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Filing date: **09/09/2005**

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

Proceeding	91159046
Party	Plaintiff NCE RESOURCES GROUP INC. ,
Correspondence Address	Stacey R. Halpern Knobbe, Martens, Olson & Bear, LLP 2040 Main Street, 14th Floor Irvine, CA 92614 UNITED STATES
Submission	OPPOSER'S REPLY TO APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL DISCOVERY RESPONSES ETC. AND APPLICANT'S MOTION TO RESET DISCOVERY AND TRIAL DATES HEREIN; OPPOSER'S MOTION TO STRIKE; AND SUPPLEMENTAL DECLARATION OF STACEY R. HALPERN IN SUPPORT THEREOF
Filer's Name	Stacey R. Halpern
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Signature	/Stacey R. Halpern/
Date	09/09/2005
Attachments	Opposer's Reply & Motion to Strike.pdf (24 pages)

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

NCE RESOURCES GROUP INC.,

Opposer,

v.

RESMARK EQUITY PARTNERS, LLC,

Applicant.

) Opposition No.: 91,159,046

) I hereby certify that this correspondence and all
) marked attachments are being electronically filed with
) the U.S. Patent and Trademark Office via their website
) located at <http://esta.uspto.gov> on:

September 9, 2005

(Date)



Stacey R. Halpern

**OPPOSER’S REPLY TO APPLICANT’S OPPOSITION TO OPPOSER’S MOTION TO
COMPEL DISCOVERY RESPONSES, ETC. AND APPLICANT’S MOTION TO
RESET DISCOVERY AND TRIAL DATES HEREIN; OPPOSER’S MOTION TO STRIKE;
AND SUPPLEMENTAL DECLARATION OF STACEY R. HALPERN IN SUPPORT THEREOF**

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

Dear Sir:

As Applicant’s Opposition to Opposer’s Motion to Compel Discovery Responses, Etc. and Applicant’s Motion to Reset Discovery and Trial Dates Herein (“Applicant’s Opposition”) contains numerous inconsistencies and misstatements, in an effort to clarify the questions at issue, pursuant to T.B.M.P. § 502.02(b), NCE Resources Group Inc. (“Opposer”) hereby submits Opposer’s Reply to Applicant’s Opposition.¹

Moreover, as Applicant’s Opposition is untimely, Opposer moves the Trademark Trial and Appeal Board (the “Board”) to strike Applicant’s Opposition pursuant to T.B.M.P. §§ 502, 517. Further, Applicant’s attempt to reopen the discovery period should be denied, as it has not shown excusable neglect as to why such period should be reopened.

¹ Seculus da Amazonia S/S v. Toyota Jidosha Kabushiki Kaisha, 66 U.S.P.Q.2d 1154, n.4 (TTAB 2003) (reply brief considered because it clarified the issues under consideration).

MOTION TO STRIKE

T.B.M.P. § 517 states that “if a brief in opposition to a motion, or a reply brief in support of the motion, is not timely filed, it may be stricken, or given no consideration, by the Board.” Opposer served its Motion to Compel on July 20, 2005. In what can only be deemed another example of Applicant’s unwillingness to comply with the applicable rules, Applicant filed Applicant’s Opposition on August 24, 2005, over 15 days after its response brief was due. As such, Applicant’s Opposition is untimely and should be stricken.

Opposer submits that it has been prejudiced by Applicant’s current and continual delays in this proceeding, which appear to be habitual. As discussed in more detail in Opposer’s Motion to Compel, Applicant’s Answer was served late and it appears that Applicant’s responses to Opposer’s First Set of Discovery Requests were likely served late. As this Opposition proceeding was filed in January 2004, Opposer urges the Board not to let Applicant’s apparent disregard for the applicable rules go unchecked.

