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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	Motion to Compel Discovery
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Signature	/Stacey R. Halpern/
Date	03/06/2006
Attachments	Renewed Motion to Compel.pdf (91 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

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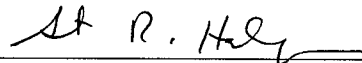
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I hereby certify that this correspondence and all marked attachments are being electronically filed with the U.S. Patent and Trademark Office via their website located at <http://esta.uspto.gov/> on:

March 6, 2006

(Date)



Stacey R. Halpern

OPPOSER’S RENEWED MOTION TO COMPEL DISCOVERY RESPONSES, TO TEST THE SUFFICIENCY OF RESPONSES TO ADMISSION REQUESTS, AND TO SUSPEND THE OPENING OF THE DISCOVERY AND TESTIMONY PERIODS; AND DECLARATION OF STACEY R. HALPERN IN SUPPORT THEREOF

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

Dear Sir:

Pursuant to 37 C.F.R. §§2.120(e)(1) and (h)(1) and 2.172(e)(1), and Trademark Trial and Appeal Board Manual of Procedure §§ 523, 524 and 527, NCE Resources Group Inc. (“Opposer”) respectfully requests that the Trademark Trial and Appeal Board (the “Board”) enter an Order compelling Resmark Equity Partners, LLC (“Applicant”) to provide **acceptable** written responses and produce all documents and things responsive to Opposer’s First Set of Requests for Production of Documents and Things Nos. 1-45, to provide all information requested in Opposer’s First Set of Interrogatories Nos. 1-36, and to provide complete and acceptable responses to

Opposer's First Set of Requests for Admissions Nos. 1-60 (collectively "Opposer's First Set of Discovery Requests").¹

Furthermore, Opposer requests that the Board suspend the opening of Opposer's testimony period pending a decision on this motion and pending Applicant's production of appropriate and complete discovery responses, in the manner discussed below. Finally, as Applicant has failed to comply with the Board's Order dated October 4, 2005, Opposer requests that if Applicant does not provide acceptable responses and responsive documents, the Board sanction Applicant by granting the Opposition in Opposer's favor.

This motion is necessitated by the failure of Applicant to produce for inspection any documents properly requested, and by Applicant's failure to provide any substantive responses or even appropriate objections to Opposer's First Set of Discovery Requests, all properly and timely served. Opposer's counsel has made a good faith effort to resolve the instant discovery dispute with Applicant's counsel, but has been unable to reach an agreement. Although the Board's October 4, 2005 Order stated that by making the blanket assertion that all of opposer's discovery requests are 'over broad, burdensome and harassing, are outside the scope of the issue here and not submitted in good faith,' applicant has disregarded its discovery obligations in this proceeding" and that "applicant's blanket objections to opposer's admission requests indicate that applicant has disregarded its discovery obligations in this proceeding" and despite the fact that since both prior to and subsequent to the issuance of the Board's October 4, 2005 Order Opposer has repeatedly attempted to obtain acceptable responses and responsive documents from Applicant, Applicant has refused to provide such responses.

¹ True and correct copies of Opposer's First Set of Discovery Requests are attached as Exhibit 1 to the Declaration of Stacey R. Halpern in Support of Opposer's Motion to Compel ("Halpern Declaration").

Opposer's counsel has made a good faith effort to resolve the instant discovery dispute with Applicant's counsel, but has been unable to reach an agreement. Applicant has refused to provide any substantive responses to Opposer's First Set of Discovery Requests and Opposer believes that Applicant must be compelled to fairly participate in discovery for the proceedings and respond to Opposer's First Set of Discovery Requests.

This motion is based on the Memorandum of Law set forth below, and the Halpern Declaration and the Exhibits attached thereto.

MEMORANDUM OF LAW

I. STATEMENT OF FACTS

This motion arises out of an Opposition action brought by Opposer against Applicant. The application at issue is U.S. Service Mark Application Serial No. 76/458,995 for the mark INVESTING IN BUILDING RELATIONSHIPS in connection with "real estate and financial services, namely, providing investment and financial services related to real estate development."

On May 27, 2004, Opposer timely served Opposer's First Set of Discovery Requests on counsel for Applicant. Accordingly, the deadline for Applicant to respond to Opposer's First Set of Discovery Requests was July 1, 2004. Included with Opposer's First Set of Discovery Requests was a settlement offer. True and correct copies of Opposer's First Set of Discovery Requests are attached as Exhibit 1 to the Halpern Declaration. Halpern Declaration at ¶ 2.

On June 28, 2005, eleven (11) days after Applicant's responses were due and eight (8) days after Opposer's counsel sent the First Meet and Confer Letter, Opposer's counsel received Applicant's "purported" responses, which consisted of nothing more than blank objections to each and every discovery request, indicating that they are all "overly broad, burdensome and

harassing, are outside the scope of the issue here and not submitted in good faith” and “that it will not respond until Opposer limits its discovery requests to the facts germane to this issue.” Halpern Declaration at ¶ 4.

After attempting to resolve this matter without the Board’s intervention, Opposer’s counsel sent the Second and Third Meet and Confer Letters. Halpern Declaration at ¶ 5 and 6. As Applicant was still not willing to provide acceptable responses to Opposer’s First Set of Discovery Requests or any responsive documents, on July 20, 2005, Opposer filed its First Motion to Compel. Halpern Declaration at ¶ 7.

In response to the Motion to Compel, on October 4, 2006, the Board issued an Order which indicated that Opposer’s Motion to Compel was procedurally defective. Thus, the Board denied the Motion to Compel. However, the Board stated that “by making the blanket assertion that all of opposer’s discovery requests are ‘over broad, burdensome and harassing, are outside the scope of the issue here and not submitted in good faith,’ applicant has disregarded its discovery obligations in this proceeding.” The Board also stated that “applicant’s blanket objections to opposer’s admission requests indicate that applicant has disregarded its discovery obligations in this proceeding.” Furthermore, the Board gave the parties thirty (30) days to properly respond to any outstanding discovery requests. Accordingly, Applicant’s amended responses and responsive documents were due on or before November 3, 2005.

As Applicant did not provide any supplemental responses or responsive documents, pursuant to 37. C.R.F. § 2.102(e), T.B.M.P 523.02, on November 14, 2005, Opposer’s counsel telephoned Applicant’s counsel to discuss Opposer’s First Set of Discovery Requests. During that conversation, Applicant’s counsel indicated that Applicant had not yet revised any of Applicant’s responses to Opposer’s First Set of Discovery Requests and refused to give a time

frame in which Applicant would provide such revised responses. Halpern Declaration at ¶ 10. On November 16, 2005, Opposer's counsel sent the Fourth Meet and Confer Letter memorializing the November 14, 2005 telephone conversation. Halpern Declaration at ¶ 11. On November 30, 2005, pursuant to 37. C.R.F. § 2.102(e), T.B.M.P 523.02, Opposer's counsel again telephoned Applicant's counsel to discuss the discovery issues. Halpern Declaration at ¶ 12. During the November 30, 2005 meet and confer telephone conversation, Applicant's counsel indicated that Applicant was not required to provide any additional responses to Opposer's First Set of Discovery Requests and that Applicant would only supplement them if it deemed necessary.

On December 2, 2005, Applicant's counsel sent Opposer's counsel a letter which failed to address any of the discovery issues. As such, pursuant to 37 C.R.F. § 2.102(e), T.B.M.P 523.02, on December 9, 2005, Opposer's counsel sent Applicant's counsel a Fifth Meet and Confer letter which, among other things, summarized the parties' November 30, 2005 telephone conversation. Halpern Declaration at ¶ 13 and 14. The Fifth Meet and Confer Letter noted that Applicant's counsel indicated that Applicant did not intend to provide any supplemental responses or responsive documents. Furthermore, the Fifth Meet and Confer Letter once again requested that Applicant provide acceptable responses to Opposer's First Set of Discovery Requests and responsive documents. The Fifth Meet and Confer Letter also advised Applicant that if Applicant did not provide supplemental responses to Opposer's First Set of Discovery Requests and responsive documents, Opposer would have no choice but to file a renewed Motion to Compel. Halpern Declaration at ¶ 14.

As Opposer's counsel did not hear anything further from Applicant's counsel, on March 2, 2006, Opposer's counsel sent Applicant's counsel a Sixth Meet and Confer Letter which

advised Applicant's counsel that as Applicant was unwilling to resolve the discovery issues without the Board's intervention, Opposer was proceeding with the filing of a renewed Motion to Compel.

Opposer's counsel has made a good faith effort to resolve the instant discovery dispute with Applicant's counsel, but has been unable to reach an agreement. To date, not only has Applicant still failed to provide any substantive responses, but Applicant has also failed to respond to the Fifth and Sixth Meet and Confer Letters. Halpern Declaration at ¶ 15.

In fact, as is detailed in the Halpern Declaration and is discussed above, it has been almost five months since the issuance of the Board's October 4, 2005 Order which stated that "by making the blanket assertion that all of opposer's discovery requests are 'over broad, burdensome and harassing, are outside the scope of the issue here and submitted in good faith,' applicant has disregarded its discovery obligations in this proceeding and the Board again finds that applicant's blanket objections to opposer's admission requests indicate that applicant has disregarded its discovery obligations in this proceeding."

As is also discussed above and in the Halpern Declaration, although the Board's October 4, 2005 Order states that supplemental responses by Applicant are necessary, it has been three months since Applicant's counsel indicated that the Board's October 4, 2005 Order did not require Applicant to provide any supplemental responses and that Applicant would only do so if it deemed necessary. Apparently, in direct contradiction of the applicable rules and the Board's October 4, 2005 Order, Applicant is unwilling to participate in the discovery process without the Board's intervention.

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II. ARGUMENTS

A. The Board Should Compel Applicant to Respond to Opposer's First Set of Discovery Requests and Provide Responsive Documents

None of the relevant circumstances are subject to dispute: (1) Opposer timely served Opposer's First Set of Discovery Requests; (2) Opposer timely responded to Applicant's discovery requests; (3) Opposer's has made a good faith effort to resolve the instant discovery dispute with Applicant's counsel by repeatedly trying to resolve the discovery issues without the Board's intervention; (4) the Board's October 4, 2005 Order indicated that Applicant disregarded its discovery obligations; (5) in an effort to obtain acceptable responses to Opposer's First Set of Discovery Requests without the Board's assistance, Opposer's counsel has telephoned Applicant's counsel several times since the issuance of the October 4, 2005 Order; (6) in an effort to obtain acceptable responses to Opposer's First Set of Discovery Requests without the Board's assistance, Opposer's counsel sent Applicant's counsel the Fourth, Fifth and Sixth Meet and Confer Letters since the issuance of the October 4, 2005 Order; (7) Applicant's counsel indicated that it is not obligated to provide acceptable responses to Opposer's First Set of Discovery Requests; and (8) to date, Applicant has failed to provide any substantive responses to Opposer's First Set of Discovery Requests and failed respond to the Fifth and Sixth Meet and Confer Letters.

Accordingly, Opposer is entitled to an Order compelling Applicant to provide acceptable responses to Opposer's First Set of Discovery Requests and compelling Applicant to produce all documents and things requested in Opposer's First Set of Document Requests.

