

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

Opposition No. 145,417

16 and 41, including entertainment services directed to children featuring a grandmotherly character whose first name is Shar. The opposition is based on opposer's ownership of various GRAMMY marks, including the name of the annual televised music awards.

On March 18, 2004, applicant served interrogatories and requests for production of documents in Opposition No. 91154147. By agreement of the parties, the due date for the responses was extended to July 20, 2004. On June 9, 2004, prior to the consolidation of the two proceedings, applicant served essentially identical discovery in Opposition No. 91154092, to which responses were due July 16, 2004.

On July 20, 2004, opposer served Opposer's Responses To Applicant's First Set Of Interrogatories and Opposer's Responses To Applicant's First Requests For Production Of Documents in Opposition No. 91154147 and essentially identical responses in Opposition No. 91154092, copies of which are attached as Exhibits A – D.<sup>1</sup>

Opposer's responses were deficient in several respects. On August 30, 2004, applicant's counsel wrote opposer's counsel regarding the deficiencies of opposer's discovery responses that could be ascertained prior to opposer's production of documents.<sup>2</sup> Exhibit E. Opposer informed applicant it would respond early the following week. Exhibit F. When two weeks went by without a response, applicant's counsel called opposer's counsel on September 13, 2004 and sent a follow up letter when applicant's counsel failed to return the call. Exhibit G. On September 14, 2004, opposer responded, indicating that it would provide some additional discovery when it

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<sup>1</sup> Opposer has stated that it believed the extension for the responses in 91154147 applied to the responses in 91154092 as well. Applicant therefore challenges the objections asserted by opposer only on the basis of their lack of merit and not on a waiver argument.

<sup>2</sup> Because the parties are in the process of finalizing a protective order, the parties have not yet exchanged documents. It therefore is not possible to know if other deficiencies exist with respect to those interrogatories where opposer indicated it would produce documents in lieu of an answer or with respect to the documents which opposer actually does produce in response to document requests.

produced documents, but largely reiterating its refusal to provide relevant discovery. *See* Exhibit H.

## II. ARGUMENT

### A. Applicant Should Be Required To Provide Discovery

Interrogatory No. 1 in each proceeding requests the identity of persons having knowledge relating to opposer's consideration or selection of marks which contain the term GRAMMY, including the persons who first conceived of the first GRAMMY mark. Opposer objected and refused to provide any response. It is well settled, however, that the identify of persons with knowledge of opposer's selection of its mark is discoverable information. *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581, 583 (TTAB 1975). Opposer subsequently attempted to justify its refusal to provide such information on the grounds that the interrogatory "ask[s] for information on registrations that are more than five (5) years old and thus incontestable." Opposer ignores the fact that the interrogatory also seeks information regarding marks that are not the subject of incontestable registrations.

More importantly, the fact that some of opposer's GRAMMY registrations may have become incontestable does not entitle opposer to withhold the names of individuals with relevant information. *See, e.g., Johnson & Johnson v. Rexall Drug Company*, 186 USPQ 167, 171 (TTAB 1975). Obviously the person(s) who first conceived of the GRAMMY mark and those involved in the selection of other GRAMMY marks have relevant knowledge and should be identified.

Interrogatory No. 2 requests opposer to identify trademark searches or investigations conducted by or for opposer in connection with a GRAMMY mark and the persons involved in the review of any such trademark search or the results of any investigation. Again, opposer's only response was a series of objections. It is well settled that information regarding search reports

(other than the opinion of counsel, which is not requested) is discoverable information. *See, Miles Laboratories, Inc. v. Instrumentation Laboratories*, 185 USPQ 432, 434 (TTAB 1975). Opposer's subsequent attempt to justify its failure based on the incontestable status of some of its registrations is unavailing.

Interrogatory No. 8 requests opposer to identify each transfer or license of rights in a GRAMMY mark to or from opposer. Again, opposer provided no response other than a series of objections. This also is information to which applicant is entitled. *Johnson Pump v. Chromallory*, 10 USPQ 2d 1671, 1675 (TTAB 1989); *Neville Chemical Co. v. Lubrizol Corp.*, 183 USPQ 184, 187 (TTAB 1974).

Interrogatory No. 10 requests opposer to identify third party uses of a GRAMMY mark of which opposer is aware. In response, opposer declined to identify any third parties by name, stating instead that it regularly becomes aware of infringements that it pursues to its satisfaction and that it was not aware of any third party registrations or applications in Classes 9 and 41. Although opposer has opposed Class 16 of applicant's applications, opposer failed to address its knowledge of applications or registrations in Class 16. In response to opposer's request for a full response to Interrogatory 10, opposer again declined to identify any third party and instead asserts that it is not aware of any "relevant third party uses, applications or registrations." It is not for opposer, however, to be the sole arbitrator of the relevance of third party uses of which it is aware. Opposer's statement that it regularly becomes aware of third party infringements that it "pursues . . . until such infringements are resolved to Opposer's satisfaction" shows it is aware of third party uses that it has not disclosed. Applicant is entitled to a full response.

Request No. 2 of applicant's request for documents seeks production of documents that relate or refer to opposer's consideration, selection, or adoption of any GRAMMY mark. Opposer

refused to produce any responsive documents. As discussed above in connection with interrogatories, this is discovery to which applicant is entitled. *Varian Associates v. Fairfield-Noble Corp.*, 188 USPQ 581, 583 (TTAB 1975).

Request No. 4 requests documents that relate to opposer's first use of each GRAMMY mark used by opposer. Again, opposer refused, citing in correspondence (see, Exhibit H), the incontestable status of certain of its registrations. Documents relating to opposer's use of its marks constitutes discoverable matter to which applicant is entitled and should be produced. See, *Neville Chemical Co. v. Lubrizol Corp.*, 183 USPQ 184, 188 (TTAB 1974).

Request No. 5 requests trademark searches and other documents that relate or refer to the clearance of any GRAMMY mark. Opposer refused to produce any documents. As discussed above, other than opinions of counsel, these are documents to which applicant is entitled. *Miles Laboratories, Inc. v. Instrumentation Laboratories*, 185 USPQ 432, 434 (TTAB 1975).

Request No. 13 requests documents regarding any assignment, license or other grant of rights in a GRAMMY mark. Opposer refused. As discussed above, this likewise is discovery to which opposer is entitled. *Johnson Pump v. Chromallory*, 10 USPQ 2d 1671, 1675 (TTAB 1989); *Neville Chemical Co. v. Lubrizol Corp.*, 183 USPQ 184, 187 (TTAB 1974).

#### **B. Discovery Should Be Extended**

An extension of discovery is necessary to provide applicant the opportunity to take depositions after opposer has provided full responses to applicant's written discovery. As discussed above, opposer has refused to identify persons with relevant knowledge and provide other relevant discovery. Until such discovery is provided, it is not possible for applicant to identify with certainty what depositions or other discovery is needed. Furthermore, applicant should not be required to incur the expense of traveling to California from Illinois twice for depositions due to opposer's

failure to provide relevant discovery. Given this fact, and the fact that the Board does not have the ability to order opposer to bear the costs of the second trip, applicant should be permitted to take the deposition of opposer following the ruling on this motion.

### III. CONCLUSION

For the foregoing reasons, applicant requests that opposer be ordered to provide full responses to applicant's Interrogatories Nos. 1, 2, 8, and 10 and Document Requests 2, 4, 5, and 13.

Respectfully submitted,

SMART & BOSTJANCICH

By: Patricia S. Smart  
Patricia S. Smart  
John Bostjancich  
19 S. LaSalle Street, Suite 1300  
Chicago, Illinois 60603  
(312) 857-2424

Attorneys for Applicant

### **CERTIFICATE OF SERVICE**

I, Patricia S. Smart, an attorney for applicant, hereby certify that a copy of the foregoing Motion To Compel And Extend Discovery is being served upon counsel for opposer, G. Roxanne Elings, Greenberg Traurig, LLP, 200 Park Avenue, New York, NY 10166, this 20th day of September, 2004, by first class mail, postage prepaid.

Patricia S. Smart

### **CERTIFICATE OF MAILING**

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner For Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3514 on September 20, 2004.

Patricia S. Smart

## EXHIBIT A



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

**In re.: U.S. Trademark Application No. 76/182726**

**Mark: GRAMMI SHAR**

**Filed: December 19, 2000**

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NATIONAL ACADEMY OF RECORDING	:	
ARTS & SCIENCES, INC.	:	
	:	<b>Opposition No. 91154147</b>
Opposer,	:	
	:	
v.	:	
	:	
SHAREEM, INC.	:	
	:	
Applicant.	:	
-----X	:	

**OPPOSER'S RESPONSES TO  
APPLICANT'S FIRST SET OF INTERROGATORIES**

Opposer, National Academy of Recording Arts & Sciences, Inc., responds to Applicant's First Set of Interrogatories as follows:

**GENERAL OBJECTIONS**

The following general objections apply to each individual interrogatory contained in the Request, and shall have the same force and effect as if set forth in full in response to each individually numbered request contained therein.

