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

FUZZI S.P.A.	:	
	:	
Opposer	:	Opposition No. 91156939
	:	
v.	:	
	:	
BROOKWOOD COMPANIES INC.	:	
	:	
Applicant	:	

**OPPOSER'S AMENDED MOTION TO EXTEND OPENING OF
TESTIMONY PERIOD**

Opposer Fuzzi S.p.A. ("Fuzzi") hereby moves that the opening of the testimony period be postponed for sixty (60) days to and including May 16, 2004, and that testimony be reset as follows:

Opposer's testimony period to close (opening thirty days prior thereto)	June 15, 2004
Applicant's testimony period to close (opening thirty days prior thereto)	August 14, 2004
Rebuttal testimony to close (opening fifteen days prior thereto)	September 28, 2004

Postponement of the opening of Opposer's testimony period is needed to provide Opposer with sufficient time to persuade Applicant to produce documents identified in response to Opposer's discovery requests, none of which have been produced. The additional time will enable the parties to engage in a good faith effort to avoid filing a motion to compel.



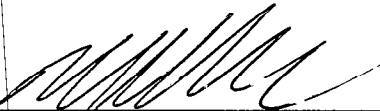
Both parties in this proceeding have served discovery. Opposer served a first set of discovery requests on Applicant on December 22, 2003, and a second set on January 20, 2004 (Applicant served its responses on January 26, 2004, and February 24, 2004, respectively). However, Applicant is still withholding essential information requested in the interrogatories and, after almost two months, has yet to produce even a single document. On March 12, 2004, Opposer sent to Applicant's counsel a letter detailing deficiencies in Applicant's responses to Opposer's discovery requests, and demanding the production of all requested documents. A copy of this letter is attached as Exhibit A. Opposer also advised Applicant that Opposer would file a motion to compel discovery with the Board if Applicant fails to produce any documents and other information requested.

Without the documents and other information requested in discovery, Opposer will not be able to prepare its testimony. Accordingly, the requested extension will expedite the creation of a fair and complete record on which the Board may render a final decision.

Please note for the record the change of firm name for Opposer's counsel.

FUZZI S.P.A.

By

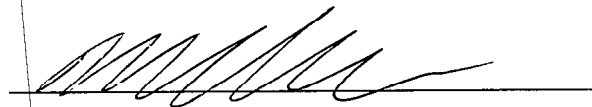


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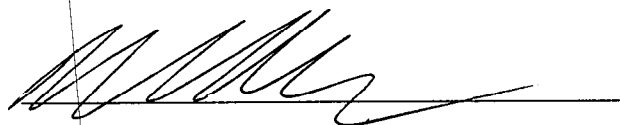
CERTIFICATE OF MAILING

It is hereby certified that the attached Opposer's amended motion to extend opening of testimony period (re Opp. No. 91156939) is being deposited with the U.S. Postal Service addressed to the Hon. Commissioner of Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202 market first class mail, postage prepaid, on March 16, 2004.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing has been served upon Applicant's counsels, Larry C. Jones, Brian M. Davis, Jason M. Sneed, at Alston & Bird LLP, Bank of America Plaza, 101 S. Tryon Street, Suite 4000, Charlotte, NC 28280-4000, by first class mail, postage prepaid, this 16th day of March 2004.

A handwritten signature in black ink, consisting of several loops and a long horizontal stroke, positioned above a solid horizontal line.

March 12, 2004

Larry C. Jones, Esq.
Brian M. Davis, Esq.
Jason M. Sneed, Esq.
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VIA FACSIMILE

**Re: Fuzzi S.p.A. v. Brookwood Companies, Inc.
Opposition No. 911 56939**

Dear Sirs,

We have received the responses of your client Brookwood Companies, Inc. ("Brookwood") to the First Set of Interrogatories and First Request For Production of Fuzzi S.p.A. ("Fuzzi"). The purpose of this letter is to bring to your attention certain deficiencies in these responses. We are writing to you to comply with our mutual obligation to engage in a good faith effort to resolve discovery disputes before filing a motion to compel. To avoid unduly prolonging this matter, please respond by March 16, 2004. If we do not hear from you by that date, we will assume that you will not voluntarily comply with your discovery obligations, and we will seek appropriate relief from the TTAB.

