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

Proceeding	91154043
Party	Defendant Gebr. Hoffmann AG. Gebr. Hoffmann AG. Eisenbahnstrasse 71 CHX CH-3601 Thun,
Correspondence Address	J. STEPHEN SIMMS SIMMS SHOWERS LLP 20 S CHARLES ST, STE 702 BALTIMORE, MD 21201
Submission	HOFFMAN’S MOTION FOR RECONSIDERATION OF DECEMBER 5, 2003 ORDER GRANTING LANCO’S MOTION TO COMPEL AS “UNOPPOSED”
Filer's Name	J. Stephen Simms
Filer's e-mail	jssimms@simmsshowers.com
Signature	J. Stephen Simms
Date	12/31/2003
Attachments	123103 Motion for reconsideration.pdf (43 pages)

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

Lanco Corporation	)	
Opposer,	)	
	)	Opposition No. 91/154,043
v.	)	
Hoffman Neopac A.G. f/k/a Gebr. Hoffman A.G.	)	Ser. No. 75/545,553 Mark: Miscellaneous Design
Applicant.	)	

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HOFFMAN'S MOTION FOR RECONSIDERATION OF DECEMBER 5, 2003 ORDER GRANTING LANCO'S MOTION TO COMPEL AS "UNOPPOSED"

Applicant Hoffman hereby moves the Board pursuant to Trademark Rule 2.129(c) and TBMP § 518 to reconsider its December 5, 2003 decision, which granted LANCO's motion to compel as unopposed.

First and foremost, Lanco wrote the Board, in its August 18, 2003 motion for a 60 day extension to respond to Hoffman's then-pending discovery requests (Exhibit A hereto), as follows:

> Because there is a possibility that the Applicant has lost interest in this matter and will never respond to the outstanding discovery requests, Opposer **requests a sixty-day extension of time** to respond to the Applicant's discovery requests and a sixty-day extension of all testimony periods. Hopefully, Applicant will inform Opposer during this additional time about its intentions with respect to this matter to prevent the need for Opposer to file a motion to compel or other documents with the Trademark Trial and Appeal Board.

(Emphasis added)

Hoffman did not oppose this extension, that Lanco requested, which by Lanco's own representation, would allow Hoffman an additional 60 day period (eg, through and including October 18th) for Hoffman to inform Lanco "about its intentions with respect to this matter to

prevent the need for Opposer to file a motion to compel . . . ."

That, as set out below, is exactly what Hoffman did - it took the 60 days that Lanco said it would allow, to consider its intentions about the proceedings. Despite Lanco's representation that it would allow this 60 days, however, Lanco "pulled the trigger" with its motion to compel, 18 days before it said it would, on October 1st. Significantly as well, in Lanco's August 18th motion, it never mentioned, any attempt to treat any of its discovery requests as, "unobjectionable."

As importantly, Hoffman **did** oppose the motion to compel - that Lanco filed, more than two weeks before it had represented to the Board, that it would.

Lanco mailed its motion to compel, on October 1, 2003. Hoffman mailed its opposition, on November 13, 2003, along with its responses to Lanco's discovery requests. The Board issued its decision sometime later, on December 5th.

Trademark Rule 2.127(a), which the Board cites as grounds for its decision nevertheless deeming the Lanco motion "unopposed" - when, in fact, Hoffman had filed an opposition well before the Board's December 5th decision, states in pertinent part as follows:

> When a party fails to file a brief in response to a motion, the Board may treat the motion as conceded.

That is not the case here. There was a response. Trademark Rule 2.127(a) does not say, that when a party fails to file a "timely" response, it instantly concedes the motion. The Board's decision, therefore, to grant the motion to compel as conceded - which it clearly is not - therefore should be reversed.

This is especially because, the next step that the Board makes, is a very harsh decision. Even though Hoffman had served its written responses to Lanco's discovery requests, well

before the Board's December 5th decision, the Board nevertheless proceeded to overrule Hoffman's objections, based on, the idea that Hoffman had conceded the motion to compel.

This amounted to declaring a default on Hoffman, when there was no default.

> The courts and the Board are reluctant to grant judgments by default and tend to resolve doubt in favor of setting aside a default, since the law favors deciding cases on their merits. *Morris v. Charnin*, 85 F.R.D. 689 (S.D.N.Y.1980); *Alopari v. O'Leary*, 154 F.Supp. 78 (E.D.Penn.1957); *Thrifty Corporation v. Bomax Enterprises*, 228 USPQ 62 (TTAB 1985); *Regent Baby Products Corp. v. Dundee Mills, Inc.*, 199 USPQ 571 (TTAB 1978).

Paolo's Associates Limited Partnership v. Paolo Bodo, 21 USPQ2d 1899, at 3 (Comm'r 1990)(Cited with approval in TBMP § 317.01 ("Default - In General"); affirming Board's setting aside of a default, where there was a docketing error in the respondent's office).

The Board wrote as follows in DC Comics and Marvel Characters, Inc. v. Philip Frederick Margo and Noah Margo, 2003 WL 22410261 (Trademark Tr. & App. Bd.):

> Pursuant to Fed. R. Civ. P. 6(b), discretion is vested in the Board to reopen discovery at any time where it appears that a party's failure to take discovery resulted from excusable neglect. The salient question for determination in connection with applicants' motion to reopen hence is whether applicants's inaction in this proceeding was occasioned by excusable neglect within the contemplation of Rule 6(b).
>
> As clarified by the Supreme Court in Pioneer Investment Services Company v. Brunswick Associates Limited Partnership, 507 U.S. 380 (1993), and followed by the Board in Pumpkin, Ltd. v. The Seed Corps, 43 USPQ2d 1582 (TTAB 1997), a determination of whether a party's neglect is excusable involves consideration of (1) the prejudice to the non-moving party, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the moving party, and (4) whether the moving party had acted in good faith. Pioneer, supra at 395. In applying these factors, the third Pioneer factor, namely the reason for the delay and whether it was in the reasonable control of the movant, might be considered the most important factor in a particular case. Atlanta-Fulton County Zoo Inc. v. DePalma, 45 USPQ2d 1858, 1859 (TTAB 1998).

In Pumpkin, Ltd. v. The Seed Corps, 43 USPQ2d at 1585, the Board wrote as follows:

> In Pioneer, the Supreme Court found, in a sharply divided five-to-four decision, that a creditor in a bankruptcy case had shown that its failure to timely file its proof of claim was the result of excusable neglect, within the meaning of Bankruptcy Rule 9006(b)(1), and that its late-filed proof of claim accordingly should have been accepted by the Bankruptcy Court. [FN4] In so deciding, the Court's majority rejected any "bright-line" approach to determining whether excusable neglect exists i.e., an approach under which excusable neglect could be found only upon a showing that the movant's failure to take timely action was caused by circumstances beyond its reasonable control, or under which any showing of fault on the part of the late filer would defeat a claim of excusable neglect.
>
> > [4] The Court reasoned that because "neglect," by definition, encompasses omissions to act caused by carelessness, it would be improper to hold that excusable neglect can be shown only when the failure to act was caused by intervening circumstances beyond the party's control, or to hold that omissions caused by inadvertence, mistake or carelessness are per se not within the ambit of excusable neglect. "Although inadvertence, ignorance of the rules, or mistakes construing the rules do not usually constitute 'excusable' neglect, it is clear that 'excusable neglect' under Rule 6(b) is a somewhat 'elastic concept' and is not limited strictly to omissions caused by circumstances beyond the control of the movant" Pioneer, 507 U.S. at 392

The question of whether Hoffman acted in good faith here, was only one that the Board raised - on its December 5th finding that, despite Hoffman's opposition, the opposition was deemed "unopposed."