1. Opposer objects to Applicant's Requests to the extent they seek information protected by the attorney-client privilege, the work product doctrine, and/or other applicable privileges or immunities from discovery.

2. Opposer objects to Applicant's Requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence. Opposer reserves all objections to the competency, relevancy, materiality or admissibility at trial of any information

provided. The identification of any witness or document or the supplying of any information does not constitute an admission that such information is relevant to the pending litigation.

3. Opposer objects to the Applicant's Requests to the extent they are ambiguous, vague or otherwise incomprehensible.

4. Opposer objects to Applicant's Requests to the extent they seek disclosure of information that is overly broad and unduly burdensome to obtain, including requests concerning documents in plaintiffs' actual or constructive possession and requests for "all" documents or "each" document.

5. Opposer objects to Applicant's Requests to the extent they seek duplicative responses.

6. Opposer objects to Applicant's Requests to the extent they seek information or the production of documents or materials containing trade secrets, confidential or other proprietary business information, the disclosure of which could injure Opposer. Opposer will not produce such documents absent execution and filing of a mutually agreeable protective order.

7. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, Opposer incorporates by reference the foregoing objections into each and every specific response contained herein. None of these general objections is waived by reason of any specific response given below.

8. To the extent Opposer responds to Applicant's Requests to which it objects, such objections are not waived by the providing of such information. In addition, the inadvertent disclosure of privileged information or release of privileged documents shall not constitute a waiver of any applicable privilege.

Opposer expressly reserves the right to amend and/or supplement its responses to Applicant's Requests.

## INTERROGATORIES

**Interrogatory 1(a):** Identify the persons having knowledge concerning Opposer's consideration or selection of the first GRAMMY mark used by Opposer, including the persons who first conceived of said mark.

**Interrogatory 1(b):** For each GRAMMY mark used by Opposer other than the one referred to in Interrogatory 1(a), identify the persons having knowledge concerning Opposer's consideration or selection of same.

**Response to No. 1:** Opposer objects to Interrogatories 1(a) and 1(b) on the grounds that they are vague, ambiguous, overly broad, irrelevant to the subject matter of this proceeding, and are not likely to lead to the discovery of admissible evidence.

**Interrogatory No. 2:** Identify each trademark search or investigation conducted by or for applicant in connection with a GRAMMY mark and the persons involved in the review of any such trademark search or the results of any investigation.

**Response to No. 2:** Opposer objects to Interrogatory 2 on the grounds that it is vague, ambiguous, overly broad, irrelevant to the subject matter of this proceeding, and not likely to lead to the discovery of admissible evidence.

**Interrogatory No. 3:** Identify, by date and circumstances, Opposer's first use of each GRAMMY mark used by Opposer and the persons with knowledge relating thereto.

**Response to No. 3:** Opposer objects to Interrogatory 3 on the grounds that it is vague, ambiguous, overly broad, irrelevant to the subject matter of this proceeding, and not likely to lead to the discovery of admissible evidence. Without waiving the general or specific objections, Opposer states that the dates of first use for the GRAMMY marks are as follows:

GRAMMY in Class 41 for "Educational services, namely, providing incentives to people to demonstrate excellence in the field of music and video arts and sciences through the issuance of awards," in 1958.

GRAMMY in Class 42 for "association services-namely, promoting artistic progress and achievement in the field of recording arts and sciences," in May, 1959.

GRAMMYS in Class 41 for "educational services, namely, conducting programs in the field of music," in March 10, 1970.

GRAMMY HALL OF FAME in Class 41 for "association services; namely, promoting artistic progress and achievements in the field of recording arts and sciences," in 1973.

VIDEO GRAMMY in Class 42 for "association services-namely, promoting artistic progress and achievements in the field of recording arts and sciences," in February, 1982.

GRAMMY IN THE SCHOOLS in Class 42 for "association services, namely, promoting artistic progress and achievement in the field of recording arts and sciences by operating a program to educate school students on careers and service opportunities in the recording community," in December 1989.

GRAMMY AWARDS in Class 25 for "clothing, namely, t-shirts, sweatshirts, jackets, and hats and caps," in January 1990.

GRAMMY LEGEND AWARDS in Class 41 for "educational services, namely, providing incentives to people to demonstrate excellence in the field of recording arts and sciences through issuance of awards," in February 1990.



in Class 41 for "entertainment and educational services; namely, performance by a musical group and providing incentives to students to demonstrate excellence in the field of music through the issuance of awards and scholarships," in January 1993.

GRAMMY in Class 9 for "pre-recorded audio tapes, audio compact discs, and video tapes featuring musical entertainment," in February 1994.

GRAMMY FOUNDATION in Class 41 for "educational services, namely, conducting classes and workshops in the field of music and music education," in March 2000.

LATIN GRAMMY in Class 9 for "musical sound recordings and musical video recordings," in September 2000.

LATIN GRAMMY in Class 25 for "clothing, namely, t-shirts, sweatshirts, jackets, and hats and caps," in September 2000.

The person most knowledgeable with respect to these GRAMMY marks is

Evan Greene.

**Interrogatory No. 4: Identify each product or service sold by Opposer under a GRAMMY mark, the time period during which it has been sold, the channels of trade through which it has been sold, and the annual sales volume for each year it has been sold.**

**Response to No. 4:** Opposer objects to Interrogatory 4 on the grounds that it is overly broad, duplicative, unduly burdensome, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer refers Applicant to Interrogatory 3. Opposer states that further information requested as to the GRAMMY marks will be provided through Applicant's Document Requests 8 and 9.

**Interrogatory No. 5: Identify the channels of trade through which applicant has sold products or services under a GRAMMY mark, the types of customers to whom they are sold and the intended end users of said products or services.**

**Response to No. 5:** Opposer objects to Interrogatory 5 on the grounds that it is overly broad, duplicative, unduly burdensome, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer states that information related to channels of trade for goods or services provided under the GRAMMY marks will be provided through Applicant's Document Request 9. Opposer further states that the end users of the goods and services provided under the GRAMMY marks are the general public, and that documents reflecting the types of the types of customers to whom they are sold and the intended end users of said products or services will be provided through Applicant's Document Requests 9 and 10.

**Interrogatory No. 6: Identify those persons who have had responsibility for the marketing, advertising, or promotion of products or services under a GRAMMY mark and the time period during which each such person has had such responsibility.**

Response to No. 6: Opposer objects to Interrogatory 6 on the grounds that it is overly broad, duplicative, unduly burdensome, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer states that Evan Greene is responsible for the marketing, advertising or promotion of products and services under the GRAMMY marks. Evan Greene has been responsible for marketing, advertising or promotion of GRAMMY products or services for approximately one year.

**Interrogatory No. 7: Identify the types of media used by Opposer for the advertising or promotion of products or services sold under a GRAMMY mark and applicant's annual expenditures for each type of advertising or promotional material.**

Response to No. 7: Opposer objects to Interrogatory 7 on the grounds that it is overly broad, vague, unduly burdensome and is not likely to lead to the discovery of admissible evidence. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer states that documents showing the media used by Opposer for advertising or promotion of products or services sold under the GRAMMY marks will be provided through Applicant's Document Request 11 and the annual expenditures for advertising or promotional materials of products or services sold under the GRAMMY marks will be provided through Applicant's Document Request No. 10.

**Interrogatory No. 8: Identify each transfer or license of rights in a GRAMMY mark to or from Opposer.**

Response to No. 8: Opposer objects to Interrogatory 8 on the grounds that it is overly broad, unduly burdensome, irrelevant, and is not likely to lead to the discovery of admissible evidence.

**Interrogatory No. 9: Identify all market research relating to a GRAMMY mark or any product or service marketed or proposed to be marketed under a GRAMMY mark.**

Response to No. 9: Opposer objects to Interrogatory 9 on the grounds that it is vague, overly broad, unduly burdensome, irrelevant, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer states that documents related to market research for GRAMMY marks, if any, will be provided through Applicant's Document Request 12.

**Interrogatory No. 10: Identify each third party use, past or present, of a GRAMMY mark of which Opposer is aware, the product or service for which it is used, and the persons having knowledge of each such use.**

Response to No. 10: Opposer objects to Interrogatory 10 on the grounds that it is vague, overly broad, unduly burdensome, irrelevant and is not likely to lead to the discovery of admissible evidence. Without waiving the general or specific objections, Opposer states that it regularly becomes aware of third parties that are infringing upon the GRAMMY mark and Opposer consistently pursues claims against such parties until such infringements are resolved to Opposer's satisfaction. Furthermore, Opposer states that it is not aware of any third party trademark registrations or applications for any other "Grammy" marks, other than Applicant's GRAMMY SHAR and GRAMMI SHAR marks in Classes 9 and 41.

