

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

In the Matter of Application Serial No, 78/095,659
Filed: November 30, 2001
For the mark: SQRAT
Published in the *Official Gazette*, December 17, 2002

TTAB

FOX ENTERTAINMENT GROUP, INC.)	
and TWENTIETH CENTURY FOX FILM)	
CORPORATION)	Consolidated Opposition
)	
Opposer,)	Opposition No. 91156138
)	Parent No.: 91,156005
- against -.)	Child No.: 91,156138
)	
IVY SILBERSTEIN,)	
)	
Applicant.)	
)	

**APPLICANT'S RESPONSE TO OPPOSERS'
CONSOLIDATED DOCUMENT REQUESTS**

Pursuant to Rule 2.120 of the Trademark Rules of Practice of the Patent and Trademark Office and Rule 34 of the Federal Rules of Civil Procedure, Applicant Ivy Silberstein ("Applicant") hereby answers the following document requests propounded by Opposers Fox Entertainment Group, Inc. and Twentieth Century Fox Film Corporation ("Opposers").

GENERAL STATEMENT

Applicant's responses set forth herein are based upon her knowledge of facts and information presently available. Applicant expressly reserves the right to update, supplement or amend her responses, should Applicant discover additional facts, information or documents responsive to Applicant's document requests.

Applicant's responses are set forth herein without prejudice to the Applicant's right to assert additional objections or supplemental responses should Applicant



discover additional information or grounds for objections at any time prior to the trial of this action, and Applicant expressly reserves the right to challenge the competency, relevance, materiality and admissibility of, or to object on any grounds to the use of, any responsive information or document in any subsequent proceeding or the trial of this or any other action.

Nothing herein shall constitute an admission by Applicant of the relevancy or admissibility at trial of any information or document that Applicant may produce in response to the request.

GENERAL OBJECTIONS

Applicant makes the following general objections to the document requests. These general objections are in addition to the specific limitations and objections set forth below. These limitations and objections form a part of the response to each and every document request and are set forth here to avoid unnecessary duplication and repetition. The absence of a reference to a general objection in response to any specific interrogatory or document request should not be construed as a waiver of such general objection as to the specific document request.

1. Applicant objects to Opposers' document requests to the extent that they seek information or documents protected by the attorney-client privilege, attorney work product privilege, joint defense privilege, and any other applicable privileges and immunities, whether or not these objections are asserted specifically in the response to a particular request. To the extent that any document is inadvertently produced, which document is properly the subject of the attorney-client privilege, work product privilege, joint defense privilege, and/or any other applicable privileges and immunities, such production is not to be construed as a waiver of

such privilege or immunity.

2. Applicant objects to Opposers' document requests to the extent that they seek information or documents that are not relevant to any material issue in these proceedings and are not likely to lead to the discovery of admissible evidence, whether or not this objection is asserted specifically in response to a particular request.

3. Applicant objects to Opposers' document requests to the extent that they seek information or documents beyond the scope of discovery or are otherwise in violation of the applicable discovery rules, whether or not this objection is asserted specifically in response to a particular request.

4. Applicant objects to Opposers' document requests to the extent that the definitions and/or instructions of the document requests are vague, ambiguous, overly broad and unduly burdensome, whether or not this objection is asserted specifically in response to a particular request.

5. Applicant objects to Opposers' document requests to the extent that they are vague, ambiguous, overly broad, unduly burdensome and/or do not specify the information or documents sought with sufficient particularity, whether or not this objection is asserted specifically in response to a particular request.

6. Applicant objects to Opposers' document requests to the extent that they are not limited to a relevant time period, relevant product or service or relevant mark because such document requests are unduly burdensome and are not reasonably calculated to lead to the discovery of admissible evidence, whether or not this objection is asserted specifically in response to a particular request.

7. Applicant objects to Opposers' document requests to the extent that they seek information or documents not within the possession, custody or control of Applicant, whether or not this objection is asserted specifically in response to a particular request.