First and foremost, Lanco received the response it wanted, as the result of its motion to compel: Hoffman's written responses to its discovery. With its August 18, 2003 request to extend time for its own responses to Hoffman's discovery, Lanco indicated that it was content, to continue to not receive Hoffman's responses, for 60 days, and would not, during that time, file any motion to compel.

Then, not only did Hoffman respond to the motion to compel, after Lanco filed it, but, the motion was moot as soon as Hoffman responded. There was no need, at that point, for the Board

to grant the motion. As set out in TBMP § 523.02, and, Trademark Rule 2.120(e):

> If issues raised in the motion are subsequently resolved by agreement of the parties, the moving party should inform the Board in writing of the issues in the motion which no longer require adjudication.
>
> * * * *
>
> In the event that issues raised in the motion are subsequently resolved by the parties, the moving party should inform the Board in writing of the issues in the motion which no longer require determination. See 37 CFR §2.120(e).

Hoffman's service of its responses, did resolve the substance of the Lanco motion (which complained only about the lack of written responses), with the exception only, of Lanco's new insistence, that (despite its August 18th representations), Hoffman be forced to respond without objection.[1]

Nevertheless, under the Pioneer standards, the Board also, reconsidering its December 5, 2003 decision (where it first raised the "excusable neglect" standard), should also find that Hoffman's filing of its response not only to the motion to compel, and discovery requests, on November 13th, constituted "excusable neglect" under Pioneer, as follows:

(1) The prejudice to the non-moving party: Lanco claims none, can claim there was

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[1] TBMP § 523.02 continues with the explanation that:

> In addition, the motion must be supported by a written statement from the moving party that such party or its attorney has made a good faith effort, by conference or correspondence, to resolve with the other party or its attorney the issues presented in the motion, and has been unable to reach agreement.

Although Hoffman agrees that Lanco's counsel did contact Hoffman's counsel about the discovery responses, there was no contact indicating that despite Lanco's August 18, 2003 representation to the Board that Lanco would allow Hoffman until October 18, 2003 to consider Hoffman's position, why Lanco despite this, "pulled the trigger" with its motion to compel on October 1st and insisted that it receive discovery responses, 18 days earlier than it had told the Board, on August 18th, that it would expect to receive them.

none, and, there was none, and especially none, for an approximately 20 day delay in the response to its motion to compel. The Board must remember Lanco's August 18, 2003 representation to the Board, in which it was content to allow 60 days to pass, before it indicated that it would file any motion to compel and during which, Hoffman could consider whether it would pursue its application.

(2) The length of the delay and its potential impact on judicial proceedings: Again, the delay of response to the motion to compel, was only 20 days. Furthermore, again, Lanco has indicated that it did not press its discovery requests; even though filed in July and August, Lanco did not move until October to compel responses. Hoffman filed its answer in February, 2003 - - but Lanco, as Opposer, waited nearly five (5) months later to take any action in its case, including, the service of any discovery requests.

(3) The reason for the delay, including whether it was within the reasonable control of the moving party: Hoffman has steadily pursued its application before the Board, over a 4½ year period, and, has timely filed its answer in these proceedings.

Hoffman's application for its trademark, furthermore, is meritorious. Hoffman is a Swiss corporation, which holds valid and enforceable Madrid Protocol/World Intellectual Property Organization ("WIPO"), and, Switzerland, trademark registrations, for its "KLICK-KLACK" lid. (See Exhibit B hereto). The Examiner of the U.S. Patent and Trademark Office ("USPTO") confirmed that Hoffman's application **is** meritorious and therefore the Office published Hoffman's registration for opposition, on April 4, 2002. The examiner determined that Hoffman's **proper mark** was the following:

> **Description of Mark:** The mark consists of the configuration of the KLICK-KLACK metal lid for cans. The KLICK-KLACK lid has acquired distinctiveness

> under section 2(f) of the Trademark Act to distinguish origin because of the unique sound created when the lid is opened or closed. KLICK to open. KLACK to close. The mark, therefore, consists of the sound created by the non-functional shape of the goods.

Although Hoffman's application is clearly meritorious, nevertheless it has taken a long time to move through the USPTO.

The cost of pursuing the application has continued to mount. It also has not been clear to Hoffman, whether there is a sufficient market for the "KLICK KLACK" product, to warrant further expenses of proceeding.

At the time that Lanco served its discovery requests, and then, its motion to compel, Hoffman did take - with Lanco's permission - further time to consider, whether continued cost of the proceedings measured against potential sales, merited continuing the proceedings, in particular, continuing to oppose the Lanco opposition (or, as Lanco's August 18, 2003 filing with the Board stated, while, Hoffman considered "its intentions" with respect to the matter).

Lanco was correct; Hoffman was considering its intentions, and, Lanco allowed Hoffman to do that.

U.S. sales of the KLIK KLAK can have been modest - as Lanco knows, since, it either sells, or is considering selling, a similar product in the marketplace (and, for that matter, the commercial situation of this product, probably explains as well, why Lanco has not vigorously pursued its own opposition, here).

After some consideration - - including, during the 60 day period that Lanco expressly granted Hoffman to do this - - Hoffman has decided to continue its application (as Hoffman's opposition to the motion to compel, discovery responses, and this instant motion to reconsider, shows). Unfortunately, that consideration took more time, than the 60 days, to October 18th, that

Lanco represented to the Board that it would give Hoffman for the consideration - but only, 25 days more - to the November 14th date, on which Hoffman filed its opposition to the Lanco motion to compel, and served its discovery responses.

Hoffman reasonably believed, considering the slow pace at which Lanco had pursued its opposition - - and the express, 60 day period from August 18th that Lanco represented to the Board that Lanco would give Hoffman to consider Hoffman's position - that Hoffman would have further time to consider its response to Lanco's discovery requests - and, its motion to compel.

Hoffman, however, is fully prepared and determined, having undertaken this consideration, to continue to press its application and to oppose Lanco's opposition.

(4) Hoffman has acted in good faith: Hoffman filed its opposition to the motion to compel, and, responded to Lanco's discovery requests. It is ready to proceed with this case, including, under the schedule that the Board's December 5th Order, established.

All of these factors, considered together, certainly meet the Pioneer standards, and constitute "excusable neglect" under them.