**Interrogatory No. 11: Identify each proceeding in which Opposer has been involved which involved a GRAMMY mark, including the parties involved, the date of the proceeding, and the outcome of same, and identify each person having knowledge thereof.**

Response to No. 11: Opposer objects to Interrogatory 11 on the grounds that it is overly broad, vague, unduly burdensome, and is not likely to lead to the discovery of admissible evidence. Without waiving the general or specific objections, Opposer lists the following TTAB Opposition proceedings:

Opposition 91115511, dated May 26, 1999  
Opposition 91104571, dated October 29, 1996

**Interrogatory No. 12: For each objection made by Opposer based on Opposer's use of, or rights in, a GRAMMY mark, identify the marks involved, the person to whom the objection was sent, the date of the objection, the outcome of the objection, and the persons having knowledge of the objection or outcome.**

**Response to No. 12:** Opposer objects to Interrogatory 12 on the grounds that it is overly broad, unduly burdensome, and duplicative of Interrogatory No. 11. Opposer further objects in that the Interrogatory is not likely to lead to the discovery of admissible evidence.

**Interrogatory No. 13: For each objection received by Opposer based on Opposer's use or registration of a GRAMMY mark, identify the marks involved, the person by whom the objection was sent, the date of the objection, the outcome of the objection, and the persons having knowledge of the objection or outcome.**

**Response to No. 13:** Opposer objects to Interrogatory 13 on the grounds that it is overly broad, unduly burdensome, and duplicative of Interrogatory No. 11. Opposer further objects in that the Interrogatory is not likely to lead to the discovery of admissible evidence. Without waiving the general or specific objections, Opposer states that Opposer states that to its knowledge, there have been no objections received by Opposer based on Opposer's use or registration of a GRAMMY mark.

**Interrogatory No. 14(a): Identify each expert witness Opposer intends to call as a witness in this proceeding, his qualifications as an expert, the substance of the facts and opinions as to which he is expected to testify and a summary of the grounds for each.**

**Interrogatory No. 14(b): Provide the information which Rule 26(a)(2)(B) specifies is to be included in an expert report.**

**Response to No. 14:** Opposer objects to Interrogatory No. 14 on the grounds that it requests information that is not required by the Trademark Rules of Practice or the Federal Rules of Civil Procedure. Without waiving the general or specific objections, Opposer states that to date it has not retained an expert to give testimony in this proceeding.



**Interrogatory No. 15: If Opposer claims privilege respecting any document called for by a request for documents by applicant to Opposer, identify each such document and the basis of the claim of privilege.**

**Response to Interrogatory No. 15:** To the extent Opposer claims privilege on any documents, it will provide a privilege log at the time all other documents are produced.

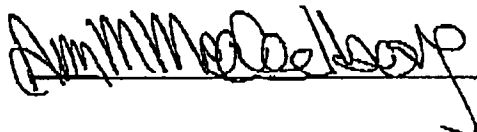
**Interrogatory No. 16: Identify each person who supplied information or otherwise assisted in the preparation of the interrogatory answers, specifying the interrogatory answers for which he or she assisted.**

**Response to Interrogatory No. 16:** Opposer objects to Interrogatory 16 on the grounds that it is overly broad, vague, unduly burdensome, and is not likely to lead to the discovery of admissible evidence. Without waiving the general or specific objections, Opposer advises that Ann Meckelborg, Manager of Contract Administration for Opposer, assisted in the preparation of Response 3, 6, 9 and 13.

Ann Meckelborg being duly sworn, deposes and says:

I hereby sign the foregoing Opposer's Responses to Applicant's First Set of Interrogatories for and on behalf of Opposer.

I have read the foregoing answers and know the contents thereof. The answers are true based upon my personal knowledge and, in some instances, upon information provided to me by others where necessary to provide a response. I certify that these answers are true and accurate to the best of my knowledge, information and belief.



Sworn to before me this  
\_\_ day of July, 2004

SEE ATTACHED JURAT  
Notary Public

# **JURAT WITH AFFIANT STATEMENT**

State of CALIFORNIA  
County of LOS ANGELES } ss.

- ☒ See Attached Document (Notary to cross out lines 1-8 below)  
☐ See Statement Below (Lines 1-7 to be completed only by document signer[s], not Notary)

*[Large X mark crossing out the signature area]*

\_\_\_\_\_  
Signature of Document Signer No. 1

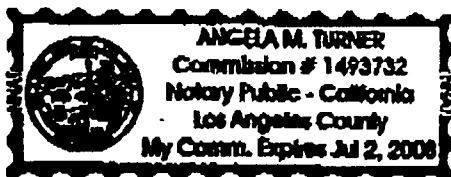
\_\_\_\_\_  
Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before  
me this 19<sup>th</sup> day of July

2004, by  
Year  
(1) Arac Meckelborg  
Name of Signer(s)

(2) \_\_\_\_\_  
Name of Signer(s)

Angela M. Turner  
Signature of Notary Public



Place Notary Seal Above

## **OPTIONAL**

*Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.*

### **Further Description of Any Attached Document**

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

RIGHT THUMBPRINT OF SIGNER #1
Top of thumb here

RIGHT THUMBPRINT OF SIGNER #2
Top of thumb here

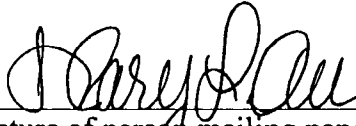
**CERTIFICATE OF MAILING**

**I hereby certify that Opposer's Responses to Applicant's First Set of Interrogatories for Opposition 91154092, Opposer's Responses to Applicant's Request for Production of Documents for Opposition 91154092, Opposer's Responses to Applicant's First Set of Interrogatories for Opposition 91154147 and Opposer's Responses to Applicant's Request for Production of Documents for Opposition 91154147 have been faxed and being deposited with the United States Postal Service via First Class Mail addressed to Patricia S. Smart, Esq., Smart & Bostjancich, 19 South LaSalle Street, Suite 1300, Chicago, IL 60603, this 20th day of July, 2004.**

Mary L. Au

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(Typed name of person mailing paper)

A handwritten signature in black ink, appearing to read "Mary L. Au", written over a horizontal line.

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(Signature of person mailing paper)

## EXHIBIT B

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

**In re.: U.S. Trademark Application No. 76/182726**

**Mark: GRAMMI SHAR**

**Filed: December 19, 2000**

-----X	:	
NATIONAL ACADEMY OF RECORDING	:	
ARTS & SCIENCES, INC.	:	
	:	<b>Opposition No. 91154147</b>
Opposer,	:	
	:	
v.	:	
	:	
SHAREEM, INC.	:	
	:	
Applicant.	:	
-----X	:	

**OPPOSER'S RESPONSES TO APPLICANT'S REQUEST FOR  
PRODUCTION OF DOCUMENTS**

Opposer, National Academy of Recording Arts & Sciences, Inc., responds to Applicant's First Set of Document Requests as follows:

**GENERAL OBJECTIONS**

The following Objections apply to each and every one of the Requests propounded by Applicant:

Opposer objects to Applicant's Definitions and Instructions to the extent that they impose requirements or obligations on Opposer contrary to or beyond those required by the Federal Rules of Civil Procedure or the Trial Trademark and Appeal Board.

Opposer objects to the Requests to the extent that they seek the production of documents and/or things that are subject to the attorney-client privilege, constitute work product, and/or are otherwise immune from discovery. To the extent required, Opposer will exchange

privilege logs with Applicant in accordance with Federal Rule of Civil Procedure 26(b)(5) in due course.

Opposer objects to the Requests to the extent that the requests seek Opposer's trade secrets or other confidential research, development or commercial information until an appropriate protective order has been signed by the parties and entered by the Court.

Opposer objects to producing documents that are considered CONFIDENTIAL by Opposer until an appropriate protective order has been signed by the parties and entered by the Court.

Opposer objects to the Requests to the extent they require Opposer to produce documents and/or things that are already in Applicant's possession, custody or control.

Opposer objects to the Requests to the extent they require Opposer to produce information that is a matter of public record, is publicly available, or is information generated by other entities.

Opposer objects to the Requests to the extent they are overly broad, vague, ambiguous, indefinite, unduly burdensome and/or harassing.

Opposer objects to the Requests to the extent that they are constructed to encompass information that is not relevant to the claim or defense of any party.

Opposer objects to the phrase "offending goods" as used by Gucci in its requests. That phrase constitutes a legal conclusion at issue in this litigation

Opposer reserves its right to modify, amend or supplement its responses and objections and to move for protective orders as necessary.

## **RESPONSES**

**Document Request No. 1: All documents identified or requested to be identified in response to Applicant's First Set Of Interrogatories To Opposer.**

**Response to Request No. 1:** Without waiving the general objections, Opposer will produce documents identified in the Interrogatories and these Document Requests upon entry of a suitable protective order.