8. Applicant objects to Opposers' document requests to the extent that the definitions and/or instructions accompanying the requests or any specific request seek discovery of information or documents that are not discoverable under the discovery rules, whether or not this objection is asserted specifically in response to a particular request. Applicant will respond to the requests consistent with and to the extent required by all applicable discovery rules.

9. Applicant objects to Opposers' document requests to the extent that they seek information or documents unrelated to the claims asserted in this action on the ground that such requests are overly broad, unduly burdensome and not reasonably calculated to lead to the discovery of admissible evidence, whether or not this objection is asserted specifically in response to a particular request. Applicant's responses are specifically limited to the claims adequately asserted in this action. Applicant notes that a fraud cause of action has not been adequately asserted by Opposers.

10. Applicant objects to Opposers' document requests to the extent that they are unreasonably cumulative or duplicative, or seek information or documents which are already in Opposers' possession or which are obtainable from some other source that is more convenient, less burdensome or less time

consuming, whether or not this objection is asserted specifically in response to a particular request.

RESPONSES TO DOCUMENT REQUESTS

1. All documents that relate or refer to Applicant's application to register the Opposed Mark in the United States Patent and Trademark Office or elsewhere.

Response: Documents responsive to this request will be produced upon reasonable advance notice.

2. All documents that tend to support, refute or evidence Applicant's contention that she had a bona fide intent to use the SQRAT mark in connection with each good identified in Application No. 78/096,063 on the filing date of said Application.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

3. All documents that tend to support, refute or evidence Applicant's contention that she had a bona fide intent to use the SQRAT mark in connection with the Services identified in Application No. 78/095,659 on the filing date of said Application.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

4. Documents sufficient to establish Applicant's bona fide intent to use the SQRAT mark in connection with each good identified in Application No. 78/096,063 on the filing date of said Application.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes

of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

5. Documents sufficient to establish Applicant's bona fide intent to use the SQRAT mark in connection with the Services identified in Application No. 78/095,659 on the filing date of said Application.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

6. All documents that tend to support, refute or evidence Applicant's contention that she had a bona fide intent to use the SQRAT mark in connection with each good identified in Application No. 78/096,063 at any time.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

7. All documents that tend to support, refute or evidence Applicant's contention that she had a bona fide intent to use the SQRAT mark in connection with the Services identified in Application No. 78/095,659 at any time.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

8. All documents that tend to support, refute or evidence that Applicant intends use the SQRAT mark in connection with each and every good identified Application No. 78/096,063.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

9. All documents that tend to support, refute or evidence that Applicant intends to use the SQRAT mark in connection with the Services identified in Application No. 78/095,659.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

10. All documents and communications referring to or relating to Applicant's reasons 11s and basis for the creation, design, development, selection, and adoption of the Opposed Mark.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

11. All documents and communications relating to the origin, creation, consideration design, development, selection, adoption, and proposed use of the Opposed Mark.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

12. Documents sufficient to establish the date when Applicant first conceived of the Opposed Mark for use in connection with the Goods and Services.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

13. All documents concerning the word "Sqrst," including without limitation all documents containing or referring to the word Sqrst.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that this Request is overbroad and unduly burdensome.

14. All documents concerning or referring to any animal (real or fictitious) that is, or is described or characterized as, part squirrel and part rat.

Response: Documents responsive to this request will be produced upon reasonable advance notice.

15. All documents reflecting Applicant's efforts to use the SQRAT mark in connection with each good identified in Application No. 78/096,063.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

16. All documents reflecting Applicant's efforts to use the SQRAT mark in connection with the Services identified in Application No. 78/095,659.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

17. All documents that relate or refer to each use, former use, or claim of use by Applicant of the Opposed Mark.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

18. All documents relating to the Services identified in Application No. 78/095,659, having ever been rendered in United States regulated commerce by Applicant under the SQRAT mark subject to Application No 78/095,659, during the time frame beginning five years preceding the filing date of said Application to present.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

