory or request based on an assertion of attorney-client, work product, or other immunity or privilege, provide along with Petitioner's responses to these discovery requests a discovery privilege log identifying all documents or information withheld and the specific privilege asserted as to each. Where documents are withheld based on an assertion of privilege, identify the author and recipient(s) of such document, the date and general subject matter of the document, and identify each and every person who has seen the document. Where Registrant claims privilege for oral communications, state the general subject matter of the communication, identify each person present during the communication, and identify each person to whom the subject of the communication has been disclosed.
5. For each interrogatory, identify all documents to which Petitioner referred or relied upon to answer that interrogatory and all individuals having knowledge regarding Registrant's answer. Wherever the identification of documents is called for in these interrogatories, Registrant may, in lieu of such identification, attach a complete and legible copy of said document to the interrogatory responses and indicate the specific interrogatory question to which the attached document is intended to be responsive.
6. Where Petitioner is requested to produce documents or things in response to these discovery requests, Petitioner is to produce all responsive documents or

things in Petitioner's possession, custody, or control, including those documents or things in the possession of Petitioner's attorneys, agents, employees, or anyone acting on Petitioner's behalf.

7. If Petitioner is aware of any document, item, or thing responsive to these discovery requests which once existed but is no longer available, state the reason such document is no longer available and identify any persons having information regarding the document or item's prior existence or its disposition or loss. For any document or item which has been destroyed, identify the date it was destroyed, the person who destroyed it, the reason it was destroyed, and the facts and circumstances under which it was destroyed.
8. None of the definitions, interrogatories, or requests set forth below shall be construed as an admission relating to the existence of any evidence, to the relevance or admissibility of any evidence, or to the truth or accuracy of any statement or characterization in the definition, interrogatory, or request.

Definitions

The following interrogatories or requests are subject to the definitions set forth herein and are deemed to be incorporated in each interrogatory or request.

1. As used herein, the terms "Petitioner" or "you" refer to GESTION DIANE LANCTÔT LTÉE and any person acting by or on its behalf including, without limitation, agents, employees, attorneys, representatives, and/or business or professional affiliates

2. As used herein, the term “Registrant” refers to IVO N. NJABE, owner of the NIVO Trademark, consultants, representatives, and any other persons acting on behalf of the foregoing.
3. As used herein, the term “Petitioner’s Mark” refers to any and all registered and common law trademarks used by Petitioner including, but not limited to, the mark shown in U.S. Registration No. 3,517,206, unless the context of a particular interrogatory, production request, or admission request states differently.
4. As used herein, the term “Registrant’s Mark” refers to any and all registered and common law trademarks used by Registrant, including, but not limited to, the mark shown in U.S. Registration No. 4,299,998, unless the context of a particular interrogatory, document request, or admission request states differently.
5. As used herein, the terms “document” and “documents” refer to all written, graphic or otherwise recorded material, including without limitation, microfilms or other film records or impressions, tape recordings or computer cards, floppy disks or printouts, any and all papers, photographs, films, recordings, memoranda, books, records, accounts, communications, letters, telegrams, correspondence, notes of meetings, notes of conversations, notes of telephone calls, inter-office memoranda or written communications of any nature, recordings of conversations either in writings or upon any mechanical or electrical recording devices, including e-mail, notes, papers, reports, analyses, invoices, canceled checks or check stubs, receipts, minutes of meetings, time sheets, diaries, desk calendars, ledgers, schedules, licenses, financial

statements, telephone bills, logs, and any differing versions of any of the foregoing, whether so denominated, formal, informal or otherwise, as well as copies of the foregoing which differ in any way, including by the addition of handwritten notations or other written or printed matter of any nature, from the original. The foregoing specifically includes information stored in a computer database and capable of being generated in documentary form, such as electronic mail.