**Document Request No. 2:** All documents which relate or refer to Opposer's creation, consideration, selection, or adoption of any GRAMMY mark.

**Response to Request No. 2:** Opposer objects to Request No. 2 on the grounds that it is overly broad, unduly burdensome, irrelevant, vague, and not likely to lead to the discovery of admissible evidence.

**Document Request No. 3:** Documents sufficient to identify each GRAMMY mark used by Opposer.

**Response to Request No. 3:** Opposer objects to Request No. 3 on the grounds that it is overly broad, unduly burdensome, vague, and not likely to lead to the discovery of admissible evidence. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer calls Applicant's attention to the Patent and Trademark Office public files, which identify each of Opposer's registrations and applications for the GRAMMY marks. Opposer also refers Applicant to Interrogatory 3 and Document Requests 6 and 7 for documents sufficient to identify each GRAMMY mark used by Opposer.

**Document Request No. 4:** All documents which relate or refer to Opposer's first use of each GRAMMY mark used by Opposer.

**Response to Request No. 4:** Opposer objects to Request No. 4 on the grounds that it is overly broad, unduly burdensome, irrelevant, vague, and not likely to lead to the discovery of admissible evidence.



**Document Request No. 5: All trademark searches and other documents which relate or refer to the clearance of any GRAMMY mark.**

**Response to Request No. 5:** Opposer objects to Request No. 4 on the grounds that it is overly broad, unduly burdensome, vague, not likely to lead to the discovery of admissible evidence, and beyond the scope of discovery permitted by the Trademark Trial and Appeal Board.

**Document Request No. 6: Representative specimens of all packaging or labeling used by Opposer for each product sold under a GRAMMY mark.**

**Response to Request No. 6:** Opposer objects to Request No. 6 on the grounds that it is overly broad, unduly burdensome and vague. Without waiving the general or specific objections, Opposer will provide representative specimens of all packaging or labeling used by Opposer for products sold under the GRAMMY marks.

**Document Request No. 7: Representative specimens of all advertising and promotional materials used for each product or service sold or provided by Opposer under a GRAMMY mark.**

**Response to Request No. 7:** Opposer objects to Request No. 7 on the grounds that it is overly broad, unduly burdensome, and vague. Without waiving the general or specific objections, Opposer will provide representative specimens of advertising and promotional materials used by Opposer for products sold under the GRAMMY marks.

**Document Request No. 8: Documents sufficient to show Opposer's annual sales volume of each product or service sold under the GRAMMY mark.**

**Response to Request No. 8:** Opposer objects to Request No. 8 on the grounds that it is overly broad, unduly burdensome and vague. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer

will provide responsive non-privileged documents sufficient to show sales volumes for the last 3 years for products sold under the GRAMMY marks upon entry of a suitable protective order.

**Document Request No. 9: Documents sufficient to identify the channels of trade through which Opposer has sold or intends to sell products or services under a GRAMMY mark.**

Response to Request No. 9: Opposer objects to Request No. 9 on the grounds that it is overly broad, unduly burdensome and vague. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer will provide responsive non-privileged documents sufficient to identify channels of trade through which Opposer has sold products or services under the GRAMMY marks upon entry of a suitable protective order.

**Document Request No. 10: Documents sufficient to identify all types of advertising or promotional media used by Opposer for products or services sold under a GRAMMY mark.**

Response to Request No. 10: Opposer objects to Request No. 10 on the grounds that it is overly broad, unduly burdensome, and vague, and to the extent that is duplicative of Request No. 7. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer will provide responsive non-privileged documents sufficient to identify the types of advertising or promotional media used by Opposer for products or services under the GRAMMY marks upon entry of a suitable protective order.

**Document Request No. 11: Documents sufficient to show Opposer's annual advertising and promotional expenditures for products or services sold under a GRAMMY mark.**

Response to Request No. 11: Opposer objects to Request No. 11 on the grounds that it is overly broad, unduly burdensome, and vague. Opposer further objects to the extent it requests

confidential business information. Without waiving the general or specific objections, Opposer will provide responsive non-privileged documents sufficient to identify the types of annual advertising and promotional expenditures by Opposer for products or services under the GRAMMY marks upon entry of a suitable protective order. Without waiving the general or specific objections, Opposer will provide, if any, responsive non-privileged documents.

**Document Request No. 12: All documents comprising, relating, or referring to a focus group study, consumer poll, survey or other market research relating to a GRAMMY mark or products or services sold under a GRAMMY mark.**

**Response to Request No. 12:** Opposer objects to Request No. 12 on the grounds that it is overly broad, unduly burdensome, and vague. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer will provide responsive non-privileged documents, to the extent that such documents exist, upon entry of a suitable protective order.

**Document Request No. 13: All documents which refer to, relate to, comprise or evidence any assignment, license or other grant of rights in a GRAMMY mark.**

**Response to Request No. 13:** Opposer objects to Request No. 13 on the grounds that it is overly broad, unduly burdensome, vague, and not likely to lead to the discovery of admissible evidence.

**Document Request No. 14: All documents comprising, relating, or referring to third party use of a GRAMMY mark.**

**Response to Request No. 14:** Opposer objects to Request No. 14 on the grounds that it is overly broad, unduly burdensome, vague and not likely to lead to admissible evidence. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer refers Applicant to Opposer's Response to Request No. 15 and Opposer's Response to Interrogatory 10.

**Document Request No. 15: All documents comprising, relating, or referring to any objection made by Opposer to another's use or registration of a mark based on a GRAMMY mark.**

**Response to Request No. 15:** Opposer objects to Request No. 15 on the grounds that it is overly broad, unduly burdensome, duplicative of Documents Request 14, and vague. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer will produce any responsive, non-privileged documents of Opposer's relating to any objection made by Opposer to another's use or registration of a mark based on the GRAMMY mark in the last three years. See also Document Request 14.

**Document Request No. 16: All documents comprising, relating, or referring to any objection received by Opposer regarding a GRAMMY mark.**

**Response to Request No. 16:** Opposer objects to Request No. 16 on the grounds that it is overly broad, unduly burdensome, and vague. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer advises Applicant that there are no documents responsive to this Request.

**Document Request No. 17: All documents given to or received from any person Applicant intends to call as an expert witness, including but not limited to any expert report, and any document the expert intends to rely on to support or illustrate his testimony.**

**Response to Request No. 17:** Opposer objects to Request No. 17 on the grounds that it requests documents beyond the scope of discovery permitted by the Trademark Trial and Appeal Board. Without waiving the general or specific objections, Opposer advises Applicant that to date it has not retained an expert to give testimony in this proceeding.

Dated: July 20, 2004

By: Allison Lucas  
G. Roxanne Elings  
Allison Lucas  
GREENBERG TRAURIG, LLP  
200 Park Avenue  
New York, New York 10166  
(212) 801-9200

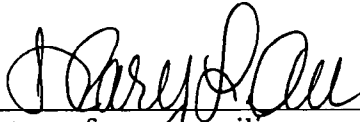
**CERTIFICATE OF MAILING**

**I hereby certify that Opposer's Responses to Applicant's First Set of Interrogatories for Opposition 91154092, Opposer's Responses to Applicant's Request for Production of Documents for Opposition 91154092, Opposer's Responses to Applicant's First Set of Interrogatories for Opposition 91154147 and Opposer's Responses to Applicant's Request for Production of Documents for Opposition 91154147 have been faxed and being deposited with the United States Postal Service via First Class Mail addressed to Patricia S. Smart, Esq., Smart & Bostjancich, 19 South LaSalle Street, Suite 1300, Chicago, IL 60603, this 20th day of July, 2004.**

Mary L. Au

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(Typed name of person mailing paper)

A handwritten signature in black ink, appearing to read "Mary L. Au", written over a horizontal line.

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(Signature of person mailing paper)

## EXHIBIT C

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

**In re.: U.S. Trademark Application No. 76/182727**

**Mark: GRAMMY SHAR**

**Filed: December 19, 2000**

NATIONAL ACADEMY OF RECORDING ARTS & SCIENCES, INC.	X	
	:	
	:	
Opposer,	:	
	:	
v.	:	
	:	
SHAREEM, INC.	:	
	:	
Applicant.	:	
	:	
	X	

**Opposition No. 91154092**

**OPPOSER'S RESPONSES TO  
APPLICANT'S FIRST SET OF INTERROGATORIES**

Opposer, National Academy of Recording Arts & Sciences, Inc., responds to Applicant's First Set of Interrogatories as follows:

**GENERAL OBJECTIONS**

The following general objections apply to each individual interrogatory contained in the Request, and shall have the same force and effect as if set forth in full in response to each individually numbered request contained therein.

1. Opposer objects to Applicant's Requests to the extent they seek information protected by the attorney-client privilege, the work product doctrine, and/or other applicable privileges or immunities from discovery.