INTERROGATORIES

In Interrogatory No. 3, Brookwood was asked to identify and describe the facts relating to the acquisition, adoption, creation and/or design of Applicant's Mark, including without limitation, the reasons for and date of the selection and the identity of all the persons who participated in the selection. In its response, Brookwood claims that on February 11, 2000, it acquired all assets of Uzzi Amphibious Gear, Inc., through its "indirect wholly owned subsidiary XtraMile, Inc. According to Brookwood, at the time of this acquisition Uzzi Amphibious Gear, Inc. owned U.S. Reg. No. 2,212,123 UZZI AMPHIBIOUS GEAR & Design and "the common law designation SUZZI", which use, goodwill and all related rights inure to the benefit of Brookwood. This response is ambiguous and thus unacceptable. Please fully clarify the nature of any "common law designation" rights Brookwood claims to have acquired, specifying the date on which Uzzi allegedly first used SUZZI, the manner in which SUZZI was displayed in the sale of any goods or services, the geographical area in which goods or services were sold, a list of the goods or services sold under the name SUZZI and the dates during which each product or service was sold. In addition, please describe the legal relationship between Brookwood and XtraMile, Inc. The term "indirect wholly owned subsidiary" is vague and ambiguous. Because Brookwood claims that the acquisition and use of alleged trademark rights by XtraMile, Inc.

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inures to the benefit of Brookwood, the nature of the legal relationship, if any, between Brookwood and XtraMile, Inc. is highly relevant to the issue of priority. Thus, because this interrogatory may lead to discovery of admissible evidence, it must be fully and satisfactorily answered. Therefore, please advise whether you will voluntarily supplement the response providing all the information requested.

In Interrogatory No. 5, Brookwood was asked to identify and describe the facts relating to the date(s) and manner in which Brookwood first used Applicant's Mark in connection with the sale or advertising of each product or service required to be identified in the preceding interrogatory, and to specify whether such use complied with all applicable federal or state statutes, rules and regulations. In response to this Interrogatory Brookwood stated that although it had not yet used the mark SUZZI on any products, its indirect wholly owned subsidiary has sold "goods" under that mark since February 11, 2000. This response is obviously insufficient because the term "goods" is vague and indefinite. Please specify the nature and amount of any "goods" sold and the period during which sales were made. Because Brookwood contends that the alleged use of the mark SUZZI by XtraMile, Inc., inures to the benefit of Brookwood, the information requested may lead to discovery of admissible evidence and must be provided. Therefore, please advise whether you will voluntarily supplement the response providing, for each product sold or advertised by XtraMile, Inc. under the mark SUZZI, information concerning the date(s) and manner of first use.

In Interrogatory No. 6, Brookwood was asked to identify all persons who designed, created, promoted or made each document and any other materials on which Applicant's Mark has ever been displayed including, without limitation, all labels, packages, hangtags, Web pages, advertisements, brochures, sales literature, annual reports, decals, badges, catalogs, computer screens, or other materials, specifying which items were designed, created or made by each such person. After objecting on the grounds that this Interrogatory is allegedly overly broad and potentially unduly burdensome, Brookwood stated "there are no such persons". This response is insufficient and conflicts with Brookwood's response to previous interrogatories. In its responses to Interrogatory Nos. 3 and 5, Brookwood indicated that the mark SUZZI has been used by a subsidiary of Brookwood, and that said use inures to the benefit of Brookwood. If the mark SUZZI was used, you must identify the labels or other materials on which the mark was displayed in connection with the advertising and sale of products, and all persons involved in the design or creation of such materials. Because Brookwood contends that the alleged use of the mark SUZZI by XtraMile, Inc., inures to the benefit of Brookwood, the information requested may lead to discovery of admissible evidence must be provided. Therefore, please advise whether you will voluntarily supplement the response.