APPLICANT’S DISCOVERY RESPONSES

Applicant argues that Opposer did not submit copies of discovery responses with Opposer’s Motion to Compel. Opposer submits that this was an inadvertent oversight. It is clear by Paragraph 13 of the Supplemental Declaration of Stacey Halpern (“Supplemental Halpern Decl.”) submitted in support of Opposer’s Motion to Compel, that Opposer intended to submit Applicant’s discovery responses with its Motion to Compel. As Applicant is well aware of what it stated in its own responses, there has been no prejudice to Applicant. Moreover, copies of Applicant’s “purported” responses to Opposer’s discovery requests are attached as Exhibit 2 to the Supplemental Halpern Decl.

THERE ARE NO CURRENT SETTLEMENT DISCUSSIONS

Applicant argues that as settlement discussions are ongoing, it should be excused from providing full and proper responses to Opposer’s discovery requests. Contrary to Applicant’s opinion, **there are no ongoing settlement discussions**. Opposer notes that on November 18, 2005 (after Opposer granted Applicant numerous extensions of time to respond to Opposer’s discovery requests), the Board *sua*

sponte suspended this matter. However, it is clear from the fact that neither party responded to the Board's Order of May 18, 2005 which lifted the suspension that settlement discussions have not continued.

On October 22, 2004, Opposer provided Applicant's counsel with a revised settlement agreement. Supplemental Halpern Decl. at ¶ 2. On January 6, 2005, Opposer sent a follow-up letter to Applicant's counsel seeking Applicant's comments regarding the revised settlement agreement. Supplemental Halpern Decl. at ¶ 3. On February 2, 2005, Opposer sent a follow-up email to Applicant's counsel seeking Applicant's comments regarding the revised settlement agreement. *Id.* On February 7, 2005, Applicant's counsel advised Opposer's counsel that Applicant would provide comments regarding the revised settlement agreement within two weeks. However, Applicant has not provided its comments or communicated any willingness to accept the terms of the revised settlement agreement, other than the self-serving statement made in Applicant's Opposition. Nor has Applicant's counsel contacted Opposer's counsel with respect to the revised settlement agreement since receiving the revised settlement agreement on October 22, 2004. Supplemental Halpern Decl. at ¶ 4.

Applicant's failure to fully respond to Opposer's discovery requests and meet and confer letters is not excused by Applicant's counterfactual belief that settlement discussions are ongoing. It is apparent from Applicant's failure to provide a substantive response regarding the settlement agreement provided almost a year ago that there can be no good faith argument that settlement discussions are ongoing. Moreover, even if settlement discussions were ongoing, "it is well established that the mere existence of settlement negotiations alone does not justify a party's inaction or delay." See Atlanta-Fulton County Zoo Inc. v. De Palma, 45 USPQ2d 1858, 1859 (T.T.A.B. 1998) (citing Cheney v. Anchor Glass Container Corp., 71 F.3d 848 (8th Cir. 1996); Jones Truck Lines v. Foster's Truck & Equipment Sales, Inc., 63 F.3d 684 (8th Cir. 1995); and Federal Savings & Loan Insurance Corp. v. H. Kroenke, v. Anderson Die Castings, Inc., 925 F.2d 226 (7th Cir. 1991)). Thus, it is improper for Applicant to argue that it need not fully respond to Opposer's discovery requests based on its belief that settlement discussions were ongoing.

Lastly, Applicant argues that none of the letters Opposer sent Applicant could be construed as “meet and confer” letters. As is discussed in more detail in Opposer’s Motion to Compel, Opposer’s letters comport with the requirements of 37 C.F.R. § 2.120(e); and T.B.M.P. §523.01, and set forth Applicant’s obligation to provide full responses to the discovery requests. Copies of Opposer’s “meet and confer” letters are attached as Exhibits 1 and 3 to the Supplemental Halpern Decl.

For example, the June 29 and July 19, 2005 letters advised Applicant that its objections were clearly baseless and that it needed to either provide acceptable responses, an executed copy of the revised settlement agreement or at least comments regarding the revised settlement agreement. The letters also indicated that if Applicant did not comply with at least one of these items, Opposer would have no choice but to file a Motion to Compel. Had the parties been involved in any ongoing settlement discussions (as alleged by Applicant), Applicant would have responded to one of these letters. However, to date, Applicant has failed to provide proper responses to Opposer’s discovery requests and has also failed to provide any comments regarding the revised settlement agreement (which was sent to Applicant’s counsel on October 22, 2004) or even contact Opposer’s counsel to discuss a possible amicable resolution of this matter.