6. As used herein, the terms “thing” and “things” refer to any tangible item other than a document.
7. As used herein, the terms “communication” and “communications” refer to, without limitation, any transmission, conveyance or exchange of a word, statement, fact, thing, idea, document, instruction, information, demand, question or the like by any medium, whether by written, oral or other means, including but not limited to, electronic communications and electronic mail (“e-mail”).
8. As used herein, the terms “person” and “persons” shall include, but are not limited to, any natural person, business, corporation (for profit or not), firm, partnership, proprietorship, association, joint venture, company, institution, foundation, body, governmental entity, every other form of legal entity or division thereof, and/or employee, agent, or representative of any of the foregoing.
9. As used herein, the term “identify” when used with respect to a document means the party shall state (1) the date of the document or the date it was created or received; (2) the author or originator of the document; (3) the type of document (*e.g.*, whether it is a letter, memorandum, report, etc.); (4) the substance of the

document; (5) the recipient or addressee of the document, where applicable; (6) the current and/or last known location and custodian of each copy of the document; and (7) any and all other means for identifying it with sufficient particularity to satisfy the requirements for its inclusion in a request for its production pursuant to Rule 34 of the Federal Rules of Civil Procedure, or a subpoena *duces tecum*.

10. As used herein, the term “identify” when used with respect to a person means the party shall state the person’s full name and present or last-known address or residence, the person’s current and prior employer and business address(es) (including dates of each), and the person’s home, business, and cellular telephone numbers. If the person is a corporation or other entity, “identify” means to state its full name, the nature of its organization, the state under which it was organized, and the address of its current and prior principal place of business(es) (including dates of each). If any of the above information is not available to Petitioner, state any other available means of identifying such person.

11. As used herein, the term “identify” when used with respect to a communication means the party shall state (1) the person making or generating the communication; (2) all person(s) to whom the communication was made, received, or directed; (3) the medium of the communication, *e.g.*, telephone conference, letter, electronic communication, etc.; (4) the date(s) of such communication; and (5) the subject matter of such communication.

12. As used herein, the term “describe” means to provide fully and with as much detail and specificity as possible the information requested, including, but not

limited to, all information discoverable under Rule 26(b) of the Federal Rules of Civil Procedure, and state any facts or opinions related to such information, identify other parties known to Petitioner who also possess such information, and list any documents evidencing, reflecting or pertaining to the information provided.

13. As used herein, the terms “and/or,” “and,” and “or” are to be read in both the conjunctive and disjunctive, and a request for information which would be responsive under a conjunctive reading shall serve as a request for all information which would be responsive under a disjunctive reading.

14. As used herein, the terms “reflect” and “relate” and derivatives thereof (*e.g.*, “refer to,” “relating to,” etc.) mean relating to, referring to, concerning, mentioning, reflecting, pertaining to, evidencing, involving, describing, discussing, commenting on, embodying, responding to, supporting, contradicting, or constituting (in whole or in part), as the context makes appropriate, or will likely to lead to admissible evidence.

15. As used herein, the use of a verb in any tense shall be construed as the use of the verb in all other tenses.

16. The singular form of a word shall be interpreted as plural, and the plural form of a word shall be interpreted as singular, whenever appropriate, in order to bring within the scope of these requests and interrogatories any information that might otherwise be considered beyond its scope.

REQUESTS FOR DOCUMENTS AND THINGS

Request No. 1: Produce all documents, things, and electronically stored information regarding the creation, selection, and adoption of Petitioner's Mark by or on behalf of Registrant.

Request No. 2: Produce all documents, things, and electronically stored information regarding any investigation or search concerning Petitioner's selection, adoption, or decision to apply for Federal registration of the NIVO mark.

Request No. 3: Produce all documents, things, and electronically stored information referring to, relating to, or concerning the date that Petitioner first selected the NIVO Mark.

Request No. 4: Produce all documents, things, and electronically stored information evidencing the circumstances of Petitioner's first use or intended first use of the NIVO Mark.

Request No. 5: Produce all documents, things, and electronically stored information relating to Petitioner's past, present, and future marketing plans for or including the NIVO Mark.