19. All documents relating to the Goods identified in Application No. 78/096,063, having ever been rendered in United States regulated commerce by Applicant under the SQRAT mark subject to Application No. 78/096,063, during the time frame beginning five years preceding the filing date of said Application to present.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

20. All documents relating to the Services identified in Application No. 78/095,659, having ever been advertised in United States regulated commerce by Applicant under the SQRAT mark subject to Application No. 78/095,659, during the time frame beginning five years preceding the filing date of said Application to present.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

21. All documents relating to the Goods identified in Application No. 78/096,063, having ever been advertised in United States regulated commerce by Applicant under the SQRAT mark subject to Application No. 78/096,063, during the time frame beginning five years preceding the filing date of said Application to present.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

22. All documents relating to the Services identified in Application No. 78/095,659, having ever been promoted for sale in United States regulated commerce by Applicant under the SQRAT mark subject to Application No. 78/095,659, during the time frame beginning five years preceding the filing date of said Application to present.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

23. All documents relating to the Goods identified in Application No. 78/096,063, having ever been promoted for sale in United States regulated commerce by Applicant under the SQRAT mark subject to Application No. 78/096,063, during the time frame beginning five years preceding the filing date of said Application to present.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

24. All documents and communications regarding the proposed or prospective use of the SQRAT mark in connection with each good identified in Application No. 78/096,063, including, without limitation, all business, marketing, branding or advertising plans or strategies (and drafts thereof).

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

25. All documents and communications regarding the proposed or prospective use of the SQRAT mark in connection with the Services identified in Application No. 78/095,659, including, without limitation, business, marketing, branding or advertising plans or strategies (and drafts thereof).

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

26. Every document, or a representative sample of every document Applicant uses, has used or plans to use in connection with marketing, advertising, offering, selling, rendering and distributing each of Opposer's Goods or Services under the Opposed Mark.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

27. A representative sample of each label, sign, display, trade dress, wrapper, or packaging bearing the SQRAT mark which Applicant has used, intends to use, or considered using in connection the Goods identified in Application No. 78/096,063 during the time frame beginning five years preceding the filing date of said Application to present, including, without limitation, all drafts, prior versions, prospective versions or alternatives.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

28. A representative sample of each label, sign, display, trade dress, wrapper, or packaging bearing the SQRAT mark which Applicant has used, intends to use, or considered using in connection with the Services identified in Application No. 78/095,659 during the time frame beginning five years preceding the filing date of said Application to present, including, without limitation, all drafts, prior versions, prospective versions or alternatives.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

29. Representative specimens of Applicant's advertisements, promotional materials or other documents Applicant has used in the advertising or promotion or planned advertising or promotion of the Goods or Services in connection with the Opposed Mark.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

30. Documents sufficient to establish the amount of money Applicant has spent or plans to spend in connection with the Opposed Mark.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

31. Documents sufficient to establish the amount of money Applicant has spent or plans to spend in connection with her intended use of the Opposed Mark.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

32. Documents sufficient to establish the amount of money Applicant has spent or plans to spend separately for each type of advertising or promotion Applicant has made or, intends to make for the Goods and Services sold under the Opposed Mark.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

33. Documents which reveal the territorial areas in the United States where Applicant \ markets, intends to market or has marketed the Goods or Services in connection with the Opposed Mark.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

34. All documents that reflect, relate to or refer to any efforts that Applicant made to license any of Applicant's Marks and any licenses or proposed licenses (including drafts thereof) entered into by Applicant for the Opposed Mark.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

35. All documents concerning your attempts to market the Goods or Services in connection with the Opposed Mark.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

36. All documents that reflect, relate to or evidence your experience with the production of motion picture films featuring animation during the time frame beginning five years preceding the filing date of Application No. 78/096,063 to present.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

37. All documents that reflect, relate to or evidence your experience, knowledge, skill or know-how with the marketing, advertising, offering, selling, rendering and distributing of k, each good identified in Application No. 78/096,063 during the time frame beginning five years preceding the filing date of said Application to present.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