The fact is, as well, that Lanco's discovery requests are objectionable. Hoffman attaches its November 13, 2003 responses to Lanco's discovery requests, and objections (Exhibit C hereto). As the Board clearly will see, a significant number of Lanco's requests are objectionable and improper under Fed. R. Civ. P. 26.

The issue that Lanco raises here is very narrow. Its Opposition, opposes Hoffman's application, says Lanco, in essence, because the applied-for mark is "functional."

Lanco nevertheless propounds a range of discovery requests directed to Hoffman's

marketing plans, for example, that have nothing to do with Lanco's claim of "functionality" and that are presumptively improper and impermissible, under Fed. R. Civ. P. 26 as applied by the Board's Discovery Guidelines. As the Board's Discovery Guidelines (TBMP § 419, citations omitted) state, for example:

> (2) In those cases where complete compliance with a particular request for discovery would be unduly burdensome, the Board may permit the responding party to comply by providing a representative sampling of the information sought, or some other reduced amount of information which is nevertheless sufficient to meet the propounding party's discovery needs.
>
> * * * *
>
> (3) . . . . In contrast, the names of customers constitute confidential information, and generally are not discoverable, even under protective order.
>
> * * * *
>
> (7) A party need not, in advance of trial, specify in detail the evidence it intends to present, or identify the witnesses it intends to call, except that the names of expert witnesses intended to be called are discoverable.
>
> (8) A party's plans for expansion may be discoverable under protective order.
>
> (9) Information concerning the use and/or registration by third parties of the same or similar marks for the same or closely related goods or services as an involved mark and goods or services is discoverable, but only to the extent that the responding party has actual knowledge thereof (without performing an investigation), and that the information appears to be reasonably calculated to lead to the discovery of admissible evidence.
>
> (10) Information concerning litigation and controversies between a responding party and third parties based on the responding party's involved mark is discoverable. However, the only information which must be provided with respect to a legal proceeding is the names of the parties thereto, the jurisdiction, the proceeding number, the outcome of the proceeding, and the citation of the decision (if published).
>
> (11) A party need not provide discovery with respect to those of its marks and goods and/or services which are not involved in the proceeding and have no relevance thereto. . . .

* * * *

> (13) . . . [I]nformation concerning a party's foreign use of its involved mark is usually irrelevant to the issues in a Board proceeding, and thus not discoverable, ...
>
> * * * *
>
> (18) Annual sales and advertising figures, stated in round numbers, for a party's involved goods or services sold under its involved mark are proper matters for discovery; if a responding party considers such information to be confidential, disclosure may be made under protective order.

In no event, could Lanco ever properly have even asked discovery requests, which exceeded the scope of Fed. R. Civ. P. 26, or, which pretended to impose requirements exceeding the scope of Fed. R. Civ. P. 34 as viewed by the Board, that a party can only require the opposing party to produce documents "as they are kept in the ordinary course of business," "at a time and place agreed upon by the parties:" 8A C. Wright & A. Miller, Federal Practice and Procedure, §2213, at 429 ("Production of Documents [under Fed. R. Civ. P. 34]" - "Response to Request").

Consequently, the Board now, should reconsider its December 5, 2003 Order, finding, that Hoffman opposed Lanco's motion to compel, that Hoffman's delay in filing its opposition was excusable, and that the discovery responses that Hoffman served on November 13, 2002 with its opposition, are permitted.

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[Continued on Next Page]

/

Hoffman respectfully requests the Board to grant this motion.

Dated: December 31, 2003.

Respectfully submitted,

/s/ J. Stephen Simms

J. Stephen Simms
Stephen S. McCloskey
Simms Showers, LLP
20 South Charles Street
Suite 702
Baltimore, Maryland 21201
Telephone: (410) 783-5795
Facsimile: (410) 510-1789

Counsel for Hoffman

CERTIFICATE OF SERVICE

I hereby certify that on December 31, 2003, I caused a true and correct copy of the foregoing to be served by First Class, United States Mail on Lanco counsel:

Kathryn Jennison Schultz
Jennison & Schultz, P.C.
Crystal Plaza #1
Suite 1102
2001 Jefferson Davis Highway
Arlington, Virginia 22202

/s/ J. Stephen Simms

EXHIBIT A

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

LANCO CORPORATION, Opposer,	:	Opposition No. 91/154,043
	:	(Serial No. 75/545,553)
v.	:	
GEBR. HOFFMAN AG., Applicant.	:	

Hon. Commissioner for Trademarks
Attention: Box TTAB – No Fee
2900 Crystal Drive
Arlington, Virginia 22202

OPPOSER'S REQUEST FOR EXTENSION OF TIME TO FILE RESPONSES TO DISCOVERY REQUESTS AND REQUEST FOR EXTENSION OF TIME FOR TESTIMONY PERIODS

Opposer, Lanco Corporation, respectfully requests a sixty-day extension of time to file answer to Applicant's outstanding discovery requests and requests a sixty-day extension of all testimony periods. The period for discovery has closed.

The extension of time is sought in good faith and not for any improper purpose of delay. On July 3, 2003, Opposer served Applicant with Opposer's First Set of Interrogatories. The responses were due on or before August 7, 2003. On July 7, 2003, Opposer served Applicant with Opposer's First Set of Requests for Production of Documents and Things. The responses were due on or before August 11, 2003. On July 9, 2003, Opposer served Applicant with Opposer's Second Set of Requests for Production of Documents and Things. The responses were due on or before July 13, 2003.

To date, Applicant has not served Opposer with responses to any of the outstanding discovery requests or requested an extension of time for that purpose. Today, Opposer's undersigned counsel, Kathryn Jennison Shultz, placed a telephone call to Applicant's attorney of record, J. Stephen Simms, Esq. Mr. Simms was not in the office; however, his assistant Debby took the call. During the conversation, Debby told Ms. Shultz that she had sent a reminder to all concerned that the responses were due, but she had not received word that the responses had been or would be prepared. Ms. Shultz asked if the Applicant had lost interest in the matter or intended to respond to the outstanding discovery requests. Debby said that she was not sure, but would try to contact Mr. Simms to obtain an answer to the inquiry. No one has contacted Opposer's counsel at this time.

Because there is a possibility that the Applicant has lost interest in this matter and will never respond to the outstanding discovery requests, Opposer requests a sixty-day extension of time to respond to Applicant's discovery requests and a sixty-day extension of all testimony periods. Hopefully, Applicant will inform Opposer during this additional time about its intentions with respect to this matter to prevent the need for Opposer to file a motion to compel or other documents with the Trademark Trial and Appeal Board.

Opposer respectfully requests the approval of this extension request.