In Interrogatory No. 9, Brookwood was asked to identify, on an annual basis for each year since Applicant's Mark was first used, the dollar amount of revenue derived from each type of product or service sold under Applicant's Mark. In its response Brookwood states that since February 11, 2000, XtraMile, Inc. has sold "goods" bearing the mark SUZZI in an aggregate amount of less than \$10,000. This response is evasive and insufficient. Less than \$10,000 could mean \$1 or \$0. Brookwood was asked to identify, for each type of product, the dollar amount of

revenue derived from sales under the mark SUZZI. Because Brookwood contends that the alleged use of the mark SUZZI by XtraMile, Inc., inures to the benefit of Brookwood, information as to each type of product sold or advertised under the mark SUZZI, and the dollar amount of revenue derived from the sale of such products, is relevant and may lead to discovery of admissible evidence. Therefore, please advise whether you will voluntarily supplement the response providing the amount of revenue derived by Brookwood from the sale of each type of product under the mark SUZZI.

In Interrogatory No. 11, Brookwood was asked to identify all advertising and promotional methods, or types of media, used, or planned to be used, in advertising or promoting the sale of any products or services under Applicant's Mark, specifying each publication, radio station, television station, Internet website or other advertising medium used in connection with such advertising, and the date or dates on which such advertisement or promotional activity occurred. In its response Brookwood states: "Trade shows, brochures, magazines advertisements, and point of sale promotions". This response is unacceptable and ambiguous, and it conflicts with Brookwood's response to Interrogatory No. 10, where Brookwood stated that since February 11, 2000 when XtraMile, Inc. allegedly acquired all assets, including trademark rights in the mark SUZZI, Brookwood did not incur any advertising or promotional expenditure in connection with products or services offered under the mark SUZZI. Because Brookwood contends that the alleged use of the mark SUZZI by XtraMile, Inc., inures to the benefit of Brookwood, the information requested may lead to discovery of admissible evidence relating to likelihood of confusion and priority and must be provided. Therefore, please advise whether you will voluntarily supplement the response providing all requested information.

In Interrogatory No. 17, Brookwood was asked to identify and describe the facts concerning any agreements referring or relating to the use of Applicant's Mark, or other marks containing or including the word FUZZI or SUZZI, including without limitation all licenses, assignments, or other agreements. After objecting on the grounds that this Interrogatory is allegedly overly broad and potentially unduly burdensome to the extent it requires Brookwood to identify any agreement pertaining to any mark other than Applicant's mark SUZZI, Brookwood states that it is not aware of any such agreement relating or referring to Applicant's Mark, or any other marks containing the word FUZZI or SUZZI. This response is unacceptable because it clearly contradicts previous responses, including Interrogatory No. 3, in which Brookwood stated that on February 11, 2000, it acquired through a subsidiary "all assets, including all intellectual property and associated goodwill" of a third-party which, at the time of this acquisition, allegedly owned the "common law designation SUZZI. . . which use, goodwill and all related rights inure to the benefit of [Brookwood]". Because Brookwood claims that its subsidiary acquired all assets, including all trademark rights owned by a third-party in the mark SUZZI, Brookwood must identify facts referring and relating to that acquisition agreement. Moreover, in its response to Interrogatory No. 5, Brookwood states that since February 11, 2000, products bearing the mark SUZZI have been sold through a subsidiary. This implies that there are agreements, oral or written, between Brookwood or its subsidiary, pertaining to the sale of said products, and thus Brookwood must provide information. Because Brookwood contends that the alleged use of the mark SUZZI by XtraMile, Inc., inures to the benefit of Brookwood, the information requested

may lead to discovery of admissible evidence, and must be provided. Therefore, please advise whether Brookwood will voluntarily amend its response and provide all requested information as soon as possible.