APPLICANT’S FAILURE TO FULLY RESPOND IS NOT EXCUSABLE

Applicant argues that its failure to provide complete responses to Opposer’s discovery requests is excused because the discovery is “more appropriate to a civil action for trademark infringement rather than the basic issue of the registrability of Applicant’s mark.” This excuse is legally absurd. First, under the applicable rules, Opposer is allowed to serve discovery on any issue that will lead to the discovery of admissible evidence. Opposer’s discovery requests fall well within the bounds of discovery set by such rules. See T.B.M.P. §§ 401 and 402.01 (“A party may take discovery not only as to matters specifically raised in the pleadings, but also as to any matter which might serve as the basis for an additional claim, defense, or counterclaim”).

Second, an opposition proceeding, much like a trademark infringement lawsuit, covers many of the same issues and can be a fact intensive proceeding in light of the likelihood of confusion standard. Lastly, Applicant argues that it was improper for Opposer to serve discovery requests and submit a settlement agreement at the same time. Opposer notes that Applicant itself served discovery requests and Opposer responded to such discovery requests.

Moreover, when settlement discussions were ongoing, Opposer agreed to extend Applicant's time to respond to the discovery requests numerous times. However, as Applicant failed to cooperate and participate in meaningful settlement discussions, Opposer was forced to proceed with this matter.

APPLICANT'S ATTEMPT TO REOPEN

THE DISCOVERY PERIOD SHOULD BE DENIED

In Applicant's Opposition, Applicant argues that discovery should be reopened. Applicant's sole argument for reopening discovery is that it "has grounds for making a Discovery motion against Opposer." However, Opposer timely served its responses to Applicant's First Set of Requests for Admissions to Opposer on April 1, 2004. Opposer provided Applicant with amended responses to Applicant's First Set of Requests for Admissions to Opposer on May 27, 2004 after obtaining additional information. To date, Applicant has not raised any issues with regard to the sufficiency, or lack thereof, of Opposer's initial and amended responses to Applicant's discovery. It has now been well over a year since Opposer provided its responses and amended responses to Applicant's discovery requests.

This is yet another example of Applicant's dilatory tactics and should not be tolerated by the Board. It is evident that the sole purpose of Applicant's motion to reopen the discovery period is for delay and/or to harass Opposer and is made in bad faith. If Applicant truly had an issue with Opposer's discovery responses, it certainly should have raised them before now. The failure to file a discovery motion is in the reasonable control of Applicant and its counsel. Applicant has provided no reason for its failure to act to date or for why discovery should be reopened, and certainly no reason that satisfies the excusable neglect standard for reopening discovery.

Opposer respectfully requests that Applicant's motion to reopen the discovery period be denied as granting such a motion would be prejudicial to Opposer. Discovery should remain closed, save for Opposer's right to prepare and propound follow-up discovery on Applicant as requested in Opposer's Motion to Compel, if the Board grants such relief to Opposer.

CONCLUSION

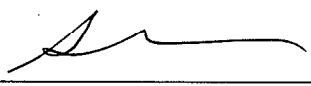
Applicant has not provided any reasonable and legally acceptable grounds for failing to fully respond to Opposer's discovery requests, or for why Opposer's Motion to Compel should not be granted. Instead, Applicant only advances excuses that do not amount to legitimate grounds for not comporting to the applicable discovery rules. Accordingly, Opposer respectfully requests that the Board grant the relief requested in Opposer's Motion to Compel.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: September 9, 2005

By: _____


Stacey R. Halpern
2040 Main Street, Fourteenth Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for Opposer
NCE Resources Group Inc.