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B. Standard for a Motion to Compel and to Test Sufficiency of Responses to Requests for Admissions

A motion to compel discovery and a motion to test sufficiency of responses to admission requests should be granted where, as here, (1) Applicant failed to provide acceptable responses to Opposer's properly served First Set of Discovery Requests; (2) Opposer made a good faith attempt to obtain acceptable responses to Opposer's First Set of Discovery Requests; (3) Applicant has had ample time to provide acceptable responses to Opposer's First Set of Discovery Requests; (4) to date, Applicant has not provided documents or information responsive to Opposer's First Set of Discovery Requests; and (5) Applicant has indicated that it is not obligated to provide acceptable responses or responsive documents and information. See 37 C.F.R. §§ 2.120(e) and (h); TBMP §523.01 and § 524.01.

There is no dispute that Applicant has failed to provide substantive responses to Opposer's properly served First Set of Discovery Requests. Instead, Applicant has demonstrated that it is unwilling to participate in this proceeding without the Board's intervention.

While opposition proceedings are necessarily adversarial, Applicant has simply chosen to ignore the Board's October 4, 2005 Order which stated that Applicant had not complied with its discovery obligations.

As the Board stated in its October 4, 2005 Order "by making the blanket assertion that all of opposer's discovery requests are 'overly broad, burdensome and harassing, are outside the scope of the issue here and not submitted in good faith' applicant has disregarded its discovery obligations in this proceeding." As Applicant has been unwilling to provide any substantive responses or responsive documents despite Opposer's good faith attempts to obtain such information and documents, Opposer respectfully requests that the Board enter an Order

compelling Applicant's responses to Opposer's First Set of Discovery Requests and to extend the time period for Opposer to prepare and propound follow-up discovery until at least thirty-five (35) days after Applicant provides complete and acceptable responses to Opposer's First Set of Discovery Requests and provides all responsive documents.

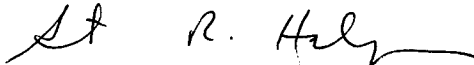
III. CONCLUSION

For the reasons above, Opposer respectfully requests the Board to: (1) suspend the close of the discovery period and opening of the testimony periods pending the Board's decision on Opposer's Motion to Compel; (2) order Applicant to serve complete responses to Opposer's First Set of Discovery Requests; (3) order Applicant to produce all documents requested; (4) provide Opposer with additional time to serve follow-up discovery once Applicant fully and completely responds to Opposer's First Set of Discovery Requests (without objection) and produces all responsive documents (without objection); and (5) grant such further relief as the Board deems just and proper.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: March 6, 2006

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.: 91159046
)	
Opposer,)	
)	
v.)	
)	
RESMARK EQUITY PARTNERS, LLC,)	
)	
Applicant.)	
)	

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 Motion to Compel Discovery Responses, to Test the Sufficiency of Responses to Admission Requests, to Extend the Period for Opposer to Propound Follow-Up Discovery, and to Suspend the Opening of the Discovery and Testimony Periods. 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 May 27, 2004, Opposer timely served Opposer’s First Set of Discovery Requests on counsel for Applicant. Accordingly, the deadline for Applicant to respond to Opposer’s First Set of Discovery Requests was July 1, 2004. Included with Opposer’s First Set of Discovery Requests was a settlement offer. True and correct copies of Opposer’s First Set of Discovery Requests are attached hereto as Exhibit 1.

3. When Opposer had not received responses to its First Set of Discovery Requests, on June 20, 2005, Opposer’s counsel sent Applicant’s counsel the First Meet and Confer Letter.

A true and correct copy of the First Meet and Confer Letter is attached hereto as Exhibit 2.

4. On June 28, 2005, Opposer received a document dated June 17, 2005 in which Applicant provided blanket objections to all of Opposer's First Set of Discovery Requests. A true and correct copy of Applicant's purported responses to Opposer's First Set of Discovery Requests is attached hereto as Exhibit 3.

5. In response the baseless objections, on June 29, 2005, Opposer's counsel 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 true and correct copy of the Second Meet and Confer Letter is attached hereto as Exhibit 4.

6. As Applicant failed to respond to the Second Meet and Confer Letter, on July 19, 2005, Opposer sent a Third Meet and Confer Letter, which reiterated the concerns set forth in the Second Meet and Confer Letter. A true and correct copy of the Third Meet and Confer Letter is attached hereto as Exhibit 5.

7. As Applicant did not provide any substantive responses to Opposer's discovery requests and did not respond to the Second or Third Meet and Confer Letters, on July 20, 2005, Opposer filed a Motion to Compel.

8. On October 4, 2005, the Board issued an Order denying Opposer's Motion to Compel without prejudice. In the Board's Order, the Board stated that by making the blanket assertion that all of opposer's discovery requests are 'overly broad, burdensome and harassing, are outside the scope of the issue here and not submitted in good faith' applicant has disregarded its discovery obligations in this proceeding." A true and correct copy of the Board's October 4,

2005 Order is attached hereto as Exhibit 6.

9. The Board's October 4, 2005 Order also provided Applicant with thirty (30) days to respond to any outstanding discovery requests. Accordingly, Applicant's amended responses and responsive documents were due on or before November 3, 2005.

10. As Applicant did not provide any supplemental responses or responsive documents, pursuant to 37. C.R.F. § 2.102(e), T.B.M.P 523.02, on November 14, 2005, Opposer's counsel telephoned Applicant's counsel to discuss Opposer's First Set of Discovery Requests. During that conversation, Applicant's counsel indicated that Applicant had not yet revised any of Applicant's responses to Opposer's First Set of Discovery Requests and refused to give a time frame in which Applicant would provide such revised responses.

11. On November 16, 2005, Opposer's counsel sent a Fourth Meet and Confer Letter memorializing the November 14, 2005 telephone conversation. A true and correct copy of Fourth Meet and Confer Letter is attached hereto as Exhibit 7.

12. On November 30, 2005, pursuant to 37. C.R.F. § 2.102(e), T.B.M.P 523.02, Opposer's counsel again telephoned Applicant's counsel to discuss the discovery issues. During the November 30, 2005 meet and confer telephone conversation, Applicant's counsel indicated that Applicant was not required to provide any additional responses to Opposer's First Set of Discovery Requests and that Applicant would only supplement them if it deemed necessary.

13. On December 2, 2005, Applicant's counsel sent Opposer's counsel a letter which failed to address any of the discovery issues. A true and correct copy of the letter is attached hereto as Exhibit 8.

14. On December 9, 2005, Opposer's counsel sent Applicant's counsel a Fifth Meet and Confer Letter which, among other things, summarized the parties' November 30, 2005

telephone conversation. The Fifth Meet and Confer Letter noted that Applicant's counsel indicated that Applicant did not intend to provide any supplemental responses or responsive documents. Furthermore, the Fifth Meet and Confer Letter once again requested that Applicant provide acceptable responses to Opposer's First Set of Discovery Requests and responsive documents. The Fifth Meet and Confer Letter also advised Applicant that if Applicant did not provide supplemental responses to Opposer's First Set of Discovery Requests and responsive documents, Opposer would have no choice but to file a renewed Motion to Compel. A true and correct copy of the Fifth Meet and Confer Letter is attached hereto as Exhibit 9.

15. As Opposer's counsel did not hear anything further from Applicant's counsel, on March 2, 2006, Opposer's counsel sent Applicant's counsel a Sixth Meet and Confer Letter, which advised Applicant's counsel that as Applicant was unwilling to resolve the discovery issues without the Board's intervention, Opposer was proceeding with the filing of a renewed Motion to Compel. A true and correct copy of the Sixth Meet and Confer Letter is attached hereto as Exhibit 10.

16. To date, Applicant has failed to provide any substantive responses. Moreover, Applicant has not responded to the Fifth and Sixth Meet and Confer Letters. In fact, Opposer's counsel has heard nothing from Applicant since the December 2, 2005 letter it received from Applicant's counsel (to which Opposer's counsel responded on December 9, 2005).

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 6th day of March 2006 at Irvine, California.

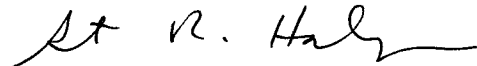


Stacey R. Halpern

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **OPPOSER'S RENEWED MOTION TO COMPEL DISCOVERY RESPONSES, TO TEST THE SUFFICIENCY OF RESPONSES TO ADMISSION REQUESTS, AND TO SUSPEND THE OPENING OF THE DISCOVERY AND TESTIMONY PERIODS; AND 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 March 6, 2006, addressed as follows:

Don Finkelstein
LAW OFFICES OF DON FINKELSTEIN
3858 Carson Street, Suite 216
Torrance, CA 90503



Stacey R. Halpern

2405649:sh
030306

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

NCE RESOURCES GROUP, INC.,	)	Opposition No.: 91159046
)	
Opposer,	)	Mark: INVESTING IN BUILDING
	)	RELATIONSHIPS
v.)	
	)	Serial No.: 76/458,995
RESMARK EQUITY PARTNERS, LLC,)	
)	
Applicant.)	
)	

OPPOSER’S FIRST SET OF REQUESTS FOR ADMISSIONS NOS. 1-60

Pursuant to the Rules of Practice of the United States Patent and Trademark Office (“PTO”), and the applicable Federal Rules of Civil Procedure (“FRCP”), Applicant, Resmark Equity Partners, LLC, is hereby required to admit or deny, in writing and under oath, each of the following Requests for Admissions (“Admission Requests”).

Applicant is hereby notified that pursuant to TBMP § 407.03(a), if a party on which Requests for Admissions have been served fails to timely respond thereto, the Requests will stand admitted.

Applicant is hereby notified that pursuant to TBMP § 411.02, if the Trademark Trial and Appeal Board (“TTAB”) determines that an answer does not comply with the requirements of FRCP 36(a), it may order either that the matter is admitted or that an amended answer be served; or if the TTAB determines that an objection is not justified, it may order that an answer be served.

DEFINITIONS

The following definitions and instructions shall apply to each of the Admission Requests herein:

1. The term "Applicant" shall mean Resmark Equity Partners, LLC, and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor, successor, affiliate parent company, wholly-owned or partially-owned subsidiary or other related company either within the United States or a foreign country, including, but not limited to, Olympic Realty Advisors II, LLC.

2. The term "Opposer shall mean NCE Resources Group, Inc., and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor, successor, affiliate parent company, wholly-owned or partially-owned subsidiary or other related company either within the United States or a foreign country.

3. The term "you" shall mean the party or person to whom the Admission Request is propounded, all agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom the Admission Request is propounded has the right to or does control or direct any activities.

4. The singular as used herein shall include the plural.

5. The term "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

6. The term "document" shall mean any tangible thing upon which information is or has been stored, recorded, or communicated, and any written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, such as (by way of example

and not by way of limitation) correspondence, letters, notes, memoranda, diaries, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, price lists, studies, drawings or sketches, tapes or discs capable of being mechanically read, films, pictures, photographs, electronic mail, advertising or promotional literature, operating manuals or instruction bulletins, voice recording, cables or telegrams, maps, charts, surveys, test data, HTML code, website pages and reports; every copy of every such writing or record where the original is not in the possession, custody or control of Applicant, and every copy of every such writing or record where such copy is not an identical copy of the original or where such copy contains any commentary that does not appear on the original.

7. The term “thing” shall mean all tangible objects of any type, composition, construction or nature.

8. The term “concerning” means relating to, referring to, describing, evidencing or constituting.

9. A document or thing “relating or referring” or which “relates” to any given subject means any document or thing that comprises, constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including, without limitation, documents concerning the preparation of other documents.

10. The term “communication(s)” includes the disclosure, transfer or exchange of information by any means, written, verbal, electronic or otherwise.

11. The term “person” shall include both natural persons and corporate or other business entities, whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of that person’s directors, officers, members, employees, representatives, agents and attorneys.