In Interrogatory No. 20, Brookwood was asked to identify all prospective purchasers, agents, and other persons with whom Brookwood had discussed, or to whom Brookwood had sent any communications, relating to the offering or selling of any goods or services under Applicant's mark. In its response Brookwood states: "none at this time". This response is unacceptable because it conflicts with previous responses. In its response to Interrogatory No. 3, Brookwood stated that on February 11, 2000, it acquired through a subsidiary "all assets, including all intellectual property and associated goodwill" of a third-party which, at the time of this acquisition, allegedly owned the "common law designation SUZZI. . . which use, goodwill and all related rights inure to the benefit of [Brookwood]". Moreover, in its response to Interrogatory No. 5, Brookwood states that since February 11, 2000, products bearing the mark SUZZI have been sold through a subsidiary. If the mark SUZZI has been used by a subsidiary, Brookwood must identify at least some purchasers with whom communications relating to the sale of products under the mark SUZZI was discussed. Because Brookwood contends that the alleged use of the mark SUZZI by XtraMile, Inc., inures to the benefit of Brookwood, the information requested may lead to discovery of admissible evidence. Therefore, please advise whether Brookwood will voluntarily amend its response and provide all requested information as soon as possible.

In Interrogatory No. 21, Brookwood was asked to identify and describe direct mail solicitations, forms, web sites; packages, labels, advertisements, financial reports, signs, handbills, stationery, business cards, decals, badges, catalogues, Internet web sites, computer screens, annual reports, or other materials on which Applicant's Mark has ever been used or displayed, and all other materials bearing Applicant's Mark that have been distributed to or seen by prospective customers. In its response, Brookwood raised objections claiming that this Interrogatory is allegedly overly broad and potentially unduly burdensome, and that it may call for the description or production of confidential business information. Without waiving its objections, Brookwood also states that it will produce a representative sampling of materials on which the SUZZI mark has appeared, if any exists in its possession, custody or control. Brookwood served its response to Fuzzi's discovery requests on January 26, 2004. However, no materials responsive to this Interrogatory have ever been provided. Because Brookwood contends that the mark SUZZI has been used by its subsidiary XtraMile, Int., and that the alleged use of the mark SUZZI by XtraMile, Inc., inures to the benefit of Brookwood, Brookwood must produce samples of materials bearing the mark SUZZI. The information requested in this Interrogatory may lead to discovery of admissible evidence relating to likelihood of confusion and priority and must be provided. Therefore, please advise whether Brookwood will voluntarily provide all requested information as soon as possible.

REQUESTS FOR PRODUCTION

Brookwood has not yet provided any documents in response to Fuzzi's Requests for Production.

Requests No. 2, 6, 8, 9, 10, 20, 22, 23, 24, 25, 26, 27, 28, 29, 31, 33 sought various documents pertaining to issues relevant to this proceeding. In its responses, Brookwood states that "[it] will produce the responsive documents, if any exist in its possession, custody or control". However, even though Brookwood served its responses on January 26, 2004, it never provided any documents responsive to any of the Requests listed above. If there are no responsive documents, Brookwood should so state. Otherwise Brookwood must provide the documents requested, because they may lead to the discovery of admissible evidence relating to the likelihood of confusion between its mark and Fuzzi's mark, and other issues. Therefore, please advise whether Brookwood will produce the requested documents, or confirm that none exist.