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

NCE RESOURCES GROUP INC.,)	Opposition No.: 91,159,046
)	
Opposer,)	
)	
v.)	
)	
RESMARK EQUITY PARTNERS, LLC,)	
)	
Applicant.)	
)	

SUPPLEMENTAL DECLARATION OF STACEY R. HALPERN

I, Stacey R. Halpern, declare as follows:

1. I am a partner in the law firm of Knobbe, Martens, Olson & Bear, LLP. I submit this declaration in support of Opposer’s Reply to Applicant’s Opposition and Opposer’s Motion to Strike. I have personal knowledge of the matters set forth herein and, if called upon to testify, I would and could competently testify thereto.

2. On October 22, 2004, I provided Applicant’s counsel with a revised settlement agreement. Thereafter, the Board *sua sponte* suspended the Opposition proceeding. Although I expected to receive Applicant’s comments regarding the revised settlement agreement or an executed copy of the settlement agreement shortly thereafter, I did not receive any communications from Applicant’s counsel.

3. On January 6, 2005, I sent a follow-up letter to Applicant’s counsel seeking Applicant’s comments regarding the revised settlement agreement. On February 2, 2005, we sent a follow-up email to Applicant’s counsel seeking Applicant’s comments regarding the revised settlement agreement.

4. On February 7, 2005, I telephoned Applicant’s counsel. Applicant’s counsel indicated that a response to the settlement offer would be forthcoming in two weeks. On May 10, 2005, I again contacted Applicant’s counsel. Since February 7, 2005, Applicant has not provided its comments or communicated any willingness to accept the terms of the revised settlement agreement, which Applicant’s counsel has had for almost a year.

5. On June 20, 2005, after it appeared that Applicant had failed to provide any responses to Opposer's First Set of Discovery Requests, I sent the First Meet and Confer Letter via electronic mail, facsimile and regular mail advising Applicant's counsel that Applicant's responses were past due and that if Applicant did not provide complete responses and responsive documents by July 1, 2005, Opposer would be forced to file a Motion to Compel. A copy of the First Meet and Confer Letter is attached hereto as Exhibit 1.

6. On June 28, 2005, Opposer received Applicant's responses to Opposer's First Set of Discovery Requests. True and correct copies of Applicant's responses to Opposer's First Set of Discovery Requests are attached hereto as Exhibit 2.

7. In response to the baseless objections raised in Applicant's responses to Opposer's First Set of Discovery Requests, on June 29, 2005, we sent the Second Meet and Confer Letter, which advised Applicant that its objections were clearly baseless and that it needed to either provide acceptable responses, an executed copy of the settlement agreement or at least comments regarding the settlement agreement, and that if Applicant did not provide one of these items, Opposer would have no choice but to file a Motion to Compel. A copy of the Second Meet and Confer Letter is attached hereto as Exhibit 3.

8. As Applicant failed to respond to the Second Meet and Confer Letter, on July 19, 2005, I sent the Third Meet and Confer Letter, which reiterated the concerns set forth in the Second Meet and Confer Letter. A copy of the Third Meet and Confer Letter is attached hereto as Exhibit 4.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct. Executed this 9th day of September 2005 at Irvine, California.



Stacey R. Halpern

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **OPPOSER'S REPLY TO APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO COMPEL DISCOVERY RESPONSES, ETC. AND APPLICANT'S MOTION TO RESET DISCOVERY AND TRIAL DATES HEREIN; OPPOSER'S MOTION TO STRIKE; AND SUPPLEMENTAL DECLARATION OF STACEY R. HALPERN IN SUPPORT THEREOF** upon Applicant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, on September 9, 2005, addressed as follows:

Mr. Don B. Finkelstein
Law Offices of Don Finkelstein
3858 Carson Street, Suite 216
Torrance, CA 90503