12. The terms "all" and "each" shall be construed to include all and each.
13. The term "and" shall be construed to include "or" and *vice versa*, and shall be the logical equivalent of "and/or," as necessary in order to bring within the scope of the request all responses which might otherwise be construed to be outside its scope.
14. The use of the singular form of any word also includes the plural and *vice versa*.
15. The wording "Notice of Opposition" shall refer to the Notice of Opposition filed with the TTAB on January 13, 2004 and assigned Opposition No. 91159046.
16. The wording "Applicant's Mark" shall mean the mark that is the subject of U.S. Trademark Application Serial Number 76/458,995.
17. The wording "Applicant's Services" shall mean the services identified in U.S. Trademark Application Serial Number 76/458,995.
18. The wording "Applicant's Application" shall mean the application identified in U.S. Trademark Application Serial Number 76/458,995.
19. The wording "Opposer's Marks" shall mean and refer to all marks relied on by Opposer in the Notice of Opposition.

GENERAL INSTRUCTIONS

1. If you claim that any information requested is privileged, please provide all information falling within the scope of the Admission Request which is not privileged, and identify with sufficient particularity for purposes of a Motion to Compel, each item of information, document or thing, separately, with respect to which you claim a privilege, and state:

- a) the basis on which the privilege is claimed;

- b) the author of the document, if applicable;
- c) each individual or other person to whom the document or copy thereof was sent or otherwise disclosed;
- d) the date of the information or document;
- e) the type of document (e.g., letter, memorandum, etc.); and
- f) the general subject matter of the information or document.

You are not requested to provide privileged information or information for which you claim privilege, but only to identify such information, document or thing.

2. Applicant's responses to the following Admission Requests are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the FRCP.

REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Applicant is not currently using Applicant's Mark in connection with Applicant's Services.

REQUEST FOR ADMISSION NO. 2:

Applicant has never used Applicant's Mark in connection with Applicant's Services.

REQUEST FOR ADMISSION NO. 3:

Applicant knew about Opposer before adopting Applicant's Mark.

REQUEST FOR ADMISSION NO. 4:

Applicant knew about the use of Opposer's Marks before adopting Applicant's Mark.

REQUEST FOR ADMISSION NO. 5:

There is a likelihood of confusion between Applicant's Mark as used on Applicant's

Services, and Opposer's Marks as used on its services identified in the Notice of Opposition.

REQUEST FOR ADMISSION NO. 6:

No one on Applicant's behalf conducted a search for possibly conflicting marks in the United States prior to Applicant's adoption of Applicant's Mark.

REQUEST FOR ADMISSION NO. 7:

Applicant conducted a search for possibly conflicting marks in the United States prior to Applicant's adoption of Applicant's Mark.

REQUEST FOR ADMISSION NO. 8:

A search for possibly conflicting marks in the United States was conducted on Applicant's behalf prior to Applicant's adoption of Applicant's Mark.

REQUEST FOR ADMISSION NO. 9:

Applicant's search for possibly conflicting marks in the United States disclosed the presence of one or more of Opposer's Marks.

REQUEST FOR ADMISSION NO. 10:

Opposer is the senior user of Opposer's Marks, as against Applicant's use of Applicant's Mark in connection with Applicant's Services.

REQUEST FOR ADMISSION NO. 11:

Applicant did not advertise, promote or market any products or services in association with Applicant's Mark in the United States prior to June 25, 1998.

REQUEST FOR ADMISSION NO. 12:

Applicant did not advertise, promote or market any products or services in association with Applicant's Mark in the United States prior to October 17, 2002.

REQUEST FOR ADMISSION NO. 13:

Applicant did not advertise, promote or market any products or services in association with Applicant's Mark in the United States prior to November 11, 2002.

REQUEST FOR ADMISSION NO. 14:

Applicant did not offer for sale any products or services in association with Applicant's Mark in the United States prior to June 25, 1998.

REQUEST FOR ADMISSION NO. 15:

Applicant did not offer for sale any products or services in association with Applicant's Mark in the United States prior to October 17, 2002.

REQUEST FOR ADMISSION NO. 16:

Applicant did not offer for sale any products or services in association with Applicant's Mark in the United States prior to November 11, 2002.

REQUEST FOR ADMISSION NO. 17:

Applicant did not sell any products or services in association with Applicant's Mark in the United States prior to June 25, 1998.

REQUEST FOR ADMISSION NO. 18:

Applicant did not sell any products or services in association with Applicant's Mark in the United States prior to October 17, 2002.

REQUEST FOR ADMISSION NO. 19:

Applicant did not sell any products or services in association with Applicant's Mark in the United States prior to November 11, 2002.

REQUEST FOR ADMISSION NO. 20:

Applicant did not distribute any products or services in association with Applicant's Mark

in the United States prior to June 25, 1998.

REQUEST FOR ADMISSION NO. 21:

Applicant did not distribute any products or services in association with Applicant's Mark in the United States prior to October 17, 2002.

REQUEST FOR ADMISSION NO. 22:

Applicant did not distribute any products or services in association with Applicant's Mark in the United States prior to November 11, 2002.

REQUEST FOR ADMISSION NO. 23:

Applicant has filed a Request for Extension of Time to File a Notice of Opposition against Opposer's U.S. Trademark Application Serial No. 75/604,636 for the mark BUILDING RELATIONSHIPS.

REQUEST FOR ADMISSION NO. 24:

Applicant's basis for filing a Request for Extension of Time to File a Notice of Opposition against Opposer's U.S. Trademark Application Serial No. 75/604,636 for the mark BUILDING RELATIONSHIPS is a likelihood of confusion between Applicant's Mark and the mark shown in Opposer's U.S. Trademark Application Serial No. 75/604,636.

REQUEST FOR ADMISSION NO. 25:

Applicant has never licensed a third party to use Applicant's Mark in connection with services identical or similar to Applicant's Services.

REQUEST FOR ADMISSION NO. 26:

Applicant's Mark dilutes Opposer's Marks.

REQUEST FOR ADMISSION NO. 27:

Applicant's Mark damages Opposer's Marks.

REQUEST FOR ADMISSION NO. 28:

Applicant has never received any communications, documents or things from a third party relating to Opposer.

REQUEST FOR ADMISSION NO. 29:

Applicant does not own any State Trademark Applications for Applicant's Mark, or any variations thereof.

REQUEST FOR ADMISSION NO. 30:

The dates of first use anywhere set forth in Applicant's Application are accurate.

REQUEST FOR ADMISSION NO. 31:

The dates of first use in commerce set forth in Applicant's Application are accurate.

REQUEST FOR ADMISSION NO. 32:

The documents produced in response to Opposer's First Requests For Production Of Documents And Things are authentic for purposes of admission into evidence during the testimony period in this opposition proceeding.

REQUEST FOR ADMISSION NO. 33:

Applicant's Services are marketed or promoted on the Internet.

REQUEST FOR ADMISSION NO. 34:

Applicant's Services are offered over the Internet.

REQUEST FOR ADMISSION NO. 35:

The web pages attached hereto as Exhibit 1 show Applicant's website.

REQUEST FOR ADMISSION NO. 36:

The web pages attached hereto as Exhibit 2 show Applicant's website.

REQUEST FOR ADMISSION NO. 37:

Applicant's Services are marketed towards individuals who are seeking financial and real estate investment services.

REQUEST FOR ADMISSION NO. 38:

Applicant's Services are competitive with Opposer's services as set forth in the Notice of Opposition.

REQUEST FOR ADMISSION NO. 39:

Applicant has not offered its services outside of the state of California on or prior to November 11, 2002.

REQUEST FOR ADMISSION NO. 40:

Applicant has not rendered its services outside of the state of California on or prior to November 11, 2002.

REQUEST FOR ADMISSION NO. 41:

Applicant's Mark contains the entirety of Opposer's mark BUILDING RELATIONSHIPS as set forth in U.S. Trademark Application Serial No. 75/604,636.

REQUEST FOR ADMISSION NO. 42:

Both Applicant's Mark and the mark covered by U.S. Trademark Application Serial No. 75/604,636 contain the wording "BUILDING RELATIONSHIPS."

REQUEST FOR ADMISSION NO. 43:

The wording "BUILDING RELATIONSHIPS" in Applicant's Mark sounds the same as the wording "BUILDING RELATIONSHIPS" in the mark covered by U.S. Trademark Application Serial No. 75/604,636.

REQUEST FOR ADMISSION NO. 44:

The wording "BUILDING RELATIONSHIPS" in Applicant's Mark has the same appearance as the wording "BUILDING RELATIONSHIPS" in the mark covered by U.S. Trademark Application Serial No. 75/604,636.

REQUEST FOR ADMISSION NO. 45:

The wording "BUILDING RELATIONSHIPS" in Applicant's Mark has the same connotation as the wording "BUILDING RELATIONSHIPS" in the mark covered by U.S. Trademark Application Serial No. 75/604,636.

REQUEST FOR ADMISSION NO. 46:

The wording "BUILDING RELATIONSHIPS" in Applicant's Mark has the same commercial impression as the wording "BUILDING RELATIONSHIPS" in the mark covered by U.S. Trademark Application Serial No. 75/604,636.

REQUEST FOR ADMISSION NO. 47:

Applicant's Eleventh Affirmative Defense as set forth in Applicant's Answer to the Notice of Opposition is true.

REQUEST FOR ADMISSION NO. 48:

Applicant has no evidence establishing that Opposer is "guilty of unclean hands" as asserted in Applicant's Sixth Affirmative Defense set forth in Applicant's Answer to the Notice of Opposition.

REQUEST FOR ADMISSION NO. 49:

The filing date of Opposer's U.S. Trademark Application Serial No. 75/604,636, predates the filing date of Applicant's Application.

REQUEST FOR ADMISSION NO. 50:

The filing date of Opposer's U.S. Trademark Application Serial No. 75/604,636, predates the alleged date of first use as set forth in Applicant's Application.

REQUEST FOR ADMISSION NO. 51:

The filing date of Opposer's U.S. Trademark Application Serial No. 75/604,636, predates the alleged date of first use in commerce as set forth in Applicant's Application.

REQUEST FOR ADMISSION NO. 52:

Applicant did not advertise, promote or market any products or services in association with Applicant's Mark in the United States prior to December 14, 1998.

REQUEST FOR ADMISSION NO. 53:

Applicant did not offer for sale any products or services in association with Applicant's Mark in the United States prior to December 14, 1998.

REQUEST FOR ADMISSION NO. 54:

Applicant did not sell any products or services in association with Applicant's Mark in the United States prior to December 14, 1998.

REQUEST FOR ADMISSION NO. 55:

Applicant did not advertise, promote or market any products or services in association with Applicant's Mark in the United States prior to 1999.

REQUEST FOR ADMISSION NO. 56:

Applicant did not offer for sale any products or services in association with Applicant's Mark in the United States prior to 1999.

REQUEST FOR ADMISSION NO. 57:

Applicant did not sell any products or services in association with Applicant's Mark in the

United States prior to 2000.

REQUEST FOR ADMISSION NO. 58:

Applicant did not advertise, promote or market any products or services in association with Applicant's Mark in the United States prior to 2000.

REQUEST FOR ADMISSION NO. 59:

Applicant did not offer for sale any products or services in association with Applicant's Mark in the United States prior to 2000.