2. Opposer objects to Applicant's Requests to the extent they seek information that is not reasonably calculated to lead to the discovery of admissible evidence. Opposer reserves all objections to the competency, relevancy, materiality or admissibility at trial of any information



provided. The identification of any witness or document or the supplying of any information does not constitute an admission that such information is relevant to the pending litigation.

3. Opposer objects to the Applicant's Requests to the extent they are ambiguous, vague or otherwise incomprehensible.

4. Opposer objects to Applicant's Requests to the extent they seek disclosure of information that is overly broad and unduly burdensome to obtain, including requests concerning documents in plaintiffs' actual or constructive possession and requests for "all" documents or "each" document.

5. Opposer objects to Applicant's Requests to the extent they seek duplicative responses.

6. Opposer objects to Applicant's Requests to the extent they seek information or the production of documents or materials containing trade secrets, confidential or other proprietary business information, the disclosure of which could injure Opposer. Opposer will not produce such documents absent execution and filing of a mutually agreeable protective order.

7. Pursuant to Rule 10(c) of the Federal Rules of Civil Procedure, Opposer incorporates by reference the foregoing objections into each and every specific response contained herein. None of these general objections is waived by reason of any specific response given below.

8. To the extent Opposer responds to Applicant's Requests to which it objects, such objections are not waived by the providing of such information. In addition, the inadvertent disclosure of privileged information or release of privileged documents shall not constitute a waiver of any applicable privilege.

Opposer expressly reserves the right to amend and/or supplement its responses to Applicant's Requests.

## INTERROGATORIES

**Interrogatory 1(a):** Identify the persons having knowledge concerning Opposer's consideration or selection of the first GRAMMY mark used by Opposer, including the persons who first conceived of said mark.

**Interrogatory 1(b):** For each GRAMMY mark used by Opposer other than the one referred to in Interrogatory 1(a), identify the persons having knowledge concerning Opposer's consideration or selection of same.

**Response to No. 1:** Opposer objects to Interrogatories 1(a) and 1(b) on the grounds that they are vague, ambiguous, overly broad, irrelevant to the subject matter of this proceeding, and are not likely to lead to the discovery of admissible evidence.

**Interrogatory No. 2:** Identify each trademark search or investigation conducted by or for applicant in connection with a GRAMMY mark and the persons involved in the review of any such trademark search or the results of any investigation.

**Response to No. 2:** Opposer objects to Interrogatory 2 on the grounds that it is vague, ambiguous, overly broad, irrelevant to the subject matter of this proceeding, and not likely to lead to the discovery of admissible evidence.

**Interrogatory No. 3:** Identify, by date and circumstances, Opposer's first use of each GRAMMY mark used by Opposer and the persons with knowledge relating thereto.

**Response to No. 3:** Opposer objects to Interrogatory 3 on the grounds that it is vague, ambiguous, overly broad, irrelevant to the subject matter of this proceeding, and not likely to lead to the discovery of admissible evidence. Without waiving the general or specific objections, Opposer states that the dates of first use for the GRAMMY marks are as follows:

GRAMMY in Class 41 for "Educational services, namely, providing incentives to people to demonstrate excellence in the field of music and video arts and sciences through the issuance of awards," in 1958.

GRAMMY in Class 42 for "association services-namely, promoting artistic progress and achievement in the field of recording arts and sciences," in May, 1959.

GRAMMYS in Class 41 for "educational services, namely, conducting programs in the field of music," in March 10, 1970.

GRAMMY HALL OF FAME in Class 41 for "association services; namely, promoting artistic progress and achievements in the field of recording arts and sciences," in 1973.

VIDEO GRAMMY in Class 42 for "association services-namely, promoting artistic progress and achievements in the field of recording arts and sciences," in February, 1982.

GRAMMY IN THE SCHOOLS in Class 42 for "association services, namely, promoting artistic progress and achievement in the field of recording arts and sciences by operating a program to educate school students on careers and service opportunities in the recording community," in December 1989.

GRAMMY AWARDS in Class 25 for "clothing, namely, t-shirts, sweatshirts, jackets, and hats and caps," in January 1990.

GRAMMY LEGEND AWARDS in Class 41 for "educational services, namely, providing incentives to people to demonstrate excellence in the field of recording arts and sciences through issuance of awards," in February 1990.



in Class 41 for "entertainment and educational services; namely, performance by a musical group and providing incentives to students to demonstrate excellence in the field of music through the issuance of awards and scholarships," in January 1993.

GRAMMY in Class 9 for "pre-recorded audio tapes, audio compact discs, and video tapes featuring musical entertainment," in February 1994.

GRAMMY FOUNDATION in Class 41 for "educational services, namely, conducting classes and workshops in the field of music and music education," in March 2000.

LATIN GRAMMY in Class 9 for "musical sound recordings and musical video recordings," in September 2000.

LATIN GRAMMY in Class 25 for "clothing, namely, t-shirts, sweatshirts, jackets, and hats and caps," in September 2000.

The person most knowledgeable with respect to these GRAMMY marks is

Evan Greene.

**Interrogatory No. 4: Identify each product or service sold by Opposer under a GRAMMY mark, the time period during which it has been sold, the channels of trade through which it has been sold, and the annual sales volume for each year it has been sold.**

Response to No. 4: Opposer objects to Interrogatory 4 on the grounds that it is overly broad, duplicative, unduly burdensome, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer refers Applicant to Interrogatory 3. Opposer states that further information requested as to the GRAMMY marks will be provided through Applicant's Document Requests 8 and 9.

**Interrogatory No. 5: Identify the channels of trade through which applicant has sold products or services under a GRAMMY mark, the types of customers to whom they are sold and the intended end users of said products or services.**

Response to No. 5: Opposer objects to Interrogatory 5 on the grounds that it is overly broad, duplicative, unduly burdensome, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer states that information related to channels of trade for goods or services provided under the GRAMMY marks will be provided through Applicant's Document Request 9. Opposer further states that the end users of the goods and services provided under the GRAMMY marks are the general public, and that documents reflecting the types of the types of customers to whom they are sold and the intended end users of said products or services will be provided through Applicant's Document Requests 9 and 10.

**Interrogatory No. 6: Identify those persons who have had responsibility for the marketing, advertising, or promotion of products or services under a GRAMMY mark and the time period during which each such person has had such responsibility.**

Response to No. 6: Opposer objects to Interrogatory 6 on the grounds that it is overly broad, duplicative, unduly burdensome, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer states that Evan Greene is responsible for the marketing, advertising or promotion of products and services under the GRAMMY marks. Evan Greene has been responsible for marketing, advertising or promotion of GRAMMY products or services for approximately one year.

**Interrogatory No 7: Identify the types of media used by Opposer for the advertising or promotion of products or services sold under a GRAMMY mark and applicant's annual expenditures for each type of advertising or promotional material.**

Response to No. 7: Opposer objects to Interrogatory 7 on the grounds that it is overly broad, vague, unduly burdensome and is not likely to lead to the discovery of admissible evidence. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer states that documents showing the media used by Opposer for advertising or promotion of products or services sold under the GRAMMY marks will be provided through Applicant's Document Request 11 and the annual expenditures for advertising or promotional materials of products or services sold under the GRAMMY marks will be provided through Applicant's Document Request No. 10.

**Interrogatory No. 8: Identify each transfer or license of rights in a GRAMMY mark to or from Opposer.**

Response to No. 8: Opposer objects to Interrogatory 8 on the grounds that it is overly broad, unduly burdensome, irrelevant, and is not likely to lead to the discovery of admissible evidence.

**Interrogatory No. 9: Identify all market research relating to a GRAMMY mark or any product or service marketed or proposed to be marketed under a GRAMMY mark.**

Response to No. 9: Opposer objects to Interrogatory 9 on the grounds that it is vague, overly broad, unduly burdensome, irrelevant, and is not likely to lead to the discovery of admissible evidence. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer states that documents related to market research for GRAMMY marks, if any, will be provided through Applicant's Document Request 12.

**Interrogatory No. 10: Identify each third party use, past or present, of a GRAMMY mark of which Opposer is aware, the product or service for which it is used, and the persons having knowledge of each such use.**

Response to No. 10: Opposer objects to Interrogatory 10 on the grounds that it is vague, overly broad, unduly burdensome, irrelevant and is not likely to lead to the discovery of admissible evidence. Without waiving the general or specific objections, Opposer states that it regularly becomes aware of third parties that are infringing upon the GRAMMY mark and Opposer consistently pursues claims against such parties until such infringements are resolved to Opposer's satisfaction. Furthermore, Opposer states that it is not aware of any third party trademark registrations or applications for any other "Grammy" marks, other than Applicant's GRAMMY SHAR and GRAMMI SHAR marks in Classes 9 and 41.

