ESTTA Tracking number: **ESTTA17870**

Filing date: **10/25/2004**

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	Response Opposing Motions for Sanctions and Request to Resume Proceedings
Filer's Name	J. Stephen Simms
Filer's e-mail	jssimms@simmsshowers.com
Signature	/J.Stephen Simms/
Date	10/25/2004
Attachments	102504 response opposing sanctions.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.	)	
	)	
Gebr. Hoffman A.G.	)	Ser. No. 75/545,553
	)	Mark: Miscellaneous Design
Applicant.	)	
	)	

****

APPLICANT GEBR. HOFFMAN A.G.'S
RESPONSE OPPOSING MOTION FOR SANCTIONS,
AND REQUEST TO RESUME THE PROCEEDINGS

The Board should deny Lanco's motion and resume the proceedings.

Hoffman has produced the further discovery responses. Hoffman's further responses are Exhibits A and B hereto.[1]

Lanco also fails to point out, that Hoffman **already** had responded - nearly a year ago - to most all of Lanco's discovery. Hoffman's responses of **November 13, 2003** are Exhibits D and E hereto.

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[1] On October 11, 2004, further, Hoffman by letter to Lanco's counsel, invited Lanco either to inspect the production at the offices of Hoffman's counsel, or to provide a way to have the production sent to Lanco's counsel. (Exhibit C hereto). Hoffman has had no response from Lanco to this offer.

Considering this, it is not true that Lanco somehow is clamoring to receive Hoffman's discovery responses. In fact, Lanco could have continued to proceed in the case months ago, for example, noting depositions of the witnesses Hoffman had identified in 2003.

Lanco's protests that it doesn't have discovery ring hollow, when the truth is that Lanco never has followed up on the discovery responses that it has received (and has had for some time) from Hoffman, and most recently, hasn't even asked to view the further discovery responses that Hoffman has undertaken to provide.

Lanco's assertion that Hoffman did not respond to discovery is wrong. In November, 2003, Hoffman responded to most all of Lanco's requests, as Exhibits D and E confirm.

Lanco was dissatisfied with some of the responses, so moved to compel. The Board issued its order and Hoffman asked for additional time to respond. The Board on October 18, 2004 granted the request for additional time to respond; by that time, on October 11, 2004, seven (7) days before, Hoffman had responded.

Hoffman is a Switzerland company. Discovery is not a process familiar to it. Hoffman also needed additional time (beyond the initial September 9th time requested) to complete its responses; at any rate, by the time that Hoffman did provide its further responses to Lanco's discovery (a little over 30 days later), the Board had not acted on Hoffman's request. To the extent that Hoffman required further time beyond the extension that Hoffman initially had asked for, if a further extension of time would be considered necessary (eg, to the time of Hoffman's responses), Hoffman requests that the Board grant such an extension as a matter of excusable neglect.[2] Lanco is not prejudiced at all; as Hoffman notes, Lanco for nearly a year, has had substantial discovery from Hoffman.

Lanco does not argue that any remedy less than dismissal would be effective, nor does it make any strong showing of evasion. As Hoffman points out, it substantially responded over a year ago to Lanco's discovery and Lanco has Hoffman's further responses. Dissmisal is not an

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[2] Should the Board determine that a further time extension is necessary, Hoffman respectfully requests the Board to grant that extension, retroactive to the time that Hoffman provided the further discovery reponses, on October 11, 2004. Hoffman respectfully points out, however, that the Board did grant Hoffman's initial extension request, on October 18, 2004, which was seven (7) days after Hoffman had served its further responses to Lanco's discovery requests. Consequently, Hoffman respectfully submits that no further extension is necessary.

appropriate sanction here, in fact, no sanction is appropriate. See Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co., 55 USPQ2d 1848, 1854 (TTAB 2000).

The Examiner already has determined that Hoffman's application is meritorious. Lanco has its discovery. The case should move forward, on its merits.

Dated: October 25, 2004.

Respectfully submitted,

J. Stephen Simms

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

Counsel for Applicant

CERTIFICATE OF SERVICE

I hereby certify that on October 25, 2004, I caused a true and correct copy of the foregoing to be served by First Class, United States Mail on counsel for Opposer as follows:

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
v.	)	
Hoffmann Neopac A.G.	)	Ser. No. 75/545,553
f/k/a Gebr. Hoffmann A.G.	)	Mark: Miscellaneous Design
Applicant.	)	

****

APPLICANT HOFFMANN NEOPAC A.G.'S AMENDED RESPONSE TO OPPOSER'S FIRST AND SECOND SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Applicant, Hoffmann Neopac A.G. ("Hoffmann") hereby amends its response to Opposer Lanco Corporation's ("Lanco") first and second requests for production of documents to Hoffmann as follows:

General Objections

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

Within its requests for production, Opposer seeks information and materials regarding Applicant's products not yet publicly used. Applicant asserts that such information is

confidential; that said production would compromise Applicant's marketing strategies and adversely affect its sales. Pursuant to the Stipulated Protective Order in place, all such information and materials provided with be marked "Confidential".

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: Documents in Applicant's possession will be produced. Those deemed to be confidential will be produced and so marked, pursuant to the Stipulated Protective Order in place.

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: Samples of information and materials for goods, products, or services will be produced.

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: Representative samples will be produced.

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 has no responsive documents.

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: Applicant has no responsive documents.

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

Response: Applicant has no responsive documents.

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: Applicant has no responsive documents.

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: Applicant has no responsive documents.

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: Applicant has no responsive documents.

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 has no responsive documents.

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: Applicant has no responsive documents.

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 has no responsive documents.

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: Applicant has no responsive documents.