Request No. 6: Produce all documents sufficient to show the amount of money expended and budgeted by Petitioner for signage or advertising material utilizing the NIVO Mark, or promoting or advertising goods in connection with the NIVO Mark.

Request No. 7: Produce all documents which identify each different good sold, offered for sale, intended to be sold or intended to be offered for sale under the NIVO Mark, including a sample of goods and materials delivered to purchasers of such goods within the United States of America.

Request No. 8: Produce all documents which record, refer to, or relate to the sales by Petitioner of any goods under or in connection with the NIVO Mark in the United States, including, but not limited to, all purchase orders, invoices, receipts, contracts, agreements, and/or sales summaries.

Request No. 9: Produce all documents, things, and electronically stored information sufficient to identify the amount of profit earned by Petitioner in connection with the sale of any goods under the NIVO Mark including, but not limited to, sales revenues, quantities, gross receipts, material costs, labor costs, general and administrative costs, overhead, gross profits and net profits.

Request No. 10: Produce all documents, things, and electronically stored information that refer or relate to Petitioner's projected annual income from the sale of Petitioner's goods under the NIVO Mark for each of the next five years.

Request No. 11: Produce all documents, things, and electronically stored information sufficient to identify each of Petitioner's customers who have purchased goods sold by Petitioner under the NIVO Mark.

Request No. 12: Produce all documents, things, and electronically stored information sufficient to identify all locations and/or websites that sell goods under the NIVO Mark.

Request No. 13: Produce all documents, things, and electronically stored information regarding each instance of actual or apparent confusion known to Petitioner regarding the source of origin of Petitioner's goods and the source or origin of Registrant's goods.

Request No. 14: Produce all documents which refer to, relate to, or are in any way concerned with the preparation, filing and/or prosecution of any applications for registration, state or federal, of marks by Registrant.

Request No. 15: Produce a sample of each good which is being used under Registrant's Mark.

Request No. 16: Produce all documents which record, refer, or relate to the channels of trade through which Petitioner markets any goods under Registrant's Mark.

Request No. 17: Produce all documents, things, and electronically stored information that support (or not) your statement that "Registrant's use of the Mark on products closely related to Petitioner's products – including those in the same International Class – are upon information and belief marketed through similar channels of trade as Petitioner's products." See Petition, at 5.

Request No. 18: Produce all documents, things, and electronically stored information that support the registration and/or operation of your business under the NIVO Trademark in the United States.

Request No. 19: Produce all documents, things, and electronically stored information that support (or not) your statement that "Registrant has abandoned its use of the Mark, and specifically has abandoned its use of the Mark in International Class 25, in that it has discontinued use of the Mark with intent not to resume such use" See Petition, at 7.

Request No. 20: Produce all documents, things, and electronically stored information that support (or not) your first use of the NIVO trademark in commerce, in the United States, on products in International Class 25.

Request No. 21: Produce all documents which record, refer to, or relate to the sales by Petitioner of any goods under or in connection with the NIVO Mark in the United States, including, but not limited to, all purchase orders, invoices, receipts, contracts, agreements, and/or sales summaries in 2008, 2009, 2010, and 2011.

Request No. 22: Produce all documents, things, and electronically stored information that refer to, relate to, or concern Registrant's Mark.

Request No. 23: Produce all documents, things, and electronically stored information that refer to, relate to, or concern Mark claimed by Petitioner.

Dated: December 25, 2015

Respectfully submitted,

/S/ Ivo N. Njabe

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Ivo. N. Njabe

Owner of NIVO

3255 Justina Terrace Apt. 7

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CERTIFICATE OF SERVICE

I here certify that a true and complete copy of the foregoing **REGISTRANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO PETITIONER** has been served on:

GESTION DIANE LANCTÔT LTÉE

By emailing and mailing said copy on December 26, 2015, as follows:

F. Michael Sajovec

Peter D. Siddoway

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Attorneys for Petitioner

Signature: /s/ Ivo N. Njabe.

Date: 12/26/2015.