**Interrogatory No. 11: Identify each proceeding in which Opposer has been involved which involved a GRAMMY mark, including the parties involved, the date of the proceeding, and the outcome of same, and identify each person having knowledge thereof.**

Response to No. 11: Opposer objects to Interrogatory 11 on the grounds that it is overly broad, vague, unduly burdensome, and is not likely to lead to the discovery of admissible

evidence. Without waiving the general or specific objections, Opposer lists the following TTAB Opposition proceedings:

Opposition 91115511, dated May 26, 1999

Opposition 91104571, dated October 29, 1996

**Interrogatory No. 12:** For each objection made by Opposer based on Opposer's use of, or rights in, a GRAMMY mark, identify the marks involved, the person to whom the objection was sent, the date of the objection, the outcome of the objection, and the persons having knowledge of the objection or outcome.

**Response to No. 12:** Opposer objects to Interrogatory 12 on the grounds that it is overly broad, unduly burdensome, and duplicative of Interrogatory No. 11. Opposer further objects in that the Interrogatory is not likely to lead to the discovery of admissible evidence.

**Interrogatory No. 13:** For each objection received by Opposer based on Opposer's use or registration of a GRAMMY mark, identify the marks involved, the person by whom the objection was sent, the date of the objection, the outcome of the objection, and the persons having knowledge of the objection or outcome.

**Response to No. 13:** Opposer objects to Interrogatory 13 on the grounds that it is overly broad, unduly burdensome, and duplicative of Interrogatory No. 11. Opposer further objects in that the Interrogatory is not likely to lead to the discovery of admissible evidence. Without waiving the general or specific objections, Opposer states that to its knowledge, there have been no objections received by Opposer based on Opposer's use or registration of a GRAMMY mark.

**Interrogatory No. 14(a):** Identify each expert witness Opposer intends to call as a witness in this proceeding, his qualifications as an expert, the substance of the facts and opinions as to which he is expected to testify and a summary of the grounds for each.

**Interrogatory No. 14(b):** Provide the information which Rule 26(a)(2)(B) specifies is to be included in an expert report.

**Response to No. 14:** Opposer objects to Interrogatory No. 14 on the grounds that it requests information that is not required by the Trademark Rules of Practice or the Federal Rules of Civil Procedure. Without waiving the general or specific objections, Opposer states that to date it has not retained an expert to give testimony in this proceeding.

**Interrogatory No. 15: If Opposer claims privilege respecting any document called for by a request for documents by applicant to Opposer, identify each such document and the basis of the claim of privilege.**

**Response to Interrogatory No. 15:** To the extent Opposer claims privilege on any documents, it will provide a privilege log at the time all other documents are produced.

**Interrogatory No. 16: Identify each person who supplied information or otherwise assisted in the preparation of the interrogatory answers, specifying the interrogatory answers for which he or she assisted.**

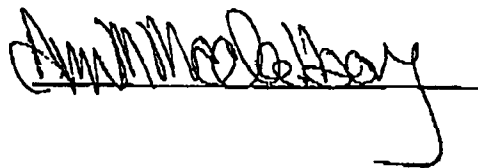
**Response to Interrogatory No. 16:** Opposer objects to Interrogatory 16 on the grounds that it is overly broad, vague, unduly burdensome, and is not likely to lead to the discovery of admissible evidence. Without waiving the general or specific objections, Opposer advises that Ann Meckelborg, Manager of Contract Administration for Opposer, assisted in the preparation of Response 3, 6, 9 and 13.



Ann Meckelborg being duly sworn, deposes and says:

I hereby sign the foregoing Opposer's Responses to Applicant's First Set of Interrogatories for and on behalf of Opposer.

I have read the foregoing answers and know the contents thereof. The answers are true based upon my personal knowledge and, in some instances, upon information provided to me by others where necessary to provide a response. I certify that these answers are true and accurate to the best of my knowledge, information and belief.



Sworn to before me this  
\_\_ day of July, 2004

See Attached Jurat  
Notary Public

## JURAT WITH AFFIANT STATEMENT

State of California  
County of Los Angeles } ss.

- ☒ See Attached Document (Notary to cross out lines 1-8 below)  
☐ See Statement Below (Lines 1-7 to be completed only by document signer[s], not Notary)

*[Large handwritten X across the signature area]*

Signature of Document Signer No. 1

Signature of Document Signer No. 2 (if any)

Subscribed and sworn to (or affirmed) before

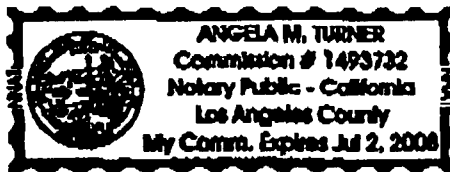
me this 19th day of July,  
Date Month

2004, by  
Year

(1) AND Meckelborg  
Name of Signer(s)

(2) \_\_\_\_\_  
Name of Signer(s)

Angela M. Turner  
Signature of Notary Public



Place Notary Seal Above

### OPTIONAL

Though the information below is not required by law, it may prove valuable to persons relying on the document and could prevent fraudulent removal and reattachment of this form to another document.

#### Further Description of Any Attached Document

Title or Type of Document: \_\_\_\_\_

Document Date: \_\_\_\_\_ Number of Pages: \_\_\_\_\_

Signer(s) Other Than Named Above: \_\_\_\_\_

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OF SIGNER #1  
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RIGHT THUMBPRINT  
OF SIGNER #2  
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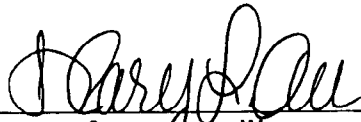
**CERTIFICATE OF MAILING**

**I hereby certify that Opposer's Responses to Applicant's First Set of Interrogatories for Opposition 91154092, Opposer's Responses to Applicant's Request for Production of Documents for Opposition 91154092, Opposer's Responses to Applicant's First Set of Interrogatories for Opposition 91154147 and Opposer's Responses to Applicant's Request for Production of Documents for Opposition 91154147 have been faxed and being deposited with the United States Postal Service via First Class Mail addressed to Patricia S. Smart, Esq., Smart & Bostjancich, 19 South LaSalle Street, Suite 1300, Chicago, IL 60603, this 20th day of July, 2004.**

Mary L. Au

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A handwritten signature in cursive script, appearing to read "Mary L. Au", written over a horizontal line.

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(Signature of person mailing paper)

## EXHIBIT D

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

**In re.: U.S. Trademark Application No. 76/182727**

**Mark: GRAMMY SHAR**

**Filed: December 19, 2000**

	X	
NATIONAL ACADEMY OF RECORDING	:	
ARTS & SCIENCES, INC.	:	
	:	
Opposer,	:	
	:	
v.	:	
	:	
SHAREEM, INC.	:	
	:	
Applicant.	:	
	:	
	X	

**Opposition No. 91154092**

**OPPOSER'S RESPONSES TO APPLICANT'S REQUEST FOR  
PRODUCTION OF DOCUMENTS**

Opposer, National Academy of Recording Arts & Sciences, Inc., responds to Applicant's First Set of Document Requests as follows:

**GENERAL OBJECTIONS**

The following Objections apply to each and every one of the Requests propounded by Applicant:

Opposer objects to Applicant's Definitions and Instructions to the extent that they impose requirements or obligations on Opposer contrary to or beyond those required by the Federal Rules of Civil Procedure or the Trial Trademark and Appeal Board.

Opposer objects to the Requests to the extent that they seek the production of documents and/or things that are subject to the attorney-client privilege, constitute work product, and/or are otherwise immune from discovery. To the extent required, Opposer will exchange

privilege logs with Applicant in accordance with Federal Rule of Civil Procedure 26(b)(5) in due course.

Opposer objects to the Requests to the extent that the requests seek Opposer's trade secrets or other confidential research, development or commercial information until an appropriate protective order has been signed by the parties and entered by the Court.

Opposer objects to producing documents that are considered CONFIDENTIAL by Opposer until an appropriate protective order has been signed by the parties and entered by the Court.

Opposer objects to the Requests to the extent they require Opposer to produce documents and/or things that are already in Applicant's possession, custody or control.

Opposer objects to the Requests to the extent they require Opposer to produce information that is a matter of public record, is publicly available, or is information generated by other entities.

Opposer objects to the Requests to the extent they are overly broad, vague, ambiguous, indefinite, unduly burdensome and/or harassing.

Opposer objects to the Requests to the extent that they are constructed to encompass information that is not relevant to the claim or defense of any party.

Opposer objects to the phrase "offending goods" as used by Gucci in its requests. That phrase constitutes a legal conclusion at issue in this litigation

Opposer reserves its right to modify, amend or supplement its responses and objections and to move for protective orders as necessary.

## RESPONSES

**Document Request No. 1: All documents identified or requested to be identified in response to Applicant's First Set Of Interrogatories To Opposer.**

Response to Request No. 1: Without waiving the general objections, Opposer will produce documents identified in the Interrogatories and these Document Requests upon entry of a suitable protective order.