38. All documents that reflect, relate to or evidence your experience, knowledge, skill or know-how with the merchandising of movies and television programs beginning five years preceding the filing date of Application No. 78/095,659 to present.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

39. All documents that reflect, relate to or evidence your experience, knowledge, skill or know-how with the marketing, advertising, offering, selling, rendering and distributing of the Services identified in Application No. 78/095,659 during the time frame beginning five years preceding the filing date of said Application to present.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

40. All documents that reflect, relate to or refer to any surveys, investigations or studies regarding the Opposed Mark conducted by, or on behalf of, or provided to Applicant.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

41. All correspondence between Applicant and the United States Patent and Trademark Office concerning the Opposed Mark including, without limitation, letters, telephone logs, message slips, tape recordings, e-mail, memoranda, drafts, receipts, notes, diaries, and electronic data.

Response: See response to Document Request #1.

42. All trademark applications concerning the mark SQRAT submitted or prepared for submission to the Trademark Office including, without limitation, all drafts of such applications.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Applicant further objects that this Request is overbroad and unduly burdensome.

43. All documents reflecting communications by Applicant and/or any representatives on behalf of Applicant with Fox and/or representatives of Fox concerning the SQRAT mark, including, without limitation, telephone logs, message slips, e-mail, letters, memoranda, drafts, notes, diaries, receipts, and electronic data.

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

44. All documents sufficient to establish or that relate to when you first learned about Fox's full-length animated film titled "Ice Age."

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

45. All documents that relate or refer to Fox's full-length animated film titled "Ice Age."

Response: Applicant objects to this request because it seeks documents or information which are neither relevant to any properly asserted causes

of action in this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

46. All documents that tend to support or refute your contention that Opposers have failed to state a claim.

Response: Case law is publicly available.

47. If Applicant intends to rely upon the opinion of an expert in connection with the defense of this proceeding, any document provided to or considered by any testifying expert witness in preparing his or her opinion in this proceeding.

Response: Applicant has no such documents in her possession, custody or control.

48. If Applicant intends to rely upon the opinion of an expert in connection with the defense of this proceeding, any expert opinions and all other information required by Rule 26 of the Federal Rules of Civil Procedure for each testifying expert witness upon whose opinion Applicant intends to rely in this proceeding.

Response: Applicant has no such documents in her possession, custody or control.

49. All documents referred to or relied upon to prepare Applicant's answers to Opposer's Consolidated Interrogatories or containing information requested by Opposer's Consolidated Interrogatories.

Response: See documents referenced in response to the foregoing requests.

Date: January 5, 2010

Respectfully submitted,



David A. Einhorn, Esq.

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IVY SILBERSTEIN


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- against -)	Child No.: 91,156138
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IVY SILBERSTEIN,)	
)	
Applicant.)	
)	

CERTIFICATE OF MAILING

I hereby certify that this APPLICANT'S RESPONSE TO OPPOSERS' CONSOLIDATED DOCUMENT REQUESTS is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" pursuant to 37 C.F.R. § 1.10 on January 5, 2010 and is addressed to the Commissioner for Trademarks, Trademark Trial and Appeal Board, Box: TTAB No Fee, 2900 Crystal Drive, Arlington, VA 22202-3513.



Audrey de Souza

Express Mail No.: EM 199391157 US

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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CORPORATION)

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Consolidated Opposition

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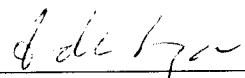
Parent No.: 91,156005

Child No.: 91,156138

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the APPLICANT'S RESPONSE TO OPPOSERS' CONSOLIDATED DOCUMENT REQUESTS was served by upon counsel for Applicant by depositing the same in the U.S. Mail, first-class postage prepaid, on January 5, 2010, in an envelope addressed to:

Jonathan Zavin, Esq.
Loeb & Loeb, LLP
345 Park Avenue, 18th Floor
New York, New York 10154



Audrey de Souza