Stacey R. Halpern

1897038:SH
090905

Knobbe Martens Olson & Bear LLP

Intellectual Property Law

2040 Main Street
Fourteenth Floor
Irvine, CA 92614
Tel 949-760-0404
Fax 949-760-9502
www.knob.com

Stacey R. Halpern
949-721-6301
shalpern@knob.com

June 20, 2005

VIA ELECTRONIC MAIL AND FACSIMILE

Mr. Don B. Finkelstein
Law Offices of Don Finkelstein
3858 Carson Street, Suite 216
Torrance, CA 90503

Re: U.S. Service Mark Application
Mark: INVESTING IN BUILDING RELATIONSHIPS
Applicant: Resmark Equity Partners, LLC
Serial No.: 76/458,995
Filed: October 17, 2002
International Class: 36
Our Client: NCB Resources Group, Inc.
Our Reference No.: SIMMC35.01ZUS16

Dear Mr. Finkelstein:

I am writing regarding Opposer's First Requests for Admissions Nos. 1-60 ("Opposer's First Set of Admission Requests"), Opposer's First Set of Interrogatories Nos. 1-36 ("Opposer's First Set of Interrogatories"), and Opposer's First Requests for Production of Documents and Things Nos. 1-45 ("Opposer's First Set of Document Requests") (collectively "Opposer's First Set of Discovery Requests"), which were served upon you on behalf of Resmark Equity Partners, LLC ("Resmark").

As you are aware, Resmark's responses to Opposer's First Set of Discovery Requests were originally due on or before July 1, 2004. Per the parties' agreement, Resmark received several 60-day extensions of time to respond to Opposer's First Set of Discovery Requests. On November 18, 2004, the Trademark Trial and Appeal Board (the "Board") suspended the above-referenced Opposition proceedings for six (6) months to allow the parties to negotiate a possible settlement.

Despite several letters requesting your client's comments on the revised Letter Agreement, both prior to and during the suspension period, we have not received any comments from you regarding the Letter Agreement or an executed copy of the Letter Agreement. Moreover as you are aware, the Board's November 18, 2004 Order indicated that Resmark's responses to Opposer's First Set of Discovery Requests were due on or before June 17, 2005.

San Diego
619-236-8550

San Francisco
415-854-4114

Los Angeles
310-551-3450

Riverside
951-781-9231

San Luis Obispo
805-547-5580

EXHIBIT 1, PAGE 1 OF 2

Krohn Martens Olson & Bear LLP

Mr. Don B. Finkelstein

June 20, 2005

Page -2-

However, to date, we have not received any responses to Opposer's First Set of Discovery Requests. As I am sure you are aware, by failing to timely respond to Opposer's First Set of Discovery Requests, Resmark has forfeited its right to object to Opposer's First Set of Interrogatories and Opposer's First Set of Document Requests on their merit. Moreover, by failing to timely respond to Opposer's First Set of Admission Requests, the Admission Requests will stand admitted.

While we would like to resolve this matter without the Board's intervention, if we do not receive complete responses to Opposer's First Set of Discovery Requests (without objections) as well as all responsive documents by July 1, 2005 (two weeks after your client's deadline to respond), our client will have no choice but to file a motion to compel responses with the Board.

Should you have any questions or require any additional information, please contact us.

Sincerely,



Stacey R. Halpern

cc: Kenneth McKay

1767898:sh
061505

Simmc 35, 01 ZUS 16
SRH/TCB

JP

TC1135

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

NCE RESOURCES GROUP INC.)
)
) Opposer)
)
) vs.)
)
) RESMARK EQUITY PARTNERS, LLC.)
)
) Applicant)

Opposition No.:91159046
Re: Application Serial No.:
Mark: INVESTING IN BUILDING
RELATIONSHIPS
Filed: October 17, 2002
Published: September 16, 2003

APPLICANT'S RESPONSE TO
OPPOSER'S FIRST SET OF
REQUESTS FOR ADMISSIONS
NOS 1 - 60

COMES NOW APPLICANT RESMARK EQUITY PARTNERS, LLC and for Response to OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS NOS. 1 - 60 hereby objects to each, every and all of said REQUESTS FOR ADMISSIONS NOS. 1 - 60, and to the purported DEFINITIONS and GENERAL INSTRUCTIONS set forth therein on the grounds that said REQUESTS FOR ADMISSIONS NOS. 1 - 60, Definitions and General Instructions, alone and when considered with Opposer's First Set of Interrogatories and First Set of Requests for Production of Documents, are overly broad, burdensome and harassing, are outside the scope of the issues herein and were not submitted in good faith.