**Document Request No. 2: All documents which relate or refer to Opposer's creation, consideration, selection, or adoption of any GRAMMY mark.**

Response to Request No. 2: Opposer objects to Request No. 2 on the grounds that it is overly broad, unduly burdensome, irrelevant, vague, and not likely to lead to the discovery of admissible evidence.

**Document Request No. 3: Documents sufficient to identify each GRAMMY mark used by Opposer.**

Response to Request No. 3: Opposer objects to Request No. 3 on the grounds that it is overly broad, unduly burdensome, vague, and not likely to lead to the discovery of admissible evidence. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer calls Applicant's attention to the Patent and Trademark Office public files, which identify each of Opposer's registrations and applications for the GRAMMY marks. Opposer also refers Applicant to Interrogatory 3 and Document Requests 6 and 7 for documents sufficient to identify each GRAMMY mark used by Opposer.

**Document Request No. 4: All documents which relate or refer to Opposer's first use of each GRAMMY mark used by Opposer.**

Response to Request No. 4: Opposer objects to Request No. 4 on the grounds that it is overly broad, unduly burdensome, irrelevant, vague, and not likely to lead to the discovery of admissible evidence.

**Document Request No. 5: All trademark searches and other documents which relate or refer to the clearance of any GRAMMY mark.**

Response to Request No. 5: Opposer objects to Request No. 4 on the grounds that it is overly broad, unduly burdensome, vague, not likely to lead to the discovery of admissible evidence, and beyond the scope of discovery permitted by the Trademark Trial and Appeal Board.

**Document Request No. 6: Representative specimens of all packaging or labeling used by Opposer for each product sold under a GRAMMY mark.**

Response to Request No. 6: Opposer objects to Request No. 6 on the grounds that it is overly broad, unduly burdensome and vague. Without waiving the general or specific objections, Opposer will provide representative specimens of all packaging or labeling used by Opposer for products sold under the GRAMMY marks.

**Document Request No. 7: Representative specimens of all advertising and promotional materials used for each product or service sold or provided by Opposer under a GRAMMY mark.**

Response to Request No. 7: Opposer objects to Request No. 7 on the grounds that it is overly broad, unduly burdensome, and vague. Without waiving the general or specific objections, Opposer will provide representative specimens of advertising and promotional materials used by Opposer for products sold under the GRAMMY marks.

**Document Request No. 8: Documents sufficient to show Opposer's annual sales volume of each product or service sold under the GRAMMY mark.**

Response to Request No. 8: Opposer objects to Request No. 8 on the grounds that it is overly broad, unduly burdensome and vague. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer



will provide responsive non-privileged documents sufficient to show sales volumes for the last 3 years for products sold under the GRAMMY marks upon entry of a suitable protective order.

**Document Request No. 9: Documents sufficient to identify the channels of trade through which Opposer has sold or intends to sell products or services under a GRAMMY mark.**

Response to Request No. 9: Opposer objects to Request No. 9 on the grounds that it is overly broad, unduly burdensome and vague. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer will provide responsive non-privileged documents sufficient to identify channels of trade through which Opposer has sold products or services under the GRAMMY marks upon entry of a suitable protective order.

**Document Request No. 10: Documents sufficient to identify all types of advertising or promotional media used by Opposer for products or services sold under a GRAMMY mark.**

Response to Request No. 10: Opposer objects to Request No. 10 on the grounds that it is overly broad, unduly burdensome, and vague, and to the extent that is duplicative of Request No. 7. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer will provide responsive non-privileged documents sufficient to identify the types of advertising or promotional media used by Opposer for products or services under the GRAMMY marks upon entry of a suitable protective order.

**Document Request No. 11: Documents sufficient to show Opposer's annual advertising and promotional expenditures for products or services sold under a GRAMMY mark.**

Response to Request No. 11: Opposer objects to Request No. 11 on the grounds that it is overly broad, unduly burdensome, and vague. Opposer further objects to the extent it requests

confidential business information. Without waiving the general or specific objections, Opposer will provide responsive non-privileged documents sufficient to identify the types of annual advertising and promotional expenditures by Opposer for products or services under the GRAMMY marks upon entry of a suitable protective order. Without waiving the general or specific objections, Opposer will provide, if any, responsive non-privileged documents.

**Document Request No. 12: All documents comprising, relating, or referring to a focus group study, consumer poll, survey or other market research relating to a GRAMMY mark or products or services sold under a GRAMMY mark.**

Response to Request No. 12: Opposer objects to Request No. 12 on the grounds that it is overly broad, unduly burdensome, and vague. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer will provide responsive non-privileged documents, to the extent that such documents exist, upon entry of a suitable protective order.

**Document Request No. 13: All documents which refer to, relate to, comprise or evidence any assignment, license or other grant of rights in a GRAMMY mark.**

Response to Request No. 13: Opposer objects to Request No. 13 on the grounds that it is overly broad, unduly burdensome, vague, and not likely to lead to the discovery of admissible evidence.

**Document Request No. 14: All documents comprising, relating, or referring to third party use of a GRAMMY mark.**

Response to Request No. 14: Opposer objects to Request No. 14 on the grounds that it is overly broad, unduly burdensome, vague and not likely to lead to admissible evidence. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer refers Applicant to Opposer's Response to Request No. 15 and Opposer's Response to Interrogatory 10.

**Document Request No. 15: All documents comprising, relating, or referring to any objection made by Opposer to another's use or registration of a mark based on a GRAMMY mark.**

Response to Request No. 15: Opposer objects to Request No. 15 on the grounds that it is overly broad, unduly burdensome, duplicative of Documents Request 14, and vague. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer will produce any responsive, non-privileged documents of Opposer's relating to any objection made by Opposer to another's use or registration of a mark based on the GRAMMY mark in the last three years. See also Document Request 14.

**Document Request No. 16: All documents comprising, relating, or referring to any objection received by Opposer regarding a GRAMMY mark.**

Response to Request No. 16: Opposer objects to Request No. 16 on the grounds that it is overly broad, unduly burdensome, and vague. Opposer further objects to the extent it requests confidential business information. Without waiving the general or specific objections, Opposer advises Applicant that there are no documents responsive to this Request.

**Document Request No. 17: All documents given to or received from any person Applicant intends to call as an expert witness, including but not limited to any expert report, and any document the expert intends to rely on to support or illustrate his testimony.**

Response to Request No. 17: Opposer objects to Request No. 17 on the grounds that it requests documents beyond the scope of discovery permitted by the Trademark Trial and Appeal Board. Without waiving the general or specific objections, Opposer advises Applicant that to date it has not retained an expert to give testimony in this proceeding.

Dated: July 20, 2004

By: Allison Lucas  
G. Roxanne Elings  
Allison Lucas  
GREENBERG TRAURIG, LLP  
200 Park Avenue  
New York, New York 10166  
(212) 801-9200

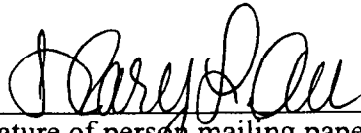
**CERTIFICATE OF MAILING**

I hereby certify that Opposer's Responses to Applicant's First Set of Interrogatories for Opposition 91154092, Opposer's Responses to Applicant's Request for Production of Documents for Opposition 91154092, Opposer's Responses to Applicant's First Set of Interrogatories for Opposition 91154147 and Opposer's Responses to Applicant's Request for Production of Documents for Opposition 91154147 have been faxed and being deposited with the United States Postal Service via First Class Mail addressed to Patricia S. Smart, Esq., Smart & Bostjancich, 19 South LaSalle Street, Suite 1300, Chicago, IL 60603, this 20th day of July, 2004.

Mary L. Au

---

(Typed name of person mailing paper)

A handwritten signature in cursive script, appearing to read "Mary L. Au", written over a horizontal line.

---

(Signature of person mailing paper)

## EXHIBIT E

SMART & BOSTJANCICH

ATTORNEYS AT LAW  
19 SOUTH LASALLE STREET  
SUITE 1300  
CHICAGO, ILLINOIS 60603

PATRICIA S. SMART

TELEPHONE (312) 857-2424  
FACSIMILE (312) 201-0737

August 30, 2004

VIA FACSIMILE  
(212) 801-6400

Allison L. Lucas, Esq.  
Greenberg Traurig  
Met Life Building  
200 Park Avenue  
New York, NY 10166

Re: *National Academy of Recording Arts & Sciences, Inc. v. ShaReem, Inc.*  
Opp. Nos. 91154092 and 9115147 (GRAMMY SHAR and GRAMMI SHAR)

Dear Allison:

We are in receipt of your August 27, 2004 letter.

As you know, when we spoke on August 12, we agreed that both parties would wait and produce documents after we had agreed on terms of a Protective Order and to date, opposer also has produced no documents.

As you also know, contrary to your letter, while we agreed that a Protective Order was necessary, we did not reach agreement as to the specific terms of the Order. To the contrary, we specifically discussed the fact that we could not agree to the Protective Order in the form provided and that it would be necessary to modify it.