Respectfully submitted,

LANCO CORPORATION

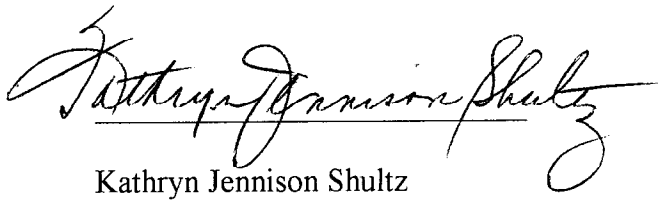
Date: August 18, 2003

By:

Kathryn Jennison Shultz
JENNISON & SHULTZ, P.C.
2001 Jefferson Davis Highway - Suite 1102
Arlington, Virginia 22202
Attorneys for Opposer

CERTIFICATE OF SERVICE

I hereby certify that true and complete copy of the foregoing OPPOSER'S REQUEST FOR EXTENSION OF TIME TO FILE RESPONSES TO DISCOVERY REQUESTS AND REQUEST FOR EXTENSION OF TIME FOR TESTIMONY PERIOD was served upon Applicant Gebr. Hoffman AG., by forwarding same via First Class Mail, postage prepaid, to Applicant's attorney of record, J. Stephen Simms, Esq. at Simms Showers LLP, 20 S. Charles Street, Suite 702, Baltimore, Maryland 21201, this 18th day of August, 2003.



Kathryn Jennison Shultz

EXHIBIT B

ORGANISATION MONDIALE
DE LA PROPRIÉTÉ INTELLECTUELLE

34, chemin des Colombettes, case postale 18, CH-1211 Genève 20 (Suisse)
Tél.: (41-22) 338 9111 - Télécopieur (marques internationales): (41-22) 740 1429
Messagerie électronique: intreg.mail@wipo.int - Internet: http://www.ompi.int

ARRANGEMENT ET PROTOCOLE
DE MADRID

CERTIFICAT D'ENREGISTREMENT

Le Bureau international de l'Organisation Mondiale de la Propriété Intellectuelle (OMPI) certifie que les indications figurant dans le présent certificat sont conformes aux inscriptions portées au registre international tenu en vertu de l'Arrangement et du Protocole de Madrid.

Salvatore Di Palma
Directeur adjoint et Chef, Section de l'Administration
Département des enregistrements internationaux

Genève, le 22 juin 2000

---

18 avril 2000 **734 252**

Gebr. Hoffmann AG
Eisenbahnstrasse 71,
CH-3602 Thun
(Suisse).

Nom et adresse du mandataire: Hans Rudolf Gachnang Patentanwalt, Badstrasse 5, CH-8500 Frauenfeld (Suisse).

Classification des éléments figuratifs:
19.8.

Indication relative à la nature de la marque ou au type de marque: marque tridimensionnelle.
Liste des produits et services:
6 Fermetures (couvercles) métalliques de récipients.
20 Fermetures (couvercles) non métalliques de récipients.
Enregistrement de base: Suisse, 22.06.1998, 471371.
Désignations selon l'Arrangement de Madrid: Allemagne, Autriche, Benelux, Espagne, France, Italie, Liechtenstein, République tchèque.
Désignations selon le Protocole de Madrid: Danemark, Finlande, Norvège, Royaume-Uni, Suède.
Déclaration d'intention d'utiliser la marque: Royaume-Uni.
Date de notification: 22.06.2000
Langue de la demande internationale: Français

Gebr. Hoffmann AG
Eisenbahnstrasse 71
Postfach
CH-3602 Thun
Telefon 033 341414
Telefax 033 351510/Telex 921170

HOFFMANN VERPACKUNGEN

Wortmarke für Klipp-Klapp-Dose

Name:	**KLIPP-KLAPP®**	
	Schweiz	**International**
Markennummern:	**418099**	**641316**
Int. Klasse:	06	06
Benennung:	Dosendeckel aus Metall	Fermetures de boîtes métalliques
Registrierungstag:	07.09.1995	22.09.1995
Registrierungsnr.:	3070/1995.1	641316
Hinterlegungstag:	22.03.1995	10.08.1995
Ablauf:	22.03.2005	10.08.2015
Anmelder:	Gebr. Hoffmann AG, CH-3602 Thun	

****

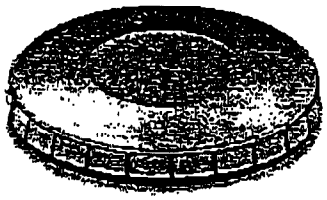
Name:	**KLICK-KLACK®**	
	Schweiz	**International**
Markennummern:	**424801**	**654241**
Int. Klasse:	06	06
Benennung:	Dosendeckel aus Metall	Fermetures de boîtes métalliques
Registrierungstag:	03.07.1996	06.06.1996
Registrierungsnr.:	01230/1996	654241
Hinterlegungstag:	22.02.1996	01.05.1996
Ablauf:	22.02.2006	01.05.2006
Anmelder:	Gebr. Hoffmann AG, CH-3602 Thun	

Thun, 17.07.96 / VS
D:MARKET/SORT/RDGEZ/KLKLMARK.DOC

H.R. GACHNANG, PATENTANWALT, BADSTR. 5, 8500 FRAUENFELD

MARKENURKUNDE

Anmelder:	Gebr. Hoffmann AG 3602 Thun
Land:	**Schweiz**
Int. Klassen:	06 20
Waren:	Gebindedeckel aus Metall; Gebindedeckel nicht aus Metall
Name:	3D Marke für Deckel (Klipp-Klapp)



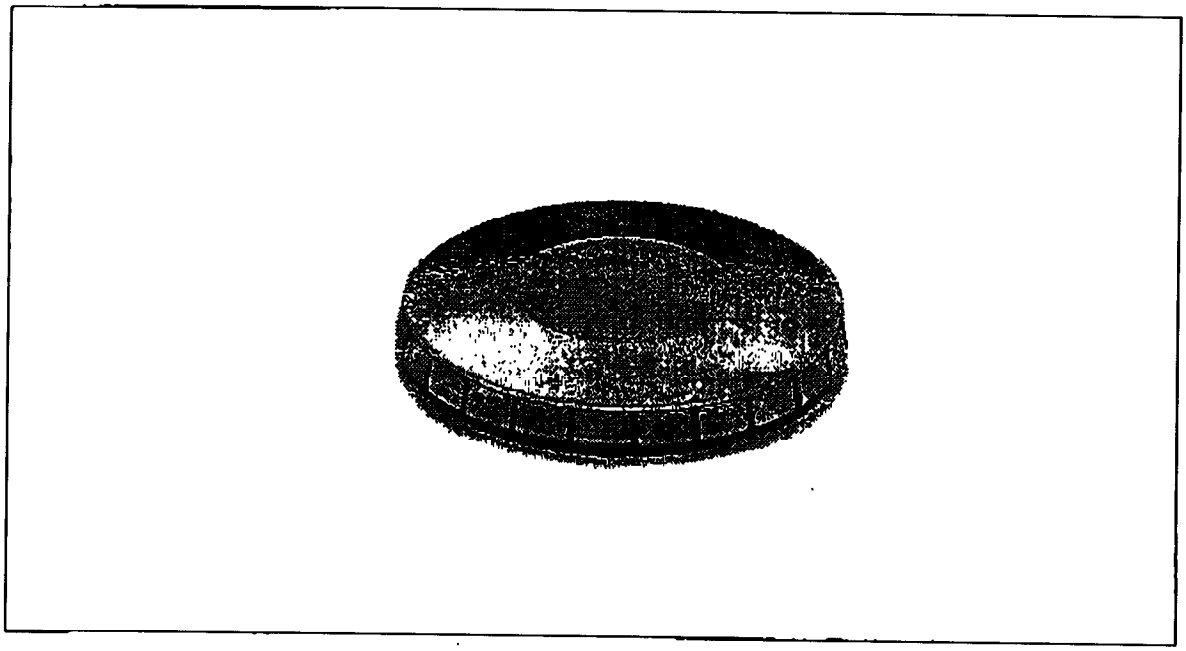
Markennummer:	**471371**
Erteilungstag:	18.04.2000
Hinterlegungsnr.:	05033/1998
Hinterlegungstag:	22.06.1998
Fälligkeit der Erneuerungsgebühr:	erstmals 22. Juni 2008
erste Laufzeit:	22.06.2008
Unser Zeichen:	G 3658Ma
Erstellungsdatum:	16.05.2000