REQUEST FOR ADMISSION NO. 60:

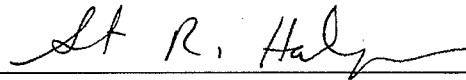
Applicant did not sell any products or services in association with Applicant's Mark in the United States prior to December 14, 1999.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: May 27, 2004

By: _____

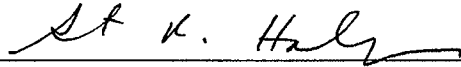


Stacey R. Halpern
Jonathan A. Hyman
2040 Main Street, 14th Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for Opposer,
NCE Resources Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS NOS. 1-60** upon Applicant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, and by sending one copy thereof via Federal Express 2-Day Delivery, U.S. Airbill No. 8467 9564 3138, on May 27, 2004, addressed as follows:

Don B. Finkelstein, Esq.
LAW OFFICES OF DON FINKELSTEIN
3858 Carson Street, Suite 216
Torrance, CA 90503



Stacey R. Halpern

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052704

Who we are

What we do

Our process

Our market

Our team

Contacts



Resmark > What we do > Investment products

Our focus

Housing and the economy

Investment products

Project locations

Resmark specializes in the following investment products:

1. Land financing (all-equity structure, no debt)
2. Acquisition & Development financing (joint venture or subordinated debt structure)
3. Housing financing (all-equity structure, no debt)
4. Housing financing (joint venture or subordinated debt structure)
5. Unentitled land financing (joint venture or subordinated debt structure)
6. Entity-level financing (direct investment in operating company)

EXHIBIT 1, PAGE 15 OF 47

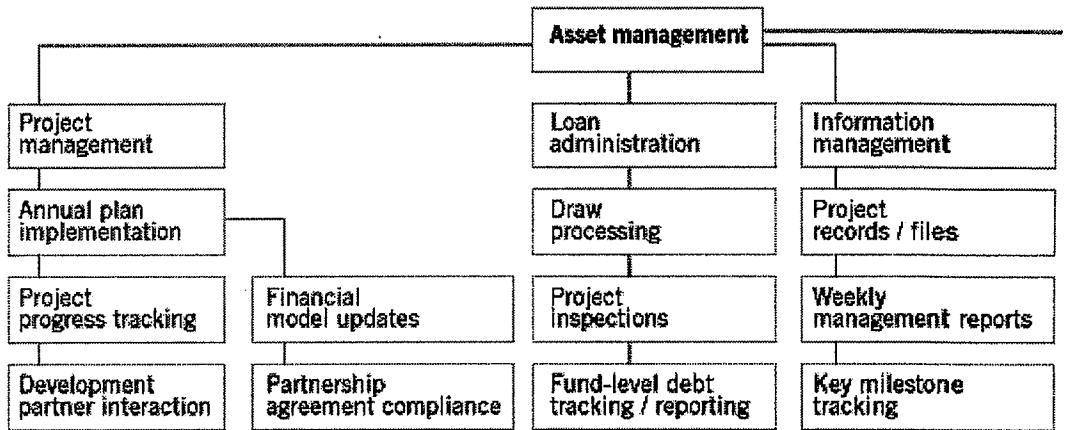
EXHIBIT 1, PAGE 1 OF 1



Resmark > Our process > Asset management

Origination
Underwriting
Asset management
Communication

Manage investments proactively to better ensure expected returns are achieved



Resmark's asset management team focuses on the key project details that drive investment returns. These return drivers include:

- the timely start of construction
- sales velocity
- cost controls
- unit closings

Resmark's "hands-on" approach better ensures that developer/builder partners proactively anticipate and resolve issues that might otherwise have an adverse impact on project business plans.

EXHIBIT 1 PAGE 6 OF 47

EXHIBIT 2 PAGE 1 OF 1

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

NCE RESOURCES GROUP, INC.,	)	Opposition No.: 91159046
)	
Opposer,	)	Mark: INVESTING IN BUILDING
	)	RELATIONSHIPS
v.)	
	)	Serial No.: 76/458,995
RESMARK EQUITY PARTNERS, LLC,)	
)	
Applicant.)	
_____)	

OPPOSER’S FIRST SET OF REQUESTS FOR

PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-64

Pursuant to Rule 2.120(d) of the U.S. Patent and Trademark Office’s (“PTO”) Trademark Rules of Practice, 37 C.F.R. § 2.120(d), and Rule 34 of the Federal Rules of Civil Procedure (“FRCP”), Opposer, NCE Resources Group, Inc., hereby requests that Applicant, Resmark Equity Partners, LLC, produce the following documents and things for inspection and copying at the offices of Knobbe, Martens, Olson & Bear, 2040 Main Street, Fourteenth Floor, Irvine, California 92614, or such other place as may be agreed between the parties, within thirty (30) days of service hereof in accordance with Rule 2.120(a) of the PTO’s Trademark Rules of Practice and FRCP 34. Alternatively, Applicant may fulfill their obligation to produce the requested documents by attaching complete and legible copies of the original documents to its written responses to Opposer’s First Requests for Production of Documents and Things (“Document Requests”) prior to the service of the same upon Opposer. Applicant may be

EXHIBIT 1, PAGE 17 OF 47

requested to supplement its responses from time to time as appropriate in accordance with FRCP 26(e).

DEFINITIONS

1. The term “Opposer” shall mean NCE Resources Group, Inc., and any present or former owners, officers, directors, employees, servants, agents, attorneys or other representatives acting on its behalf, and shall include any parent corporation, or wholly-owned or partially-owned subsidiary, predecessor, successor, or affiliate either within the United States or a foreign country.

2. The term “Applicant” shall mean Resmark Equity Partners, LLC, and any present or former owners, officers, directors, employees, servants, agents, attorneys or other representatives acting on its behalf, and shall include any parent corporation, or wholly-owned or partially-owned subsidiary, predecessor, successor, or affiliate either within the United States or a foreign country, including, but not limited to, Olympic Realty Advisors II, LLC.

3. The term “you” shall mean the party or person to whom the Document Request is propounded, all agents, servants, attorneys, and all other representatives, and persons over whom the person or party to whom the Document Request is propounded has the right to or does control or direct any activities.

4. The term “document” shall mean the original and all copies (whether or not different from the original because of notes made on or attached to each copy or otherwise), including but not limited to written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, such as (by way of example and not by way of limitation) letters, notes, memoranda, summaries, minutes, interoffice communications, invoices, purchase

orders, records, bills, contracts, agreements, catalogs, websites, orders, receipts, drawings or sketches, photographs, tapes or discs capable of being electronically or mechanically read, advertising or promotional literature, operating manuals or instruction bulletins, cables or telegrams, e-mail, microfilm, videotapes, tape or other recordings, test data and reports.

5. The term "thing" shall mean all tangible objects of any type, composition, construction or nature.

6. A document or thing "relating" or which "relates" to any given subject means any document or thing that comprises, constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including, without limitation, documents concerning the preparation of other documents.

7. The term "person" shall include both natural persons and corporate or other business entities, whether or not in the employ of Applicant, and the acts and knowledge of a person are defined to include the acts and knowledge of that person's directors, officers, members, employees, representatives, agents and attorneys.

8. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

9. The terms "trademark" or "mark" shall include trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

10. The terms "all" and "each" shall be construed to include all and each.

11. The term "and" shall be construed to include "or" and *vice versa*, and shall be the logical equivalent of "and/or."

12. The use of the singular form of any word also includes the plural and *vice versa*.

13. The wording "Notice of Opposition" shall refer to the Notice of Opposition filed

with the Trademark Trial and Appeal Board ("TTAB") on January 13, 2004 and assigned Opposition No. 91159046.

14. The wording "Applicant's Mark" shall mean the mark that is the subject of U.S. Trademark Application Serial Number 76/458,995.

15. The wording "Applicant's Services" shall mean the services identified in U.S. Trademark Application Serial Number 76/458,995.

16. The wording "Opposer's Marks" shall mean and refer to all marks relied on by Opposer in the Notice of Opposition.

GENERAL INSTRUCTIONS

1. If you claim that any document requested or any portion thereof is privileged, please provide all information on such document falling within the scope of the Document Request which is not privileged, and identify with sufficient particularity for purposes of a Motion to Compel, each item, document or thing, separately, with respect to which you claim a privilege, and state:

- a) the basis on which the privilege is claimed;
- b) the author of the document;
- c) each individual or other person to whom the document or copy thereof was sent or otherwise disclosed;
- d) the date of the document; and
- e) the general subject matter of the document.

You are not requested to provide privileged documents or portions thereof for which you claim privilege, but only to identify such information, document or thing.

2. Applicant's responses to the following Document Requests are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the FRCP.

3. If any document which you would have produced in response to any Document Request was, but is no longer, in your present possession or subject to your control, or is no longer in existence, please state whether any such document is:

- a) missing or lost;
- b) destroyed;
- c) transferred to others; and
- d) otherwise disposed of and, in any such instance, set forth the surrounding circumstances in any authorization for such disposition and state the approximate date of any such disposition, and, if known, state also the present location and custodian of such document.

4. The documents produced pursuant to these Document Requests shall be separately produced for each paragraph of the Documents Requests or, in the alternative, shall be identified as complying with the particular paragraph(s) of the Document Requests to which they are responsive.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

REQUEST FOR PRODUCTION NO. 1:

All documents and things identified in response to Opposer's First Set of Interrogatories, segregated by Interrogatory number.

REQUEST FOR PRODUCTION NO. 2:

All documents and things consulted in preparing responses to Opposer's First Set of

Interrogatories, segregated by Interrogatory number.

REQUEST FOR PRODUCTION NO. 3:

Representative samples of all documents and things referring or relating to Applicant's selection, adoption, development, or creation of Applicant's Mark, including, but not limited to, invoices, advertisements in any media, promotional materials in any media, brochures, catalogs, labels, tags, packaging, containers, point-of-sale displays, or websites, produced by or on behalf of Applicant.

REQUEST FOR PRODUCTION NO. 4:

Representative samples of all documents and things referring or relating to any variations of Applicant's Mark and/or the goods and/or services upon which such variations were used, or on which Applicant plans to use Applicant's Mark, including, but not limited to, invoices, advertisements in any media, promotional materials including email advertisements and promotions, catalogs, brochures, tags, labels, point-of-sale displays, or websites, produced by or on behalf of Applicant.

REQUEST FOR PRODUCTION NO. 5:

Representative samples of all documents and things referring or relating to Applicant's current use of Applicant's Mark in connection with Applicant's Services, including, but not limited to, invoices, advertisements in any media, promotional materials including email advertisements and promotions, catalogs, brochures, tags, labels, point-of-sale displays, or websites, produced by or on behalf of Applicant.

REQUEST FOR PRODUCTION NO. 6:

All documents and things sufficient to identify each person who participated in the adoption, development, creation, or selection of Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 7:

All documents and things sufficient to identify each mark considered by Applicant as an alternate mark to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 8:

Representative samples of all documents and things referring or relating to Applicant's past use, current use, or plans for future use of Applicant's Mark in connection with any goods or services.

REQUEST FOR PRODUCTION NO. 9:

All documents and things concerning any search, business, legal or other opinions regarding any mark consisting of or including the wording BUILDING RELATIONSHIPS, or any variations thereof.

REQUEST FOR PRODUCTION NO. 10:

All documents and things concerning any inquiry or investigation made by or on behalf of Applicant with respect to any reference noted on each trademark search.

REQUEST FOR PRODUCTION NO. 11:

All documents and things concerning any opinion regarding Applicant's right to use Applicant's Mark.

REQUEST FOR PRODUCTION NO. 12:

All documents and things sufficient to identify all goods and/or services Applicant offers or intends to offer under Applicant's Mark, or any variations thereof including:

- a) The nature and intended use of the products and/or services;
- b) The projected date and nature of the first use of Applicant's Mark, or any variations thereof, for each of the products and/or services;

- c) The projected date and nature of the first use of Applicant's Mark, or any variations thereof, in interstate commerce;
- d) The present stage of development of each product and/or service;
- e) The steps that have been taken toward the exploitation of Applicant's Mark, or any variations thereof, in connection with each product and/or service; and
- f) Your intent to use Applicant's Mark, or any variations thereof, in connection with each product and/or service.