Requests No. 4, 5, 17 and 19 sought all documents referring or relating to various issues relevant to this proceeding. In its responses Brookwood objects to each Request to the extent it seeks information or documents protected from discovery by the attorney-client communication privilege or the attorney work product immunity doctrine. "Otherwise, [Brookwood] will produce the responsive documents, if any exists in its possession, custody or control". However, even though Brookwood served its responses on January 26, 2004, it never provided any documents responsive to any of the Requests listed above, nor has it provided any log of allegedly privileged documents. If there are no responsive documents, Brookwood should so state. If responsive documents exist and Brookwood claims that they are protected from discovery, Brookwood should also so state and identify them. Otherwise Brookwood must provide the documents requested, because they may lead to the discovery of admissible evidence relating to the issue of the existence of a likelihood of confusion between its mark and Fuzzi's mark. Therefore, please advise whether Brookwood will produce the requested documents as soon as possible.

Request No. 3 sought documents referring or relating to the organizational structure of Brookwood, including without limitation any articles of incorporation, by-laws, and lists of Brookwood's current or former officers, directors and managerial employees and /or descriptions, of their duties and responsibilities. In its response Brookwood objects alleging that this Request is overbroad and unduly burdensome, and not calculated to lead to the discovery of admissible evidence. This objection is baseless. This Request clearly seeks only documents sufficient to show the nature of the organizational structure of Brookwood, and the identity and responsibility of its officers. Because Brookwood filed the trademark application at issue in this proceeding, Brookwood's organizational structure and the identities and duties of its officers are highly relevant. Please advise whether Brookwood will produced the requested documents as soon as possible.

Request No. 7 sought all documents referring or relating to the creation, design, development, printing or manufacture of any materials on which Applicant's Mark has ever been

displayed, or is planned to be displayed, including without limitation any correspondence, purchase orders, records of payment or invoices sent to or received from any person involved in such creation, design, development, or manufacture. In its response, Brookwood objects alleging that this Request is overly broad and presently or potentially unduly burdensome. Brookwood also states that it will produce a representative sampling of the responsive documents, if any exist in its possession, custody or control. However, even though Brookwood served its responses on January 26, 2004, it never provided any documents responsive to this Request. If there are no responsive documents, Brookwood should so state. Otherwise Brookwood must provide the documents requested, because they may lead to the discovery of admissible evidence relating to the issue of the existence of a likelihood of confusion between its mark and Fuzzi's mark. Therefore, please advise whether Brookwood will produce the requested documents as soon as possible.

Request No. 16 sought all documents referring or relating to Applicant's Mark that Brookwood has filed with or received from any federal, state or local government office or regulatory agency, including without limitation all documents filed or received in connection with any application to register Applicant's Mark. In its response, Brookwood objects to the extent this Request seeks documents that do "not pertain to the use of SUZZI as, or as a component of, a trade name, trademark or service mark" on the ground that such documents would not be relevant. Otherwise Brookwood states that it will produce responsive documents. This response is evasive and unacceptable. Moreover, even though Brookwood served its responses on January 26, 2004, it never provided any documents responsive to this Request. If there are no responsive documents, Brookwood should so state. Alternatively, Brookwood must provide the documents requested, because they may lead to the discovery of admissible evidence relating to the issue of the existence of a likelihood of confusion between its mark and Fuzzi's mark. Therefore, please advise whether Brookwood will produce the requested documents as soon as possible.

Request No. 18 sought all documents referring or relating to any objections made by Brookwood concerning use or registration of any mark including the word FUZZI or SUZZI, or any similar word or phrase by any third-party. In its response, Brookwood objects to the extent the phrase "similar word or phrase" is vague and calls for a legal conclusion. Without waiving this objection, Brookwood states that it will produce responsive documents. However, even though Brookwood served its responses on January 26, 2004, it never provided any documents responsive to this Requests. If there are no responsive documents, Brookwood should so state. Otherwise Brookwood must provide the documents requested, because they may lead to the discovery of admissible evidence relating to the issue of the existence of a likelihood of

Larry C. Jones, Esq.
March 12, 2004
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confusion between its mark and Fuzzi's mark. Therefore, please advise whether Brookwood will produce the requested documents as soon as possible.

Sincerely,



Michael A. Grow



Chiara Giuliani