Eidgenössisches Institut ...istiges Eigentum
Institut Fédéral de la Pro... Intellectuelle
Istituto Federale della Proprietà Intellettuale
Swiss Federal Institute of Intellectual Property
Einsteinstrasse 2 · CH-3003 Bern · Telefon +41 31 325 25 25 · Fax +41 31 325 25 26 · http://www.ige.ch

Bescheinigung über die Eintragung einer Marke

Wir bestätigen Ihnen folgende Angaben, die ins schweizerische Markenregister eingetragen wurden.
Die Eintragung ist während 10 Jahren vom Hinterlegungsdatum an gültig.

Die Markendaten wurden wie folgt im Schweizerischen Handelsamtsblatt Nr. 0092 vom 11. Mai 2000 veröffentlicht:
Hinterlegungsdatum: 22. Juni 1998 Marke: 471371



Markeninhaber/in
Gebr. Hoffmann AG
Eisenbahnstrasse 71
3602 Thun

Vertreter/in
Hans Rudolf Gachnang
Patentanwalt
Badstrasse 5
8500 Frauenfeld

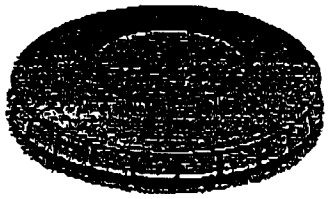
Verzeichnis der Waren und/oder Dienstleistungen
6 Gebindedeckel aus Metall.
20 Gebindedeckel nicht aus Metall.

Internationale Klassifikation
6, 20

H.R. GACHNANG, PATENTANWALT, BADSTR. 5, 8500 FRAUENFELD

MARKENURKUNDE

Anmelder:	Gebr. Hoffmann AG 3601 Thun
Land:	**International**
Benennungen:	AT DE BENELUX ES FR IT LI CZ (gemäss Madrider Markenabkommen) DK GB SE FI NO (gemäss Madrider Protokoll) (beantragte Ausdehnung HU PL SI SK vom 19.6.2000 noch nicht berücksichtigt)
Int. Klassen:	06 20
Waren:	Gebindedeckel aus Metall; Gebindedeckel nicht aus Metall
Name:	3D Marke für Deckel (Klipp-Klapp)



Markennummer:	**734252**
Erteilungstag:	22.06.2000
Hinterlegungsnr.:	734252
Hinterlegungstag:	18.04.2000
Priorität: Nummer: Land:	22.06.1998 471371 Schweiz
Fälligkeit der Erneuerungsgebühr:	Apr.18 (erstmals 2010)
erste Laufzeit:	18.04.2010
Unser Zeichen:	G 3668Ma
Erstellungsdatum:	23.06.2000

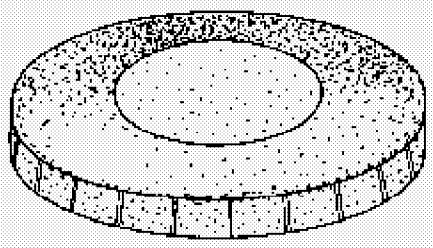
Thank you for your request. Here are the latest results from the TARR web server.

This page was generated by the TARR system on 2003-12-13 14:36:18 ET

Serial Number: 75545553

Registration Number: (NOT AVAILABLE)

Mark



Standard Character claim: No

Current Status: An opposition is now pending at the Trademark Trial and Appeal Board.

Date of Status: 2002-12-26

Filing Date: 1998-08-31

Transformed into a National Application: No

Registration Date: (DATE NOT AVAILABLE)

Register: Principal

Law Office Assigned: LAW OFFICE 114

Attorney Assigned:
STRASER RICHARD A Employee Location

Current Location: 845 -TTAB

Date In Location: 2002-12-26

LAST APPLICANT(S)/OWNER(S) OF RECORD

---

1. Gebr. Hoffmann AG.

Address:
Gebr. Hoffmann AG.
Eisenbahnstrasse 71
CH-3601 Thun,
Switzerland
Legal Entity Type: Corporation
State or Country of Incorporation: Switzerland

GOODS AND/OR SERVICES

METAL LIDS FOR CANS
International Class: 006

First Use Date: (DATE NOT AVAILABLE)
First Use in Commerce Date: (DATE NOT AVAILABLE)

Basis: 1(b), 44(e)

NON-METAL LIDS FOR CANS
International Class: 020
First Use Date: (DATE NOT AVAILABLE)
First Use in Commerce Date: (DATE NOT AVAILABLE)

Basis: 1(b), 44(e)

ADDITIONAL INFORMATION

Description of Mark: The mark consists of the configuration of the KLICK-KLACK metal lid for cans. The KLICK-KLACK lid has acquired distinctiveness under section 2(f) of the Trademark Act to distinguish origin because of the unique sound created when the lid is opened or closed. KLICK to open. KLACK to close. The mark, therefore, consists of the sound created by the non-functional shape of the goods.

Foreign Application Number: 050331998
Foreign Registration Number: 471371
Foreign Registration Date: 2000-09-07
Country: Switzerland
Foreign Filing Date: 1998-06-22
Foreign Expiration Date: 2008-06-22

MADRID PROTOCOL INFORMATION

(NOT AVAILABLE)

PROSECUTION HISTORY

2002-12-26 - Opposition instituted for Proceeding

2002-12-26 - Opposition instituted for Proceeding

2002-09-09 - Opposition instituted for Proceeding

2002-05-23 - Extension of time to oppose - Filed

2002-04-23 - Published for opposition

2002-04-03 - Notice of publication

2001-11-09 - Approved for Pub - Principal Register (Initial exam)

2001-11-09 - Examiner's amendment mailed

2001-08-23 - Communication received from applicant

2000-10-16 - Unresponsive paper received

2001-02-26 - Non-final action mailed

2001-02-16 - Previous allowance count withdrawn

2001-01-29 - Letter of Protest accepted

2000-11-28 - Approved for Pub - Principal Register (Initial exam)