REQUEST FOR PRODUCTION NO. 13:

All documents and things sufficient to identify the period or periods of use of Applicant's Mark, or any variations thereof, since the date of first use.

REQUEST FOR PRODUCTION NO. 14:

Representative samples of all invoices, sales reports, or other records concerning any sales or offerings of goods and/or services to any person or entity under Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 15:

All documents and things, including financial, accounting and corporate records concerning:

- a) your total income from the sale or sponsorship of goods and/or services sold under Applicant's Mark annually; and
- b) your projected income from the sale or sponsorship of goods and/or services sold under Applicant's Mark.

REQUEST FOR PRODUCTION NO. 16:

All documents and things, including financial, accounting and corporate records concerning:

- a) the total amount spent on sponsorships, promotions, or advertising Applicant's Mark; and
- b) the projected total amount spent on sponsorships, promotions, or advertising Applicant's Mark.

REQUEST FOR PRODUCTION NO. 17:

All documents and things sufficient to establish the date of first use in commerce of Applicant's Mark, or any variations thereof, in connection with each good and/or service rendered under Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 18:

All documents and thing sufficient to show how Applicant uses or intends to use Applicant's Mark, or any variations thereof, including, but not limited to: advertising and advertising mockups and proposals, promotional materials including emails and websites, brochures, forms, letterhead, membership materials, purchase orders, press and/or media kits, trade show displays, and promotional goods.

REQUEST FOR PRODUCTION NO. 19:

All documents and things sufficient to identify each channel of trade or distribution through which Applicant markets or intends to market its goods and/or services under Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 20:

All documents and things sufficient to identify each type of media or publication through

which Applicant advertises and promotes or intends to advertise and promote goods and/or services under Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 21:

All documents and things sufficient to identify each type of sponsorship through which Applicant advertises and promotes or intends to advertise and promote goods and/or services under Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 22:

Representative samples of all documents and things relating or referring to, or tending to show, the amount of money spent by any authorized user of Applicant's Mark for promotional activities or advertisements for Applicant's Mark.

REQUEST FOR PRODUCTION NO. 23:

All documents and things concerning, relating, or referring to the name change from Olympic Realty Advisors II, LLC to Resmark Equity Partners, LLC.

REQUEST FOR PRODUCTION NO. 24:

All documents and things concerning business plans, including but not limited to, marketing plans, advertising plans, and business forecasts, for Applicant's Services in connection with Applicant's Mark.

REQUEST FOR PRODUCTION NO. 25:

All documents and things concerning any efforts to enforce the rights in Applicant's Mark against any third persons.

REQUEST FOR PRODUCTION NO. 26:

All documents and things relating or referring to, or showing ownership of any claimed predecessor-in-title to Applicant's Mark.

REQUEST FOR PRODUCTION NO. 27:

All documents and things that refer or relate to any plans by Applicant to expand use of Applicant's Mark, or any variations thereof, or sales or distribution of the goods and/or services, including but not limited to, expansion of marketing lines, channels of distribution, the number of products or services in connection with which Applicant's Mark is used, the customer base or geographical areas served.

REQUEST FOR PRODUCTION NO. 28:

Representative samples of all documents and things relating or referring to, or showing how Applicant's Mark has been and is being advertised or promoted since the date of its initial adoption to the present, including internal memorandums, brochures, flyers, newspaper articles, advertisements (both print and electronic versions), magazine or trade journal articles, and radio or television advertisements.

REQUEST FOR PRODUCTION NO. 29:

Representative samples of documents referring or relating to, or tending to show any current or anticipated advertisements or promotions of goods and/or services in connection with Applicant's Mark, including internal memorandums, brochures, flyers, newspaper articles, advertisements (both print and electronic versions), magazine or trade journal articles, and radio or television advertisements.

REQUEST FOR PRODUCTION NO. 30:

All documents and things sufficient to identify each trade and/or professional association through which Applicant promotes or intends to promote its goods and/or services under Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 31:

All documents and things which support Applicant's allegations in its Answer to the Notice of Opposition.

REQUEST FOR PRODUCTION NO. 32:

All documents and things that support your claim that there is not a likelihood of confusion between Opposer's Marks and Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 33:

All documents and things that support each of the Affirmative Defenses set forth in Applicant's Answer to the Notice of Opposition.

REQUEST FOR PRODUCTION NO. 34:

All documents and things referring or relating to any trade shows attended by Applicant, or proposed to be attended by Applicant, where goods and services provided under Applicant's Mark, or any variations thereof, were sold, offered, advertised or promoted.

REQUEST FOR PRODUCTION NO. 35:

All documents and things sufficient to identify each class of persons, including but not limited to, gender, age, ethnicity, and socioeconomic status, who purchase Applicant's goods and/or services provided under Applicant's Mark.

REQUEST FOR PRODUCTION NO. 36:

All documents sufficient to identify each public relations firm, advertising agency, and marketing firm that has been engaged to advertise or promote Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 37:

All communications between Applicant and any public relations firm, advertising agency,

and marketing firm that has been engaged to advertise or promote Applicant's goods and/or services.

REQUEST FOR PRODUCTION NO. 38:

Each press release issued by or on behalf of Applicant which refers to Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 39:

Each unsolicited press mention, article or other story relating to Applicant and/or Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 40:

All advertisements in any magazines, newspapers or other printed publications, relating to Applicant and/or Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 41:

All documents and things sufficient to identify the specific geographic area(s) within which Applicant has provided goods and/or services under Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 42:

All documents and things sufficient to identify the specific geographic areas within which Applicant has promoted goods and/or services under Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 43:

All documents and things concerning the marketing, advertisement, and/or promotion of Applicant's goods and/or services, including any customer lists, or other materials identifying actual or prospective clients and customers.

REQUEST FOR PRODUCTION NO. 44:

All documents sufficient to identify the approximate annual sales in both units and dollars

of all goods and/or services offered in connection with Applicant's Mark, or any variations thereof, from Applicant's first use until present.

REQUEST FOR PRODUCTION NO. 45:

All documents and things relating or referring to any discontinuation of use of Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 46:

All documents and things in Applicant's possession, custody or control concerning, referring, or relating to Applicant's first awareness of any of Opposer's Marks.

REQUEST FOR PRODUCTION NO. 47:

All documents and things in Applicant's possession, custody, or control which refer or relate to Opposer, any of Opposer's Marks, or to any good and/or service of Opposer, including but not limited to Opposer's goods and/or services rendered under Opposer's Marks.

REQUEST FOR PRODUCTION NO. 48:

All documents and things evidencing, referring or relating to third-party use of Applicant's Mark, or any variations thereof, including but not limited to, authorizations, assignments, licenses, agreements, recording contracts, performance agreements and manufacturing agreements, whether in draft form or executed.

REQUEST FOR PRODUCTION NO. 49:

All documents and things evidencing, referring or relating to the sale of any goods or services in which the mark BUILDING RELATIONSHIPS, or any variations thereof, was used.

REQUEST FOR PRODUCTION NO. 50:

A copy of each market survey and other research documents, including but not limited to, surveys, market research, polls, tests and focus group studies Applicant has conducted or plans to

conduct, directed to:

- a) Applicant's goods and/or services rendered under Applicant's Mark, or any variations thereof;
- b) Applicant's Mark, or any variations thereof, as perceived by purchasers and potential purchasers;
- c) establishing Applicant's target audience of consumers;
- d) confusion between Applicant's Mark, or any variations thereof, and the mark or name of any other entity; or
- e) possible use in this Opposition proceeding.

REQUEST FOR PRODUCTION NO. 51:

All unsolicited communications to Applicant that refer to Opposer's Marks, or any variations thereof.

REQUEST FOR PRODUCTION NO. 52:

All documents and things concerning any inquiry or investigation made by or on behalf of Applicant, with respect to Opposer's Marks.

REQUEST FOR PRODUCTION NO. 53:

All documents and things which evidence, refer, or relate to any confusion, or the likelihood or possibility of confusion, between Opposer and Applicant, or between the goods and/or services offered, sold, or distributed by Applicant and Opposer, including but not limited to consumer statements, misdirected mail and inquiries as to affiliation.

REQUEST FOR PRODUCTION NO. 54:

All documents and things concerning any complaint or statement by any person about the quality of Applicant's goods and/or services offered under Applicant's Mark.

REQUEST FOR PRODUCTION NO. 55:

All communications intended for Opposer that were received by Applicant.

REQUEST FOR PRODUCTION NO. 56:

All documents and things referring or relating to, or tending to show a disclaimer made by Applicant as to an association with Opposer.

REQUEST FOR PRODUCTION NO. 57:

All documents and things referring or relating to any adversarial proceeding, excluding the present proceeding, involving Applicant's Mark, or any variations thereof, before the TTAB in the United States Patent and Trademark Office, the United States Bureau of Customs, the United States Federal Trade Commission, or any court in the United States.

REQUEST FOR PRODUCTION NO. 58:

All documents and things referring or relating to any raised objections, other than by Opposer, as to Applicant's use or registration of Applicant's Mark, or any variations thereof, by any third party.

REQUEST FOR PRODUCTION NO. 59:

All documents and things referring or relating to any raised objections made by Applicant to the use by others, of marks believed by Applicant to be confusingly similar to Applicant's Mark, or any variations thereof.

REQUEST FOR PRODUCTION NO. 60:

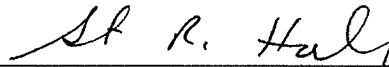
For each expert whose opinion may be relied upon in this proceeding, each document concerning:

- a) any opinions that may be presented in the opposition;
- b) the reason for such opinions;

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-64** upon Applicant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, and by sending one copy thereof via Federal Express 2-Day Delivery, U.S. Airbill No. 8467 9564 3138, on May 27, 2004, addressed as follows:

Don B. Finkelstein, Esq.
LAW OFFICES OF DON FINKELSTEIN
3858 Carson Street, Suite 216
Torrance, CA 90503



Stacey R. Halpern

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052704

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

NCE RESOURCES GROUP, INC.,	)	Opposition No.: 91159046
)	
Opposer,	)	Mark: INVESTING IN BUILDING
	)	RELATIONSHIPS
v.)	
	)	Serial No.: 76/458,995
RESMARK EQUITY PARTNERS, LLC,)	
)	
Applicant.)	
)	

OPPOSER’S FIRST SET OF INTERROGATORIES NOS. 1-36

Pursuant to Rule 2.120(d) of the U.S. Patent and Trademark Office’s (“PTO”) Trademark Rules of Practice, 37 C.F.R. § 2.120(d), and Rule 33 of the Federal Rules of Civil Procedure (“FRCP”), Opposer, NCE Resources Group, Inc., hereby requests that Applicant, Resmark Equity Partners, LLC, answer separately and fully, in writing and under oath, each of the following Interrogatories within thirty (30) days of service hereof in accordance with Rule 2.120(a) of the PTO’s Trademark Rules of Practice and FRCP 33. A party which fails to respond to Interrogatories during the time allowed therefore may be found to have forfeited its right to object to the Interrogatories on their merits. Applicant may be requested to supplement its responses from time to time as appropriate in accordance with FRCP 26(e).