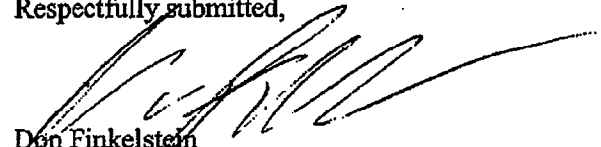
The issue in this action is whether Applicant may register its mark in the United States Applicant will provide full responses once Opposer limits its Discovery .Requests to the facts

SSC/101\Frg\3487\

TC1135

germane to this issue. Applicant desires to resolve this matter either by Judgment of the Board or by a settlement that protects the rights of both parties. Accordingly, it is requested that Opposer's counsel contact the undersigned to resolve the discovery dispute herein and move this case to conclusion.

Respectfully submitted,



Don Finkelstein
Attorney for Applicant
Date: June 17, 2005

Don B. Finkelstein, Esq.
LAW OFFICES OF DON FINKELSTEIN
3858 Carson Street, Suite 216
Torrance, CA 90503
Phone: (310) 543 0070
Fax: (310) 543 7570
e-mail: BIGFINK@AOL.COM

SSC/101\Frg\3487\

PROOF OF SERVICE

It is hereby certified that a true and correct copy of the foregoing: **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES NOS. 1 - 36, APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS NOS 1 - 60** and **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS NOS. 1 - 64** was served on Opposer on June 17, 2005 by first class mail postage prepaid in an envelope addressed to:

Stacy R. Halpern, Esq.
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614

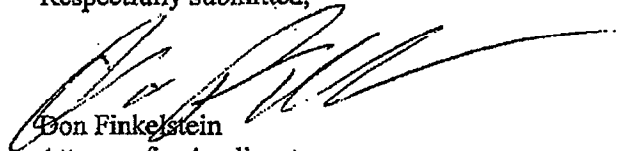


Don Finkelstein
Date: June 17, 2005

TC1135

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Respectfully submitted,



Don Finkelstein
Attorney for Applicant
Date: June 17, 2005

Don B. Finkelstein, Esq.
LAW OFFICES OF DON FINKELSTEIN
3858 Carson Street, Suite 216
Torrance, CA 90503
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Fax: (310) 543 7570
e-mail: BIGFINK@AOL.COM

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Stacy R. Halpern, Esq.
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614


Don Finkelstein

Date: June 17, 2005

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

NCE RESOURCES GROUP INC.

Opposer

vs.

RESMARK EQUITY PARTNERS, LLC.

Applicant

Opposition No.:91159046

Re: Application Serial No.:

Mark: INVESTING IN BUILDING
RELATIONSHIPS

Filed: October 17, 2002

Published: September 16, 2003

APPLICANT'S RESPONSE TO
OPPOSER'S FIRST SET OF
INTERROGATORIES NOS. 1 - 36

COMES NOW APPLICANT RESMARK EQUITY PARTNERS, LLC and for Response to OPPOSERS FIRST SET OF INTERROGATORIES NOS. 1 - 36, hereby objects to each, every and all of said Interrogatories Nos. 1 to 36, and to the purported DEFINITIONS and GENERAL INSTRUCTIONS set forth therein on the grounds that said Interrogatories, Definitions and General Instructions, alone and when considered with Opposer's First Request for Production of Documents and First Set of Requests for Admissions, are overly broad, burdensome and harassing, are outside the scope of the issues herein and were not submitted in good faith.