2000-09-18 - Communication received from applicant

2000-03-02 - Communication received from applicant

2000-04-10 - Final refusal mailed

2000-04-06 - Case file assigned to examining attorney

1999-11-24 - Communication received from applicant

1999-05-24 - Non-final action mailed

1999-04-29 - Case file assigned to examining attorney

1998-09-28 - Communication received from applicant

CONTACT INFORMATION

Correspondent (Owner)
J. STEPHEN SIMMS (Attorney of record)

J. STEPHEN SIMMS
SIMMS SHOWERS LLP
20 S CHARLES ST, STE 702
BALTIMORE, MD 21201

EXHIBIT C

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

Lanco Corporation	)	
	)	
Opposer,	)	
	)	Opposition No. 91/154,043
v.	)	
	)	
Gebr. Hoffman A.G.	)	Ser. No. 75/545,553
	)	Mark: Miscellaneous Design
Applicant.	)	
	)	

****

APPLICANT GEBR. HOFFMAN A.G.'S
ANSWERS TO INTERROGATORIES

Applicant, Gebr. Hoffman A.G. ("Hoffman") answers Lanco Corporation's ("Lanco") interrogatories as follows:

GENERAL OBJECTIONS

In addition to the specific objections to each individual interrogatory, Hoffman hereby incorporates by reference the following General Objections to its answers to specific interrogatories as if fully set forth therein:

A. Hoffman objects to each interrogatory and instruction to the extent that it is inconsistent with Fed. R. Civ. P. 33.

B. Hoffman objects to each interrogatory and instruction to the extent that it calls for information which is privileged, attorney work product, or created in anticipation of litigation.

C. In its responses, Hoffman has made a good faith effort to provide complete and accurate information by conducting a reasonable investigation with respect to the requested information. However, Hoffman's investigation of this case is ongoing and, among other things, damages have not yet been determined with finality. Accordingly, Hoffman hereby reserves the

right to supplement its responses in the event additional relevant information is uncovered through its continuing investigation during the course of this litigation.

D. Hoffman's review of this matter is continuing. Accordingly, Hoffman reserves the right to assert additional objections as warranted.

Answers to Interrogatories

Interrogatory No. 1: Does the identification of Applicant's Mark as published in the Official Gazette accurately describe your alleged trademark?

Response: Yes.

Interrogatory No. 2: Identify, by full name and address, the persons who are most knowledgeable with Applicant's plans to use Applicant's Mark in connection with its products in the United States.

Response: Kurt Lüthi, Managing Director

Interrogatory No. 3: Identify, by full name and address, the persons who are most knowledgeable concerning the products sold under Applicant's mark in the United States.

Response: Kurt Lüthi, Managing Director

Interrogatory No. 4: Identify, by full name and address, the persons most familiar with the advertising and promotion of the products sold under Applicant's Mark in the United States.

Response: Kurt Lüthi, Managing Director

Interrogatory No. 5: Identify all products sold by Applicant.

Response: Applicant sells a wide range of products. See Applicant's website http://www.hoffmannneopac.ch.

Interrogatory No. 6: Identify all marks used by the Applicant for the products identified in response to Interrogatory No. 5.

Response: Applicant objects on the basis that this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 7: Identify all patents (by number, date, and title) owned and/or

licensed by Applicant number, date and title.

Response: Applicant objects on the basis that this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 8: Identify all patents (by number, date and title) owned and/or licensed by Applicant for lids.

Response: Applicant objects on the basis that this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 9: Identify all functions of the products identified by Applicant's Mark.

Response: The Klick-Klack® can is distinctive and not functional. Like many other types of containers, the Klick-Klack® can functionally serves as a container that opens and closes. There are a myriad of other container designs in the market place that serve the same function.

Interrogatory No. 10: Identify, by full name and address, each office presently maintained by Applicant in the United States.

Response: Applicant objects on the basis that this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence, but to the extent that an answer is required, there are none.

Interrogatory No. 11: Identify all means by which Applicant promotes the sale of products identified by Applicant's Mark.

Response: Applicant objects to the interrogatory on the basis that it is overly broad, but, without waiving the objection, Applicant promotes its products through trade shows, its web site, distributor advertising, and media publications.

Interrogatory No. 12: Identify all market research done by Applicant directed to Applicant's Mark.

Response: Applicant monitors trade shows and industry journals.

Interrogatory No. 13: Identify all patent and/or trademark searches conducted by or on behalf of Applicant directed to the Applicant's Mark and/or configurations of lids for cans.

Response: Applicant objects on the basis that this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Without waiving this response, Applicant states that its counsel conducted a search on the USPTO web site.

Interrogatory No. 14: Is Applicant claiming rights in the configuration of the lids?

Response: Yes.

Interrogatory No. 15: Is Applicant claiming rights in the sounds "klick and klack?"

Response: Yes.

Interrogatory No. 16: Is Applicant claiming rights in the manner in which the lids open and close?

Response: Yes.

Interrogatory No. 17: Explain what causes the lids to make the "klick" and the "klack" sounds.

Response: In its "closed state," the domed portion of the lid lies in a plane above the outer margin. By depressing the domed portion of the lid, the can makes a "klick" sound. By pressing sideways on the edge of the lid, the teeth are caused to close and a resulting "klack" sound is heard.

Interrogatory No. 18: Describe how Applicant's Mark was selected and/or adapted by Applicant, setting forth, in detail, the reasons for that selection.

Response: The Klick-Klack® can has existed in essentially the same form since the beginning of the 20th Century. During much of the century its design was favored by companies that marketed a wide variety of products including confectionary, medicines, and fishing bait. In the 1990's Hoffman substantially innovated its design by developing a new coating and implementing a new process of tin plate packaging which eliminated the sharp edges of the lid.

The innovations were in response to the demands of high-value candies and cosmetic manufacturers who want to emphasize the quality of their products through the unique packaging granted by the use of the Klick-Klack® can.

Interrogatory No. 19: Identify (by full name, city and state) representative purchasers of products sold or distributed under Applicant's Mark within each of the past years in the United States.

Response: Applicant objects on the basis that this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 20: Identify all agreements between Applicant and any third party relating to the manufacture and/or sale of any goods under Applicant's Mark.

Response: Applicant has a distribution agreement with Independent Can Company of Maryland and its subsidiary, Western Specialty Container of California.

Interrogatory No. 21: Identify all marketing efforts within the preceding twenty-four months by Applicant relating to the sale of goods under Applicant's mark.

Response: See Applicant's Response to Interrogatory No. 11.

Interrogatory No. 22: Identify all trade shows in the United States at which Applicant has exhibited or promoted its goods under Applicant's Mark, including the names of such shows and their locations, dates, and types of products exhibited or promoted.

Response: Applicant objects on the basis that this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence. Opposer has only opposed Applicant's mark on grounds of functionality, not on any other ground.

Interrogatory No. 23: Identify all facts supporting Applicant's belief that Applicant's mark is distinctive.