DEFINITIONS

1. The term “Applicant” shall mean Resmark Equity Partners, LLC, and any present or former owners, officers, directors, employees, servants, agents, attorneys or other

representatives acting on its behalf, and shall include any parent corporation, or wholly-owned or partially-owned subsidiary, predecessor, successor, licensee or affiliate either within the United States or a foreign country, including, but not limited to, Olympic Realty Advisors II, LLC.

2. The term "Opposer" shall mean NCE Resources Group, Inc., and any present or former owners, officers, directors, employees, servants, agents, attorneys or other representatives acting on its behalf, and shall include any parent corporation, or wholly-owned or partially-owned subsidiary, predecessor, successor, licensee or affiliate either within the United States or a foreign country.

3. The term "you" shall mean the party or person to whom this Interrogatory is propounded, all agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom the Interrogatory is propounded, has the right to or does control or direct any activities.

4. The term "document" shall mean the original and all copies (whether or not different from the original because of notes made on or attached to each copy or otherwise), including but not limited to written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, such as (by way of example and not by way of limitation) letters, notes, memoranda, summaries, minutes, interoffice communications, invoices, purchase orders, records, bills, contracts, agreements, catalogs, websites, orders, receipts, drawings or sketches, photographs, tapes or discs capable of being electronically or mechanically read, advertising or promotional literature, operating manuals or instruction bulletins, cables or telegrams, e-mail, microfilm, videotapes, tape or other recordings, test data and reports.

5. The term "thing" shall mean all tangible objects of any type, composition, construction or nature.

6. The term "trademark" or "mark" includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. § 1127.

7. The term "person" shall include both natural persons and corporate or other business entities, whether or not in the employ of Applicant, and the acts or knowledge of a person are defined to include the acts or knowledge of that person's directors, officers, members, employees, representatives, agents, and attorneys.

8. The term "concerning" means relating to, referring to, describing, evidencing or constituting.

9. A document or thing "relating or referring" or which "relates" to any given subject means any document or thing that comprises, constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including, without limitation, documents concerning the preparation of other documents.

10. The term "communication(s)" includes the disclosure, transfer or exchange of information by any means, written, verbal, electronic or otherwise.

11. The terms "all" and "each" shall be construed to include all and each.

12. The term "and" shall be construed to include "or" and *vice versa*, and shall be the logical equivalent of "and/or."

13. The use of the singular form of any word also includes the plural and *vice versa*.

14. The term "use" or "used" shall mean and refer to the definition provided under 15 U.S.C. §1127.

15. The wording "Notice of Opposition" shall refer to the Notice of Opposition filed with the Trademark Trial and Appeal Board ("TTAB") on January 13, 2004 and assigned Opposition No. 91159046.

16. The wording "Applicant's Mark" shall mean the mark shown in U.S. Trademark Application Serial Number 76/458,995.

17. The wording "Opposer's Marks" shall mean and refer to all marks relied on by Opposer in the Notice of Opposition.

GENERAL INSTRUCTIONS

1. In multi-part Interrogatories, the separate parts of such Interrogatories are to be read in context of the entire Interrogatory, but each part is to be answered separately.

2. All requests contained in the following Interrogatories to identify a person are to be answered by providing sufficient information to enable the undersigned to contact the person by telephone, mail, and to serve legal documents on such person. If such a person is a natural person, state his or her:

- a) full name;
- b) current business and residence addresses, including telephone numbers;
- c) present employer, occupation and position;
- d) a brief description of the job responsibilities of such person; and
- e) a brief description of the responsibilities of such person with the pertinent organization if the person is other than a natural person by stating:
 - (1) its full name or designation;
 - (2) the legal classification of the entity (e.g. corporation, partnership, etc.), giving the state of incorporation where appropriate;
 - (3) the principal place of business;
 - (4) the current or last known address and telephone number of the

organization; and

- (5) any other information reasonably necessary to permit efficient contact with the organization.

3. If you claim that any information requested is privileged, please provide all information falling within the scope of the Interrogatory which is not privileged, and identify with sufficient particularity for purposes of a Motion to Compel a Response or Production of each item of information, document or thing, separately, with respect to which you claim a privilege, and state:

- a) the basis on which the privilege is claimed;
- b) the author of the document;
- c) each individual or other person to whom the document, or copy thereof, was sent or otherwise disclosed; and
- d) the date of the document.

You are not requested to provide privileged information or information for which you claim privileged, but only to identify such information, document or thing.

4. Applicant's responses to the following Interrogatories are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of FRCP 26(e).

INTERROGATORIES

INTERROGATORY NO. 1:

Identify any and all persons who have the greatest knowledge concerning Applicant's past, present, or plans to use Applicant's Mark.

INTERROGATORY NO. 2:

Describe in detail the circumstances surrounding, and the reasons for, the selection and/or adoption of Applicant's Mark, and identify the person(s) with the most knowledge of the selection of Applicant's Mark.

INTERROGATORY NO. 3:

Identify and describe Applicant's first use of Applicant's Mark, including but not limited to, the dates of first use, first use in intrastate commerce, and first use in interstate commerce; all persons with knowledge of the same, and all documents relating thereto.

INTERROGATORY NO. 4:

Describe in detail all goods and/or services in conjunction with which Applicant's Mark or any variations thereof, has been or is currently being used, or is contemplated to be used, by Applicant or any other authorized user of Applicant's Mark.

INTERROGATORY NO. 5:

With respect to each of the goods and/or services identified in response to Interrogatory No. 4, state the date when Applicant commenced use of Applicant's Mark in connection with each such good and/or service.

INTERROGATORY NO. 6:

With respect to each of the goods and/or services identified in response to Interrogatory No. 4, state the total number of annual revenue, in units and dollars, for each year from inception to the present.

INTERROGATORY NO. 7:

With respect to each of the goods and/or services identified in response to Interrogatory No. 4, state the geographic area by state, county, and region, in which Applicant's Mark, or any

variations thereof, has been used in conjunction therewith.

INTERROGATORY NO. 8:

With respect to each of the goods and/or services identified in response to Interrogatory No. 4, describe in detail the channels of distribution by which the goods and/or services of Applicant reach the ultimate user or consumer.

INTERROGATORY NO. 9:

State the lowest, highest and average price for each good and/or service, or estimated price if such goods or services have not been sold, identified in Interrogatory No. 4 sold or offered by Applicant under Applicant's Mark every year from the year that each such good or service was first sold or offered under Applicant's Mark to the present.

INTERROGATORY NO. 10:

Describe all plans made or steps taken by Applicant to alter or expand the goods and/or services in connection with which Applicant's Mark is used; to alter the channels of trade mentioned in the answer to Interrogatory No. 8; or to sell or offer such items and/or services to purchasers, including, but not limited to, an identification of such goods and/or services.

INTERROGATORY NO. 11:

Describe in detail the manner in which Applicant's Mark, or any variations thereof, is promoted and/or advertised, including but not limited to, all media in which Applicant's Mark, or any variations thereof, appears, how the mark is presented, including but not limited to, any advertisements, brochures, flyers, pamphlets, promotional materials, magazines, articles, or other printed or electronic publications, website or domain names (collectively "Printed and Electronic Materials") and the dates, issues and titles of the Printed and Electronic Materials where advertisements or information appears for goods and/or services provided under Applicant's

Mark.

INTERROGATORY NO. 12:

For each promotional, informational or advertising medium identified in the preceding Interrogatory, state the annual expenditure for advertising and promotion and the provision of information for Applicant's Mark, or any variations thereof, during each year since inception.

INTERROGATORY NO. 13:

Identify any person who has publicly endorsed or promoted the goods and/or services provided under Applicant's Mark.

INTERROGATORY NO. 14:

State the nature of the business conducted by Applicant and a brief business history of Applicant and of all companies related to Applicant.

INTERROGATORY NO. 15:

Identify any variations of Applicant's Mark ever used or contemplated to be used by Applicant or an authorized user, including, but not limited to, any other mark which includes the words BUILDING RELATIONSHIPS and indicate the goods and/or services upon which such variation was used or contemplated to be used.

INTERROGATORY NO. 16:

Describe any period of time when Applicant discontinued use of Applicant's Mark since its initial adoption by Applicant, provide the reasons for such discontinuance, and, if applicable, provide the date and location of any resumption of use and the reason for such resumption of use.

INTERROGATORY NO. 17:

Identify all advertising agencies or persons, public relations agencies or persons, marketing firms, or market research agencies or persons which Applicant has used, participated

with, or cooperated with in advertising, marketing or promoting any goods and/or services offered in connection with Applicant's Mark and indicate the time period(s) during which such activities were conducted and each person that was responsible or consulted.

INTERROGATORY NO. 18:

Describe in detail every search, survey, study, market analysis, or investigation conducted by or on behalf of Applicant in connection with Applicant's Mark, or any variation thereof, including any search of records of the PTO, or of any other records or publications.

INTERROGATORY NO. 19:

Describe in detail all agreements and the parties thereto, which Applicant has entered or is contemplating to enter into, relating to the sale or offering of goods and/or services in connection with Applicant's Mark, or any variations thereof, including, but not limited to, all license agreements.

INTERROGATORY NO. 20:

If Applicant claims the benefit of any use of Applicant's Mark, or any variations thereof, by any predecessor-in-title or licensee, identify the predecessor-in-title or licensee and describe in detail the nature and extent of the predecessor or licensee's use of the mark.

INTERROGATORY NO. 21:

Describe in detail the circumstances under which Applicant has sought to register Applicant's Mark, or any variation thereof, under the laws of any state of the United States or before the PTO including the date of filing and any applicable registration or serial number pertaining thereto.

INTERROGATORY NO. 22:

Describe in detail the circumstances, including the date and person involved, under which

Applicant first acquired knowledge of Opposer's Marks.

INTERROGATORY NO. 23:

Identify and describe all instances of actual or possible confusion, or any reports of such confusion, known to Applicant between Applicant's Mark and Opposer's Marks, including but not limited to, misdirected communications and inquiries as to affiliation, all persons with knowledge thereof, and all documents related thereto.

INTERROGATORY NO. 24:

Describe in detail every instance in which Applicant has ever disclaimed any association with Opposer in connection with the use of Applicant's Mark, or any variation thereof.

INTERROGATORY NO. 25:

Describe in detail any adversarial proceeding (apart from the present proceeding) involving Applicant's Mark or any variations thereof, before the TTAB, the United States Bureau of Customs, the United States Federal Trade Commission, or any court.

INTERROGATORY NO. 26:

Describe in detail the nature of any objection received by Applicant to its use or registration of Applicant's Mark, or any variations thereof, (apart from the present proceeding), and the basis of each objection, the identity from whom it was received, and the date it was received.

INTERROGATORY NO. 27:

Describe in detail the nature of every objection made by Applicant to the use by others of any trademark or service mark believed by Applicant to be confusingly similar to Applicant's Mark, or any variations thereof, including, but without limitation to, the mark objected to, the goods and/or services with which the mark objected to is or was used, the date of the objection

and the identity of the person to whom the objection was made.

INTERROGATORY NO. 28:

Identify any third-party trademarks or service marks known by Applicant which employ Applicant's Mark, or any variations thereof.

INTERROGATORY NO. 29:

Describe the types of distribution channels through which Applicant sells or offers its goods and services under Applicant's Mark.

INTERROGATORY NO. 30:

Identify each person whom Applicant expects to call as a witness to give evidence in this proceeding, and for each such person, state the subject matter and the substance of the facts on which such person is expected to testify; the substance of the facts and opinions to which each expert is expected to testify; and the grounds for each such opinion of each expert.

INTERROGATORY NO. 31:

Identify all third-party registrations, applications, or common law marks upon which Applicant will rely for any purpose in connection with this opposition.