As we discussed previously, the Protective Order needs to include a provision whereby the parties, their attorneys and any experts agree to be bound by the terms of the Protective Order after the completion of the opposition proceeding. In connection therewith, the Protective Order needs to be signed by the parties as well as the attorneys and there needs to be an acknowledgment form for signature by any person who will receive access to protected materials. The Protective Order also needs to make clear that it is the duty of the party taking a deposition to arrange for a court reporting service that will be bound by the Protective Order.

In addition, each party needs to identify two or three persons who will be permitted access to confidential materials or highly confidential materials, as opposed to providing access to any officer or managing employee without limitation, as you have suggested. The Protective Order also

Allison L. Lucas, Esq.  
August 30, 2004  
Page 2

needs to make clear that persons receiving such information cannot reveal it to anyone other than those persons designated by the Protective Order and can use the information only for purposes of the opposition proceeding. Also persons obtaining such information must agree to exercise the highest degree of care rather than reasonable care. The Protective Order also should provide for the destruction rather than return of protected documents that contain attorney notes.


Please let me know whether you agree to the foregoing terms or whether further discussion is necessary.

With respect to your request for further responses to Interrogatories 4, 12 and 13, additional information, to the extent it exists, can be provided once the Protective Order is in place.

As we previously discussed, opposer's interrogatory answers consist largely of objections. We request that you provide responses, rather than objections, to Interrogatories 1, 2, 8 and 12. In addition, please provide complete responses to Interrogatories 10 and 11. We likewise request that you agree to the production of documents responsive to requests 2, 4, 5, 13, and 14. In connection therewith, we note that your responses to the discovery requests in Opp. No. 91154092 were untimely and your objections waived.

With respect to the depositions, applicant is available for deposition on September 17, 2004. Once we receive opposer's documents, we can let you know what discovery depositions, if any, of opposer will be necessary.

Very truly yours,

  
Patricia S. Smart

PSS:mn



## EXHIBIT F



pattismart@hotmail.com

Printed: Tuesday, September 7, 2004 3:26 PM

**From :** <LucasA@gtlaw.com>**Sent :** Tuesday, August 31, 2004 10:13 PM**To:** <pattismart@hotmail.com>**CC:** <ELINGSR@gtlaw.com>**Subject :** Grammy Shar protective order

Attachment : TR3B01\_.DOC (0.06 MB)

&gt; Dear Patti,

&gt;

> As discussed, I attach an electronic copy of the protective order (now that the motions are consolidated, we can just amend to include both opposition numbers). As discussed on the phone, we agree to have the Order survive the opposition proceedings. In addition, rather than name specific individuals in the Order, we have agreed that any individuals at the company who end up reviewing the documents will be named before they receive any documents, and will agree to be bound by the Order. However, in light of that, and in light of the fact that any highly confidential documents will be marked attorneys eyes only, I do not think that we need (or are willing) to have our client sign the agreement. If there are any documents that we will need our client to review for any reason, we are happy to execute that separate agreement that binds them to the Order. But the Order as it stands, signed by the attorneys, will adequately protect both of our clients.

&gt;

> Please let us know if this is acceptable, and please send us a redline as soon as possible. We plan on going forward with the deposition on September 17, 2004, but will need time to review the documents well in advance of that date.

&gt;

> As I mentioned on the phone, the extension we gave on answering document requests and interrogatories was based on a mutual extension for both oppositions. In our letter to you dated June 25, 2004, as well as previous correspondence from our office on the issue of discovery, we reference both oppositions. We therefore expected the courtesy of both sets of responses being granted an extension. As such, we believe we have timely responded to the document requests and interrogatories and have not waived any objections.

&gt;

> Finally, we will review our responses to the document requests and interrogatories you reference in your letter, and will respond early next week.

&gt;

&gt; Regards,

&gt; Allison

&gt;

Allison Lucas  
Greenberg Traurig  
MetLife Building  
200 Park Avenue  
New York, NY 10166  
(212) 801 2256 (tel)  
(212) 224 6156 (fax)

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The information contained in this transmission may contain privileged and confidential information. It is intended only for the use of the person(s) named above. If you are not the intended recipient, you are hereby notified that any review, dissemination, distribution or duplication of this communication is strictly prohibited. If you are not the intended recipient, please contact the sender by reply email and destroy all copies of the original message. To reply to our email administrator directly, please send an email to postmaster@gtlaw.com.

## EXHIBIT G

SMART & BOSTJANCICH

ATTORNEYS AT LAW  
19 SOUTH LASALLE STREET  
SUITE 1300  
CHICAGO, ILLINOIS 60603

PATRICIA S. SMART

TELEPHONE (312) 857-2424  
FACSIMILE (312) 201-0737

September 13, 2004

VIA FACSIMILE  
(212) 801-6400

Allison Lucas, Esq.  
Greenberg Traurig, LLP  
200 Park Avenue  
New York, NY 10166

Re: National Academy of Recording Arts & Sciences, Inc. v. ShaReem, Inc.  
Opposition Nos. 91154092 and 91154147

Dear Allison:

The reason for my call earlier today was to determine where we are on the Protective Order issue, specifically, whether you are willing to have your client sign a protective order and to find out when you anticipate responding to the issues set forth in my August 30 letter regarding the deficiencies of opposer's discovery responses.

I also wanted to discuss the issue of our deposition of opposer. As indicated previously, our intent had been to determine what deposition(s) of opposer were required once we received your document production. However, given the outstanding issues, it is not clear when we can anticipate receiving your production. Accordingly, enclosed is a 30(b)(6) deposition notice.

Very truly yours,

  
Patricia S. Smart

PSS:ms

## EXHIBIT H

# Greenberg Traurig

G. Roxanne Ellings  
212-801-2146  
ellingsr@gtraw.com

September 14, 2004

## VIA FACSIMILE

Patricia S. Smart, Esq.  
Smart & Bostjancich  
19 South LaSalle Street  
Suite 1300  
Chicago, IL 60603

Re: *National Academy of Recording Arts & Sciences, Inc. v.  
ShaReem, Inc.:*  
*Oppositions Against ShaReem's Applications for the Marks  
GRAMMY SHAR and GRAMMI SHAR*  
*(Consolidated Opp. Nos. 91,154,092 and 91,154,147)*  
*(Our Ref.: 35132.015800)*

Dear Ms. Smart:

This letter in response to your letter dated August 30, 2004, in which you ask us to provide additional responses to Applicant's Document Requests and Interrogatories. We respond as follows:

Interrogatories 1 and 2, Document Requests 2, 4 and 5: These interrogatories and document requests ask for information on registrations that are more than five years old, and thus incontestable. The validity of the GRAMMY marks may not be challenged (see, e.g., *Park N Fly, Inc. v. Dollar Park & Fly, Inc.*, 469 U.S. 189 (1985)). Therefore, any information about Opposer's selection of the GRAMMY marks, the first of which was chosen and registered more than 35 years ago, is completely irrelevant and beyond the scope of permissible discovery.

Interrogatory 8 and Document Request 13: Opposer does not believe that these questions are at all relevant to these proceedings.

Interrogatory 10: Notwithstanding our general and specific objections and to the best of our knowledge, Opposer is not aware of any other relevant third party uses, applications or registrations of the GRAMMY mark.

ALBANY  
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BOCA RATON  
BOSTON  
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DALLAS  
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FORT LAUDERDALE  
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MIAMI  
NEW JERSEY  
NEW YORK  
ORANGE COUNTY, CA  
ORLANDO  
PHILADELPHIA  
PHOENIX  
SILICON VALLEY  
TALLAHASSEE  
TYSONS CORNER  
WASHINGTON, D.C.  
WEST PALM BEACH  
WILMINGTON  
ZURICH

Patricia Smart  
September 14, 2004  
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Interrogatory 11: Notwithstanding our general and specific objections, we will provide non-privileged documents responsive to Interrogatory 11 once a Protective Order is in place.

Interrogatory 12 and Document Request 14: Notwithstanding our general and specific objections, we will provide non-privileged documents responsive to Interrogatory 12 and Document Request 14 once a Protective Order is in place.

As we have previously discussed in our conversations and email to you on August 31, 2004, contrary to your assertion, Opposer has not waived its objections with respect to the GRAMMY SHAR Opposition. The extension we gave on answering document requests and interrogatories was based on a mutual extension for both oppositions. In our letters to you dated June 25, 2004 and June 14, 2004, we refer to both oppositions. We therefore expected the courtesy of both sets of responses being granted an extension. As such, we believe we have timely responded to the document requests and interrogatories and have not waived any objections.

Finally, we still have not received satisfactory responses to several interrogatories outlined in our letter of August 26, 2004, nor have we received answers to the Second Set of Interrogatories and Document Requests, which were due on July 30, 2004. We expect these answers, as stated in our letter to you dated September 13, 2004, immediately.

Very truly yours,

  
G. Roxanne Elings