Response: The distinctive feature of the Klick-Klack® can includes that, in its "closed

state," the lid's outer edge is substantially flat while its center portion is slightly domed with the domed portion in a plane above that of the outer margin and in its "open state" the domed portion lies at the same plane or slightly below the plane of the outer margin.

Interrogatory No. 24: Identify all facts supporting Applicant's belief that Applicant's mark is not functional.

Response: See Responses to Interrogatories No. 9 and No. 23.

Interrogatory No. 25: Does Applicant's Mark make the same sounds in connection with the opening and closing of its metal lids as it does in connection with the opening and closing of its non-metal lids? If the answer is no. describe the difference.

Response: Applicant objects on the basis that this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 26: Identify all fact witnesses, which Applicant intends to rely upon in proof of any issue in this proceeding.

Response: Applicant has not yet identified fact witnesses, but reserves the right to do so.

Interrogatory No. 27: State in round numbers the dollar volume of each product manufactured by or for Applicant and sold in commerce under Applicant's Mark on an annual basis for each of the last five years.

Response: Applicant objects on the basis that this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 28: Identify all steps Applicant takes to monitor competitive activity.

Response: Applicant objects on the basis that this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 29: Identify all experts consulted by Applicant with respect to any matter at issue in this proceeding.

Response: Applicant has not yet identified experts, but reserves the right to do so.

Interrogatory No. 30: Identify all experts on whom Applicant intends to rely to present evidence in this proceeding.

Response: Applicant has not yet identified experts but reserves the right to do so.

Interrogatory No. 31: Identify all advertising agencies employed by Applicant to promote any of the goods sold under Applicant's Mark.

Response: Applicant objects on the basis that this interrogatory is not reasonably calculated to lead to the discovery of admissible evidence.

Interrogatory No. 32: Identify all channels of trade through which Applicant has promoted, exhibited and/or sold its metal and non-metal lids.

Response: See Responses to Interrogatories No. 11 and No. 12.

Interrogatory No. 33: Identify Applicant's chief competitors.

Response: There are none.

Interrogatory No. 34: Identify the date of first and continuous use of Applicant's Mark in the United States.

Response: See Response to Interrogatory No. 18.

Interrogatory No. 35: Identify all periods of time during which Applicant ceased using Applicant's Mark and explain the reasons why it was discontinued.

Response: Applicant has not discontinued use of its Mark, however, the metal containers were redesigned in the 1990's to eliminate the sharp edges only. No changes were made to the basic method of operation of the containers.

/

/

As to Answers:

I certify under penalty of perjury that the foregoing answers are true and correct to the best of my information and belief.

Dated: November 19, 2003

Hoffman Neopac AG.

By: _____

Kurt Lüthi, ~~Managing~~ Director

Sales & Marketing

Interrogatory No. 36: Identify each person who participated in responding to the preceding interrogatories, and, for each person so identified, set forth the interrogatory number (or numbers) to which he or she provided information for the interrogatory response.

Response: Kurt Lüthi, Managing Director of Gebr. Hoffman A.G., as to all.

As to Objections:

Dated: November 13, 2003

J. Stephen Simms
Stephen S. McCloskey
Simms Showers, LLP
20 South Charles Street
Suite 702
Baltimore, Maryland 21201
Telephone: (410) 783-5795
Facsimile: (410) 783-1368

Counsel for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on November 13, 2003, I caused a true and correct copy of the Applicant Gebr. Hoffman A.G.'s Answers to Interrogatories to be served by First Class, United States Mail on Kathryn Jennison Schultz, Jennison & Schultz, P.C., Crystal Plaza #1, Suite 1102, 2001 Jefferson Davis Highway, Arlington, Virginia 22202, counsel for Opposer, and on Richard Strasser, Assistant Commissioner for Trademarks, Box TTAB FEE, 2900 Crystal Drive, Arlington, Virginia 22202-3513.

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

Lanco Corporation	)	
	)	
Opposer,	)	
	)	Opposition No. 91/154,043
v.	)	
	)	
Gebr. Hoffman A.G.	)	Ser. No. 75/545,553
	)	Mark: Miscellaneous Design
Applicant.	)	
	)	

****

APPLICANT GEBR. HOFFMAN A.G.'S RESPONSE TO OPPOSER'S FIRST AND SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Applicant, Gebr. Hoffman A.G.("Hoffman"), by its undersigned counsel and pursuant to Rule 34 (b) of the Federal Rules of Civil Procedure, responds to Opposer Lanco Corporation's ("Lanco") first and second requests for production of documents to Hoffman as follows:

General Objections

Hoffman incorporates each of the following general objections into each of its responses to Lanco's requests:

A. Hoffman objects to each request to the extent that it calls for the identification or production of any document which is privileged, attorney work product, or created in anticipation of litigation.

B. Hoffman objects to each request to the extent that it calls for the production of any document which it does not possess, control, or over which it does not have custody.

C. Hoffman's investigation of this matter is still ongoing. Hoffman reserves the right to supplement its responses.

Response to Requests

Request No. 1: Any and all documents identified by Applicant in its responses to Opposer's First Set of Interrogatories to Applicant.

Response: Documents in Applicant's possession will be produced.

Request No. 2: Any and all documents not identified in Applicant's responses to Opposer's First Set of Interrogatories to Applicant, but upon which Applicant relied to prepare its responses.

Response: To the extent that the requested documents are not confidential to the Applicant's business, documents in Applicant's possession will be produced.

Request No. 3: Samples of each and every use of the Applicant's mark for the goods named in the subject application, and any other product or service on which you have used or intend to use Applicant's mark including, but not limited to, all labels, tags, packaging, promotional materials, advertising materials, decals, brochures, signs, displays or any other device for fixing Applicant's mark in connection with your goods or associating Applicant's mark with your goods, whether or not such materials have yet to be publicly used.

Response: Applicant objects to this request on the grounds that it is too broad in its scope, and is not reasonably calculated to lead to the discovery of admissible evidence, Further, the production of information and materials for products not yet publicly used may compromise Applicant's marketing strategies and adversely affect Applicant's sales. To the extent that a response is required, see Applicant's web site at www.hoffmannneopac.ch.

Request No. 4: Representative samples of any and all advertising materials and/or promotional materials, in any and all media, employing any use of Applicant's mark in connection with other words, designs or symbols, whether or not such materials have yet been publicly used.

Response: See Response to Document Request No. 3.

Request No. 5: Copies of all publications, in any and all media, in which Applicant's mark has appeared (other than publications produced in response to Document Requests Nos. 3 and 4 above).

Response: Applicant objects to this request on the grounds that it is too broad in its

scope and is not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 6: Any and all documentation and things relating to the development, selection, and/or adoption of Applicant's mark by you or any other person.

Response: To the extent that the requested documents are not confidential to the Applicant's business and related to Opposer's contention that the mark is functional, documents in Applicant's possession will be produced.

Request No. 7: Any and all documents and things relating to any investigation or inquiries concerning use or availability of Applicant's mark.

Response: To the extent that such documents are not privileged or attorney work product, documents in Applicant's possession will be produced.