INTERROGATORY NO. 32:

Identify all persons who were consulted or participated in the preparation of the Answer to the Notice of Opposition and the responses to the preceding Interrogatories.

INTERROGATORY NO. 33:

Identify all facts supporting Applicant's contentions in its Answer to the Notice of Opposition.

INTERROGATORY NO. 34:

Identify all facts supporting Applicant's Affirmative Defense as set forth in Applicant's

Answer to the Notice of Opposition.

INTERROGATORY NO. 35:

Identify all facts supporting Applicant's claim that Opposer is "guilty of unclean hands" as asserted in Applicant's Sixth Affirmative Defense as set forth in Applicant's Answer to the Notice of Opposition.

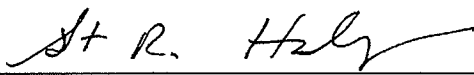
INTERROGATORY NO. 36:

If you contend that the types of services for which you seek registration for Applicant's Mark in Class 36 (including but not limited to "real estate and financial services, namely, providing investment and financial services related to real estate development") differ from Opposer's services offered under Opposer's Marks, explain how they allegedly differ.

Respectfully submitted,

KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: May 27, 2004

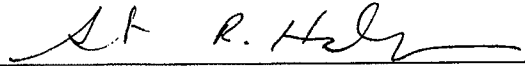
By: 

Stacey R. Halpern
Jonathan A. Hyman
2040 Main Street, 14th Floor
Irvine, CA 92614
(949) 760-0404
Attorneys for Opposer,
NCE Resources Group, Inc.

CERTIFICATE OF SERVICE

I hereby certify that I served a copy of the foregoing **OPPOSER'S FIRST SET OF INTERROGATORIES NOS. 1-36** upon Applicant's counsel by depositing one copy thereof in the United States Mail, first-class postage prepaid, and by sending one copy thereof via Federal Express 2-Day Delivery, U.S. Airbill No. 8467 9564 3138, on May 27, 2004, addressed as follows:

Don B. Finkelstein, Esq.
LAW OFFICES OF DON FINKELSTEIN
3858 Carson Street, Suite 216
Torrance, CA 90503



Stacey R. Halpern

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052704

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

Stacey R. Halpern
949-721-6301
shalpern@kmob.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: NCE 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
619-235-8550

San Francisco
415-954-4114

Los Angeles
310-551-3450

Riverside
951-781-9231

San Luis Obispo
805-547-5580

EXHIBIT 2 PAGE 1 OF 2

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

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061505

SIMMC 35, 01 ZUS 16
SRH/TCB

JJ

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**

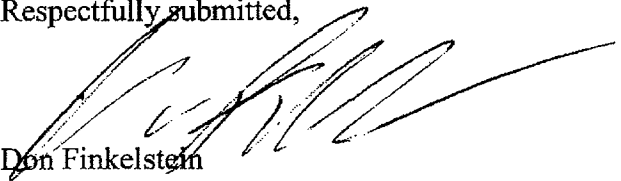
COMES NOW APPLICANT RESMARK EQUITY PARTNERS, LLC and for Response to **OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS NOS. 1 - 60** hereby objects to each, every and all of said **REQUESTS FOR ADMISSIONS NOS. 1 - 60**, and to the purported **DEFINITIONS** and **GENERAL INSTRUCTIONS** set forth therein 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\

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

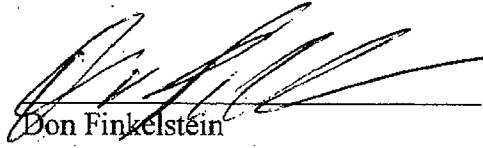
Don B. Finkelstein, Esq.
LAW OFFICES OF DON FINKELSTEIN
3858 Carson Street, Suite 216
Torrance, CA 90503
Phone: (310) 543 0070
Fax: (310) 543 7570
e-mail: BIGFINK@AOL.COM

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

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 PRODUCTION
OF DOCUMENTS NOS. 1 - 64

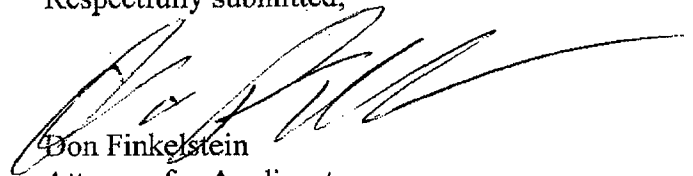
COMES NOW APPLICANT RESMARK EQUITY PARTNERS, LLC and for Response to, **OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS NOS. 1 - 64** hereby objects to each, every and all of said **REQUESTS FOR PRODUCTION OF DOCUMENTS NOS. 1 - 64**, and to the purported DEFINITIONS and GENERAL INSTRUCTIONS set forth therein on the grounds that said **REQUESTS FOR PRODUCTION OF DOCUMENTS NOS. 1 - 64**, Definitions and General Instructions, alone and when considered with Opposer's First Set of Interrogatories 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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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,



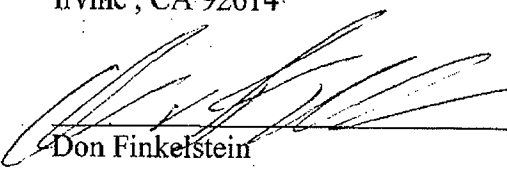
Don Finkelstein
Attorney for Applicant
Date: June 17, 2005

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

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:

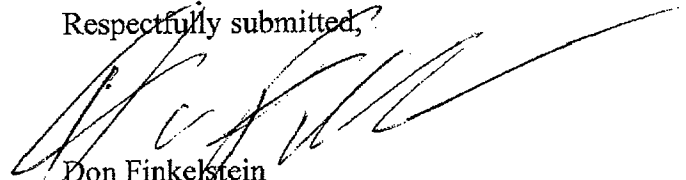
Stacy R. Halpern, Esq.
KNOBBE, MARTENS, OLSON & BEAR, LLP
2040 Main Street, 14th Floor
Irvine , CA 92614


Don Finkelstein

Date: June 17, 2005

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Respectfully submitted,



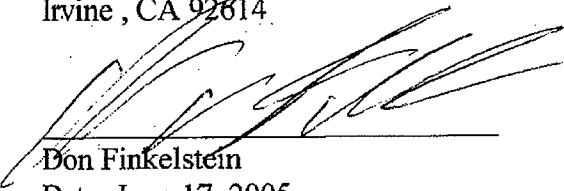
Don Finkelstein
Attorney for Applicant
Date: June 17, 2005

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

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

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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,

EXHIBIT 4 PAGE 1 OF 2

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Mr. Don B. Finkelstein

July 6, 2005

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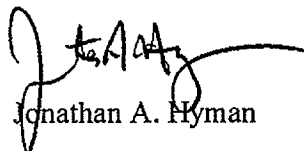
custody, condition, and location of any books, documents, or other tangible things and the identity and location of persons having knowledge of any discoverable matter. . . . Relevant information need not be admissible at the trial if the discovery appears reasonably calculated to lead to the discovery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

EXHIBIT 5 PAGE 1 OF 2

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Mr. Don B. Finkelstein
July 19, 2005
Page -2-

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,

A handwritten signature in cursive script that reads "Stacey R. Halpern/hcb".

Stacey R. Halpern

cc: Kenneth McKay

1819735:sh
071905

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: October 4, 2005

Opposition No. 91159046

NCE RESOURCES GROUP INC.

v.

RESMARK EQUITY PARTNERS, LLC

Peter Cataldo, Interlocutory Attorney

This case now comes before the Board for consideration of opposer's motion to compel, to test the sufficiency of applicant's responses to admission requests, and to allow opposer additional time in which to serve follow-up discovery.¹ Applicant filed an untimely brief in response thereto along with a cross-motion to reopen discovery. See Trademark Rule 2.127(a). Nonetheless, in order to come to a more complete determination of the parties' discovery dispute, the Board will exercise its discretion to consider applicant's untimely response.² In addition, opposer filed

¹ Opposer's motion to suspend the instant proceeding pending the Board's disposition of the foregoing was granted in a Board order issued on July 26, 2005.

² Accordingly, opposer's motion to strike applicant's response and cross-motion is denied. Further, opposer's request that the Board order applicant to aver that its discovery responses were mailed on the date asserted therein will be given no consideration. However, applicant is reminded that failure to adhere to applicable rules of procedure and deadlines in this proceeding may result in such matters being decided by default.

a reply brief which the Board has entertained.³

The Board has carefully considered the arguments of both parties with regard to the above motions. However, an exhaustive review of those arguments would only serve to delay the Board's disposition of these matters.

Motion to Compel

The Board turns to opposer's motion to compel.⁴

In this instance, the Board finds that the motion to compel fails to comply with the special requirements of Trademark Rule 2.120(e) which provides, in part, as follows:

The motion shall include a copy of the request for designation or of the relevant portion of the discovery deposition; or a copy of the interrogatory with any answer or objection that was made; or a copy of the request for production, any proffer of production or objection to production in response to the request, and a list and brief description of the documents or things that were not produced for inspection and copying. The motion must be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement.

See Trademark Rule 2.120(e). See also *Giant Food, Inc. v. Standard Terry Mills, Inc.*, 231 USPQ 626 (TTAB 1986); and

³ Consideration of reply briefs is discretionary on the part of the Board. See Trademark Rule 2.127(a).

⁴ As a preliminary matter, the motion is timely inasmuch as it was filed prior to the opening of opposer's first testimony period. See Trademark Rule 2.120(e).

Envirotech Corp. v. Compagnie Des Lampes, 219 USPQ 448 (TTAB 1979).

In this case, opposer fails to state in its motion to compel that its counsel has made a good faith effort to resolve with applicant's attorney the instant discovery dispute and has been unable to reach agreement. In addition, opposer fails to include with its motion to compel copies of either the discovery responses at issue or its second and third "meet and confer letters" referenced therein.⁵ As such, opposer's motion to compel is procedurally defective.

On the other hand, the Board finds that by making the blanket assertion that all of opposer's discovery requests are "overly broad, burdensome and harassing, are outside the scope of the issue here and not submitted in good faith," applicant has disregarded its discovery obligations in this proceeding.

It is clear from the total number of discovery requests in dispute that the parties have failed to make a substantial effort to resolve by agreement the issues raised in opposer's motion to compel. See Trademark Rule 2.120. At least some of the problems herein should be resolved without Board intervention, and the Board suggests that the

⁵ It is noted that opposer enclosed the referenced discovery responses and "meet and confer letters" with its reply brief.

parties make a greater effort to avoid or resolve such controversies.

In view of the foregoing, opposer's motion to compel is denied without prejudice.

Motion to Test Sufficiency of Admissions

With regard to opposer's motion to test the sufficiency of applicant's responses to its admission requests, the Board again finds that opposer has not satisfied the special requirements of Trademark Rule 2.120(h), which provides, in part, as follows:

The motion shall include a copy of the request for admission and any exhibits thereto and of the answer or objection. The motion must be supported by a written statement from the moving party that such party or the attorney therefor has made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion and has been unable to reach agreement.

See Trademark Rule 2.120(h).

In this case, opposer fails to include either the required statement concerning its good faith effort to resolve the issues under consideration or a copy of applicant's answers to its admission requests. As such, opposer's motion to test the sufficiency of applicant's admission responses is procedurally defective. In addition, the Board again finds that applicant's blanket objections to opposer's admission requests indicate that applicant has disregarded its discovery obligations in this proceeding.

In view of the foregoing, and in accordance with the above analysis regarding opposer's motion to compel, opposer's motion to test the sufficiency of applicant's answers to its admission requests is denied without prejudice.