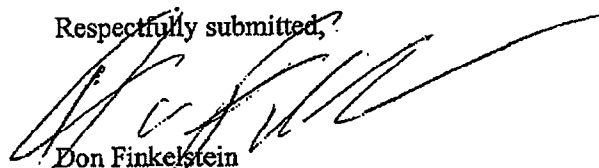
The issue in this action is whether Applicant may register its mark in the United States Applicant will provide full responses once Opposer limits its Discovery Requests to the facts

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TC1135

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Respectfully submitted,



Don Finkelstein
Attorney for Applicant
Date: June 17, 2005

Don B. Finkelstein, Esq.
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3858 Carson Street, Suite 216
Torrance, CA 90503
Phone: (310) 543 0070
Fax: (310) 543 7570
e-mail: BIGFINK@AOL.COM

SSC/101\Frg\3487\1

PROOF OF SERVICE

It is hereby certified that a true and correct copy of the foregoing: **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES NOS. 1 - 36, APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS NOS 1 - 60** and **APPLICANT'S RESPONSE TO OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS NOS. 1 - 64** was served on Opposer on June 17, 2005 by first class mail postage prepaid in an envelope addressed to:

Stacy R. Halpern, Esq.
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine, CA 92614



Don Finkelstein

Date: June 17, 2005

Knobbe Martens Olson & Bear LLP

Intellectual Property Law

2040 Main Street
Fourteenth Floor
Irvine, CA 92614
Tel 949-760-0404
Fax 949-760-9502
www.kmob.com

Jonathan A. Hyman
jhyman@kmob.com

June 29, 2005

VIA ELECTRONIC MAIL AND U.S. MAIL

Mr. Don B. Finkelstein
Law Offices of Don Finkelstein
3858 Carson Street, Suite 216
Torrance, CA 90503

Re: U.S. Service Mark Application
Mark: INVESTING IN BUILDING RELATIONSHIPS
Applicant: Resmark Equity Partners, LLC
Serial No.: 76/458,995
Filed: October 17, 2002
International Class: 36
Our Client: NCE Resources Group, Inc.
Our Reference No.: SIMMC35.01ZUS16

Dear Don:

This letter is in response to Resmark Equity Partners, LLC's ("Resmark") responses to Opposer's First Requests for Admissions Nos. 1-60, Opposer's First Set of Interrogatories Nos. 1-36, and Opposer's First Requests for Production of Documents and Things Nos. 1-64 (hereinafter collectively referred to as "Opposer's First Set of Discovery Requests"), which were sent with a certificate of service dated June 17, 2005. We note with some skepticism the date you served your nonresponsive responses due to the fact that they arrived at our offices on June 28, 2005, with no date stated in the postmark.

Our client is quite disappointed with your client's lack of response and communication regarding the Letter Agreement. Our client is even more disappointed with the "responses" to Opposer's First Set of Discovery Requests. The responses, or lack thereof, were nonresponsive and neither comply with the Federal Rules of Civil Procedure, nor the Trademark Trial and Appeal Board's (the "Board") Manual of Procedure. While we had hoped to resolve this matter without the Board's intervention, if Resmark is unwilling to comply with the applicable rules governing discovery and provide complete and full responses to Opposer's First Set of Discovery Requests by July 7, 2005, our client has no choice but to file a Motion to Compel responses with the Board.

In response to Opposer's First Set of Discovery Requests, you refused to answer any of the individual responses. Instead, your client asserted that Opposer's First Set of Discovery Requests were "overly broad, burdensome and harassing, are outside the scope of the issues herein and were not submitted in good faith." Fed. R. Civ. P. 26(b)(1) provides in pertinent part that:

Parties may obtain discovery regarding any matter, not privileged, that is relevant to the claim or defense of any party, including the existence, description, nature,

San Diego
619-235-8550

San Francisco
415-954-4114

Los Angeles
310-551-3450

Riverside
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July 6, 2005
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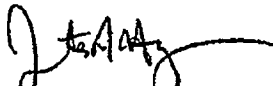
custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. . . . Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery of admissible evidence. . . .