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 has no responsive documents.

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 has no responsive documents.

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 has no responsive documents.

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: Applicant has no responsive documents.

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: Applicant has no responsive documents.

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: Applicant has no responsive documents.

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: Applicant has no responsive documents.

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: Applicant has no responsive documents.

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: Other than those documents produced with respect to this action, Applicant has no responsive documents.

Request No. 27: All documents between Applicant and any third parties relating to

the distribution of products under Applicant's Mark in the United States.

Response: Applicant has no responsive documents.

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: Applicant has no responsive documents.

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

Response: Applicant has no responsive documents.

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 has no responsive documents.

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

Response: Applicant has no responsive documents.

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 has no responsive documents.

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: Responsive documents 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: Applicant has no responsive documents.

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: Applicant has no responsive documents or things.

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

Response: Applicant has no responsive documents or things.

Dated: October 11, 2004

J. Stephen Simms
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 October 11, 2004, I caused a true and correct copy of the Applicant Hoffmann Neopac A.G.'s Amended Answers to Production Requests to be served by facsimile and by First Class, United States Mail to:

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

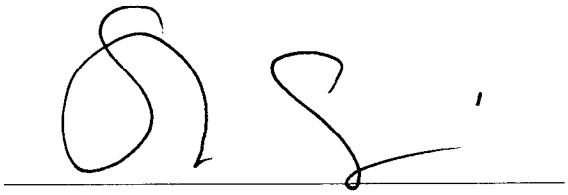


EXHIBIT B

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

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

****

APPLICANT HOFFMANN NEOPAC A.G.'S
AMENDED ANSWERS TO INTERROGATORIES

Applicant, Hoffmann Neopac A.G. ("Hoffmann") amends its answers to Lanco Corporation's ("Lanco") interrogatories as follows:

GENERAL OBJECTIONS

Hoffmann incorporates by reference the following General Objections to its answers to specific interrogatories as if fully set forth therein:

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

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

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, Sales and Marketing Director Hoffmann Neopac A.G., Eisenbahnstrasse 71, Postfach, CH-3602, Thun/Switzerland.

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, Sales and Marketing 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, Sales and Marketing 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: Hoffmann has no other U.S. marks related to the products at issue in this action.

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

Response: Hoffmann has no U.S. patents related to the products at issue in this action.

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

Response: See Response to Interrogatory No. 7.

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: There are none.

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

Response: 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 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, as described in the Official Gazette.

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

Response: Yes, to the extent only that such manner produces the sound.

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 Hoffmann 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: Hoffmann has no responsive documents.

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: Hoffmann has no responsive documents.

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: Hoffmann does not manufacture the product at issue in non-metal form.

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

Response: Kurt Lüthi, Sales and Marketing Director

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 has no responsive information.

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

Response: Applicant monitors trade shows and industry journals.

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: None.

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.

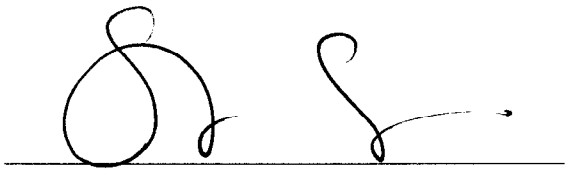
Interrogatory No. 35: Identify all periods of time during which Applicant ceased using Applicant's Mark and explain the reasons why it was discontinued.

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.

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 Hoffmann Neopac A.G., as to all.

Dated: October 11, 2004



J. Stephen Simms
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 October 11, 2004, I caused a true and correct copy of the Applicant Hoffmann Neopac A.G.'s Amended Answers to Interrogatories to be served by facsimile and by First Class, United States Mail to:

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

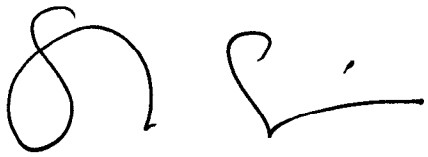


EXHIBIT C

FACSIMILE

SIMMS SHOWERS LLP

TWENTY SOUTH CHARLES STREET
BALTIMORE, MARYLAND 21201

PHONE (410) 783-5795 FACSIMILE (410) 510-1789

Date: October 11, 2004

To: Kathryn Jennison Shultz, Esq. 703-415-0788
Jennison & Shultz, P.C.

From: J. Stephen Simms
E-Mail jssimms@simmsshowers.com

Re: Lanco v. Gebr. Hoffman, Opposition No. 91/154,043

Dear Kathryn:

With this fax is a copy of Hoffman's amended interrogatory and document request responses, which we are also mailing you.

We also have at our offices, representative copies of the Hoffman cans and the remaining other responsive documents, namely, sales brochures.

The brochures are in color, and Hoffman has sent us duplicates. We can send those on; please let us have your FedEx or other mailing account number and we will send these to your office, rather than requiring inspection here or copying.

The cans are available for inspection at our offices. Alternatively we'd be glad to send them to your office also by FedEx, to be returned in several weeks' time. If that's agreeable to the Lanco side, please also let us know of your firm's FedEx number and we will send the cans on, as well.

Best regards.

Accompanying pages: 13

EXHIBIT D

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.

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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

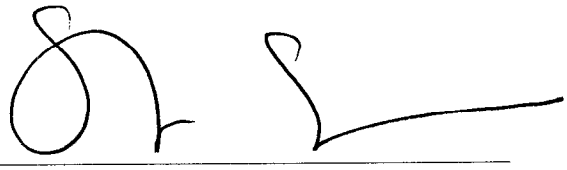
Sales & Marketing

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



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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.

EXHIBIT E

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.	)	
	)	

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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
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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.