Request No. 8: All documents concerning any investigation, research, reports, surveys or studies, conducted by or on behalf of you, relating to Applicant's mark or any product or service sold, offered or intended to be sold or offered in connection therewith.

Response: To the extent that such documents are not privileged or attorney work product, documents in Applicant's possession will be produced.

Request No. 9: All correspondence, applications, specimens, office actions, responses to office actions or other documents contained in, comprising or relating to any state or federal registration of, or application to register, Applicant's mark either alone or in combination with other words.

Response: Documents in Applicant's possession will be produced.

Request No. 10: All invoices, payment orders, receipts, or related documents evidencing the first sale or shipment of the products or any other goods and services sold or distributed in connection with Applicant's's mark were provided.

Response: Applicant's first sale and/or shipment occurred in the early 20th century, and no records exist from that time period.

Request No. 11: Documents identifying annual sales and projected sales of goods and/or services in connection with Applicant's mark, in terms of dollar amounts and number of units sold.

Response: Documents in Applicant's possession will be produced.

Request No. 12: All documents concerning Applicant's annual advertising and/or promotional or related expenses, and/or projected advertising and/or promotional or related expenses, for goods or services marketed or to be marketed under Applicant's mark.

Response: Applicant objects to this request on the grounds that it is not reasonably calculated to lead to the discovery of admissable evidence.

Request No. 13: Any and all reports or memoranda prepared by expert witnesses retained by Applicant in connection with this proceeding.

Response: No experts witnesses have been engaged at this time.

Request No. 14: Any and all documents constituting contracts and agreements with others concerning or relating to promoting, distributing, selling or marketing the goods sold or intended to be sold under Applicant's Mark.

Response: Documents in Applicant's possession will be produced.

Request No. 15: Any and all specifications or technical documentation for the products or any other goods or services sold or intended to be sold under Applicant's Mark.

Response: Applicant objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 16: All past, present and/or future product development plans, marketing plans, advertising plans, and business plans for the goods and any other goods or products sold or intended to be sold under Applicant's Mark.

Response: See Response to Request No. 15.

Request No. 17: Any and all documents analyzing, discussing or relating to the demographics or characteristics of actual or potential purchasers of the goods or any other goods or services sold or intended to be sold under Applicant's Mark.

Response: Applicant objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 18: Any and all documents evidencing, discussing or referring to the channels of distribution through which Applicant either offers and sells or plans to offer and sell its goods or any other goods or services sold or intended to be sold under Applicant's Mark.

Response: Applicant objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence.

Request No 19: Any and all sales or distribution agreements relating to the goods or any other goods or services sold or intended to be sold under Applicant's Mark.

Response: Applicant objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 20: Representative samples of all different containers and lids designed by Applicant for sale or distribution.

Response: Representative samples will be produced.

Request No. 21: All documents relating to any unsolicited publicity or recognition obtained or received by Applicant for Applicant's mark.

Response: Documents in Applicant's possession will be produced.

Request No. 22: All documents pertaining to any license or right granted by Applicant to a third party regarding use of Applicant's mark, including all correspondence relating to same.

Response: Documents in Applicant's possession will be produced.

Request No. 23: All documents on which Applicant will rely, or intends to rely, to establish the alleged acquired distinctiveness of Applicant's Mark.

Response: Documents in Applicant's possession will be produced.

Request No. 24: All documents on which Applicant will rely, or intends to rely, to establish that the trade and consumers have come to recognize goods bearing Applicant's Mark emanate from Applicant.

Response: Documents in Applicant's possession will be produced.

Request No. 25: All documents, agreements, and correspondence constituting, referring to, or relating to any assertions or claims by or between Applicant and any other entity which in any way involve, affect, or purport to affect Applicant's ownership, title to, or rights in Applicant's mark.

Response: Documents in Applicant's possession will be produced.

Request No. 26: All documents showing, reflecting, referring to or relating to any litigation by Applicant in defense of Applicant's Mark or to attack another's use of a mark or name.

Response: Documents in Applicant's possession will be produced.

Request No. 27: All documents between Applicant and any third parties relating to the distribution of products under Applicant's Mark in the Untied States.

Response: Applicant objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 28: All documents setting forth unsolicited requests for information concerning goods bearing Applicant's Mark received from potential licensees, distributors and/or consumers.

Response: Documents in Applicant's possession will be produced.

Request No. 29: All documents referring to and/or relating to patents owned by and/or licensed by Applicant for lids.

Response: Applicant will produce any responsive patents.

Request No. 30: All documents received by Applicant setting forth any complaints or voicing any dissatisfaction with the products sold under Applicant's Mark, as well as all correspondence sent by Applicant in response to such complaints.

Response: Applicant objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 31: All documents relating to any monetary valuation of Applicant's Mark as ascribed to it by any financial institution.

Response: Applicant objects to this request because it is not reasonably calculated to lead to the discovery of admissible evidence.

Request No. 32: Such documents as will show or evidence the market share held by Applicant in the legal and marketing fields for the goods sold or distributed under Applicant's Mark.

Response: Applicant objects to this request because it is not reasonably calculated to

lead to the discovery of admissible evidence.

Request No. 33: Such documents, including catalogs and specification sheets, as will identify each and every product in connection with which Applicant presently uses Applicant's Mark.

Response: Documents in Applicant's possession will be produced.

Request No. 34: Any and all documents and things not produced in response to any of the foregoing requests upon which Applicant intends to rely in this opposition proceeding.

Response: Documents in Applicant's possession will be produced.

Request No. 35: Representative samples of each metal lid showing use of the Applicant's Mark.

Response: Representative samples will be produced.

Request No. 36: Representative samples of each non-metal lid showing use of Applicant's Mark.

Response: Applicants possesses no responsive documents or things.

Request No. 37: One example of each prototype showing use of the Applicant's Mark.

Response: Examples of any prototypes for products currently being sold will be produced.

As to prototypes for future products, Applicant objects to this request on the grounds that said production may compromise Applicant's business strategies.

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Request No. 38: Representative samples of lids sold and/or distributed by Applicant's competitors.

Response: Applicant has no responsive documents or things.

Dated: November 13 , 2003.

J. Stephen Simms
Stephen S. McCloskey
Simms Showers, LLP
20 South Charles Street
Suite 702
Baltimore, Maryland 21201
Telephone: (410) 783-5795
Facsimile: (410) 783-1368

Counsel for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on November 13 , 2003, I caused a true and correct copy of the Applicant Gebr. Hoffman A.G.'s Response to Opposer's First and Second Set of Requests for Production of Documents and Things to be served by First Class, United States Mail on Kathryn Jennison Schultz, Jennison & Schultz, P.C., Crystal Plaza #1, Suite 1102, 2001 Jefferson Davis Highway, Arlington, Virginia 22202, counsel for Opposer, and on Richard Strasser, Assistant Commissioner for Trademaks, Box TTAB FEE, 2900 Crystal Drive, Arlington, Virginia 22202-3513.