Moreover, T.B.M.P. § 402.01 states that “[a] party may take discovery not only as to matters specifically raised in the pleadings but also as to any matter which might serve as the basis for an additional claim, defense, or counterclaim.” Your client’s blanket attempt to state that Opposer’s First Set of Discovery Requests is irrelevant is unfounded. The discovery requests seek information relevant to the issue before the Board, namely, your client’s right to register the mark with the United States Patent and Trademark Office and the issue of a likelihood of confusion between the parties’ marks. Moreover, the discovery requests seek information that may serve as the basis for an additional claim against your client. Your client cannot shirk its discovery responsibilities by requesting that our client “limit[] its Discovery Requests to the facts germane to this issue.” If your client truly believes that a request is not relevant, your client must identify with particularity why the request is not relevant and answer those requests, or parts thereof, which are relevant.

As to your client’s objections based on the discovery requests being “overly broad, burdensome and harassing,” your client cannot possibly make such a claim as to each and every discovery request. Moreover, your client cannot satisfy its duties under the applicable rules by making such blanket objections. Pursuant to the T.B.M.P. and the Fed. R. Civ. P., your client has an obligation to cooperate with our client in the discovery process, and a duty to make a good faith effort to satisfy our client’s discovery needs. See T.B.M.P. § 408.01. Your client cannot possibly contend that each and every discovery request is overly broad, burdensome and harassing. Under the Fed. R. Civ. P., your client has a duty to state fully the reasons for its objections with specificity and shall answer to the extent the request is not objectionable. See Fed. R. Civ. P. 33(b)(1) and (4); 34(b); and 36(a). If your client truly believes that a request is not proper, your client must identify with particularity why the request is “overly broad, burdensome and harassing” or answer those requests, or parts thereof, which are not “overly broad, burdensome and harassing.”

Unless we receive complete responses to Opposer’s First Set of Discovery Requests and all responsive documents or an executed copy of the Letter Agreement by July 7, 2005, our client will proceed with the filing of a Motion to Compel.

Sincerely,


Jonathan A. Hyman

cc: Kenneth McKay
Stacey R. Halpern
1795924 062905

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July 19, 2005

VIA ELECTRONIC MAIL AND U.S. MAIL

Mr. Don B. Finkelstein
Law Offices of Don Finkelstein
3858 Carson Street, Suite 216
Torrance, CA 90503

Re: U.S. Service Mark Application
Mark: INVESTING IN BUILDING RELATIONSHIPS
Applicant: Resmark Equity Partners, LLC
Serial No.: 76/458,995
Filed: October 17, 2002
International Class: 36
Our Client: NCE Resources Group, Inc.
Our Reference No.: SIMMC35.01ZUS16

Dear Don:

We note that we have not yet received a response to our letter of June 29, 2005. Nor, have we received substantive responses to any of Opposer's First Set of Discovery Requests or responsive documents. In fact, we note that it has been over six (6) months since we last receive any "substantive" communications from you.

As indicated in our previous communications, your client's blanket attempt to state that Opposer's First Set of Discovery Requests is irrelevant, is unfounded. The discovery requests seek information relevant to the issue before the Trademark Trial and Appeal Board (the "Board"), namely, your client's right to register the mark with the United States Patent and Trademark Office and the issue of a likelihood of confusion between the parties' marks. Moreover, the discovery requests seek information that may serve as the basis for an additional claim against your client. If your client truly believes that a request is not relevant, your client must identify with particularity why the request is not relevant and answer those requests, or parts thereof, which are relevant.

As was also indicated in our previous communications, your client cannot possibly claim that each and every discovery request is "overly broad, burdensome and harassing." If your client truly believes that a request is not proper, your client must identify with particularity why the request is "overly broad, burdensome and harassing" or answer those requests, or parts thereof, which are not "overly broad, burdensome and harassing."

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While our client still hopes to resolve this matter amicably and had hoped to resolve the discovery issues without the Board's intervention, as we have not received any response to our previous communications, our client has no choice but to proceed with the filing of a Motion to Compel.

Sincerely,

Stacey R. Halpern

cc: Kenneth McKay

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