Motion to Extend Time for Opposer's Follow-Up Discovery

Based upon the showing made therein, opposer's motion for additional time in which to conduct follow-up discovery is granted to the extent that the close of the discovery period is reset at the end of this order.⁶

In view thereof, applicant's cross-motion to reopen discovery is moot.

Discovery Reminders

The parties are reminded that the purpose of discovery is to advance the case so that it may proceed in an orderly manner within reasonable time constraints.⁷ To this end, both parties must adhere to the strictures set forth in *Sentrol, Inc. v. Sentex Systems, Inc.*, 231 USPQ 666 (TTAB 1986), and repeated below:

[E]ach party and its attorney has a duty not only to make a good faith effort to satisfy the discovery needs of its opponent but also to make a good faith effort to seek only such discovery as is proper and relevant to the specific issues involved

⁶ Opposer's request that discovery be extended solely for opposer is denied.

⁷ The parties are directed to carefully review TBMP §414 (2d ed. rev. 2004) for the discoverability of a variety of matters of relevance to this proceeding.

in the case. Moreover, where the parties disagree as to the propriety of certain requests for discovery, they are under an obligation to get together and attempt in good faith to resolve their differences and to present to the Board for resolution only those remaining requests for discovery, if any, upon which they have been unable, despite their best efforts, to reach an agreement. Inasmuch as the Board has neither the time nor the personnel to handle motions to compel involving substantial numbers of requests for discovery which require tedious examination, it is generally the policy of the Board to intervene in disputes concerning discovery, by determining motions to compel, only where it is clear that the parties have in fact followed the aforesaid process and have narrowed the amount of disputed requests for discovery, if any, down to a reasonable number.

The parties are directed to work together to resolve their discovery problems, in the spirit of good faith and cooperation which is required of all litigants in Board proceedings.

The parties are reminded of their duty to supplement discovery responses in proceedings before the Board in accordance with Fed. R. Civ. P. 26(e)(2). See Trademark Rule 2.116(a), and *"Effect of December 1, 1993 Amendments to the Federal Rules of Civil Procedure on Trademark Trial and Appeal Board Inter Partes Proceedings,"* 1159 TMOG 14 (February 1, 1994). Under that rule, a party which has responded to a request for discovery with a response is under a duty to supplement or correct the response to include information thereafter acquired under the particular circumstances specified in paragraph (e)(2).

The parties are cautioned that if proper discoverable matter is withheld during discovery, the withholding party may be precluded from relying on such information and from adducing testimony with regard thereto during its testimony period. See *Shoe Factory Supplies Co. v. Thermal Engineering Company*, 207 USPQ 517 (TTAB 1980); and *Presto Products Inc. v. Nice-Pak Products Inc.*, 9 USPQ2d 1895, at fn.5 (TTAB 1988).

Protective Order

The Board published in the Official Gazette of June 20, 2000 a standard protective order that may be imposed in an appropriate situation. In order to facilitate the orderly completion of discovery in this proceeding, it is adjudged appropriate for the standard Board protective order to be imposed herein, and accordingly, an executed order is attached.

The parties are advised that only confidential or trade secret information should be filed pursuant to a stipulated protective agreement. Such an agreement may not be used as a means of circumventing paragraphs (d) and (e) of Trademark Rule 2.27, which provide, in essence, that the file of a published application or issued registration, and all proceedings relating thereto, should otherwise be available for public inspection.

Dates Reset

Trial dates, beginning with the close of discovery, are reset as indicated below. The parties are allowed thirty days from the mailing date of this order in which to serve responses to any outstanding discovery requests.⁸

Discovery period to close: January 31, 2006

Testimony period for party in
position of plaintiff to close: May 1, 2006
(open for thirty days)

Testimony period for party in
position of defendant to close: June 30, 2006
(open for thirty days)

Rebuttal testimony period to close: August 14, 2006
(open for fifteen days)

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

⁸ The parties must note that this is not an order compelling discovery. A party seeking an order compelling discovery must file a motion to compel in accordance with Trademark Rule 2.120(e). Thus, the Board will not entertain a motion for discovery sanctions under Trademark Rule 2.120(g) based upon a party's failure to comply with the above provision.

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November 16, 2005

VIA ELECTRONIC MAIL AND U.S. MAIL

OFFER OF COMPROMISE PURSUANT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE

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

Re: U.S. Service Mark Opposition
Mark: INVESTING IN BUILDING RELATIONSHIPS
Opposition No.: 91159046
Your Client: Resmark Equity Partners, LLC
Our Reference No.: SIMMC35.01ZUS16

Dear Don:

This letter is further to our telephone discussion on November 14, 2005, regarding your client's revised responses to the outstanding discovery requests. During our conversation, you informed us that you have not completed your client's revised responses to the outstanding discovery requests and refused to give us a time frame for when you would provide them to us. As you are aware, pursuant to the Trademark Trial and Appeal Board's October 4, 2005 Order, your client had thirty (30) days to provide proper responses to our client's discovery requests without blanket objections. Thus, your client's responses are past due. Please provide us with your client's responses or advise us immediately as to when we can expect them.

During our conversation, you raised the issue of settlement and that you wanted a comment on a proposal you had made that you said we found unacceptable. As you may recall, the last response you provided us with respect to the proposed settlement was on August 25, 2004. We provided you with a response addressing your proposals/concerns in our letter of October 22, 2004. To date, you have not provided us with a response regarding our letter of October 22, 2004. As you were not able to identify which proposal you wanted our response to during our conversation the other day, and as it has been well over a year since your last substantive communication regarding settlement, we request that you identify which proposal/issue is of concern so we can clearly deal with it.

EXHIBIT 7 PAGE 1 OF 2

Knobbe Martens Olson & Bear LLP

Mr. Don B. Finkelstein
July 19, 2005
Page -2-

In light of your previous long delays in providing us with your client's responses regarding settlement, we wish to advise you that our client is not willing to suspend the opposition or extend any deadlines based on any settlement discussions occurring at this time. Thus, you should not try to use the fact that the parties are exploring settlement as a basis for shirking your client's discovery obligations.

We look forward to hearing from you shortly and receiving your client's revised responses to the outstanding discovery requests.

Sincerely,


Stacey R. Halpern

cc: Kenneth McKay
Jonathan A. Hyman

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111605

LAW OFFICES

DON B. FINKELSTEIN ESQ.

ATTORNEYS AT LAW
PATENT LAWYERS

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OFFER OF COMPROMISE OR SETTLEMENT

FRE 408

December 2, 2005

Stacy R. Halpern, Esq.
Knobbe Martens Olson & Bear LL
2040 Main Street
Fourteenth Floor
Irvine, CA 92614

Re: TC1135: NCE RESOURCES GROUP, INC. v. RESMARK EQUITY PARTNERS,
LLC

Dear Ms. Halpern:

I am enclosing herewith a copy of my comments of August 25, 2004 with regard to your proposed Agreement of May 27, 2004 in which I have noted the changes desired by Resmark. You responded with your letter of October 22, 2004, copy enclosed. In your response, you repeated the same terms to which Resmark had objected and made comments. I repeat what I mentioned in my August 25, 2004 letter: "Each party is using the marks in the fields they have chosen and there does not appear to be any overlap." This is clearly shown by the changes you desire in the identification of the services in Resmark's application. From these changes **you requested**, it appears that NCE is content with Resmark using its mark in connection with any service except the excluded services.

It is suggested that, if NCE is interested in settling this matter, you review my letter of August 25, 2004 and the comments made therein. Resmark's field of activities in which it uses its mark is in "for sale" or "for rent" residential properties, commercial properties such as office, industrial or retail properties, etc. and includes capital raising activities. These are activities in which NCE is not engaged.. Resmark is not engaged in activities providing investment and financial services related to real estate development associated with oil and gas industries, utilities, mining and metal industries.

Very truly yours,


Don Finkelstein

DBF/cc

enc.

EXHIBIT 8, PAGE 1 OF 1

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December 9, 2005

VIA ELECTRONIC MAIL AND U.S. MAIL

OFFER OF COMPROMISE PURSUANT TO RULE 408 OF THE FEDERAL RULES OF EVIDENCE

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

Re: U.S. Service Mark Opposition
Mark: INVESTING IN BUILDING RELATIONSHIPS
Opposition No.: 91159046
Your Client: Resmark Equity Partners, LLC
Our Reference No.: SIMMC35.01ZUS16

Dear Don:

This letter is further to your letter of December 2, 2005, regarding the proposed settlement and your telephone conversation of November 30, 2005 with Jonathan Hyman.

As you and Jonathan discussed during the telephone conversation, there appears to be a discrepancy between the services you believe are included in NCE Resource Group, Inc.'s ("NCE") pending application and the services that are actually included in the application. For clarification, the recitation of services for Class 36 as set forth in NCE's U.S. Service Mark Application Serial No. 75/604,636 is as follows (we have bolded the semicolons in the recitation for ease of reference):

FINANCIAL INVESTMENT IN THE FIELD OF REAL ESTATE;

FINANCIAL INVESTMENT IN THE FIELD OF UTILITIES;

**INVESTMENT SERVICES, NAMELY, INVESTMENT MANAGEMENT
RELATING TO MINING AND METALS AND OIL AND GAS
EXPLORATION, DEVELOPMENT AND PRODUCTION**

As you can see, the services "financial investment in the field of real estate" and "financial investment in the field of utilities" are **not** modified by the remaining portion of the recitation. In other words, only the wording "investment services" is modified by "investment management relating to mining and metals and oil and gas exploration, development and production."

EXHIBIT 9, PAGE 1 OF 3

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Mr. Don B. Finkelstein
December 9, 2005
Page -2-

Similarly, Resmark Equity Partners, LLC's ("Resmark") application covers "real estate and financial services, namely, providing investment and financial services related to real estate development." This recitation of services is not limited to any particular field of "real estate development." Thus, despite your contention that there is no overlap between the parties' respective services, there clearly is overlap between the services in the parties' applications.

In that regard, we note that you, on behalf of Resmark, filed an Extension of Time to Oppose NCE's application. As NCE's application has a constructive use date several years before Resmark's actual use date, there was no basis for Resmark to oppose NCE's application. More importantly, you have repeatedly indicated that there is no overlap between the parties' applications. If you truly believed this to be an accurate statement, the filing of the Request for an Extension of Time to Oppose was clearly done for no other reason but as an effort to delay the allowance of NCE's application.

In light of the scope of NCE's application and your statements that Resmark only intends to use the mark in association with residential real estate services, NCE will only consent to Resmark's use and registration of the mark INVESTING IN BUILDING RELATIONSHIPS in association with "real estate and financial services, namely, providing investment and financial services related to real estate development, excluding financial and investment services in the fields of utilities, non-residential real estate, mining, metal, oil, and gas exploration, development and production."

With this understanding, we will address what appear to be your apparent issues with the October 22, 2004 Letter Agreement. With regard your proposed revisions to Paragraphs 1, 4 and 7 of the October 22, 2004 Letter Agreement (formerly Paragraph 1, 3 and 6 of the May 27, 2004 Letter Agreement), in light of the recitation of services in NCE's application, and the broad scope of the services in Resmark's application, your proposed amendments to Paragraphs 1, 4 and 7 are far too limiting and simply fail to take into account the full scope of NCE's application.

Moreover, while NCE is willing to give Resmark some leeway to use its mark with designs or a logo, NCE is not willing to consent to Resmark's use and registration of the mark INVESTING IN BUILDING RELATIONSHIPS in all real estate fields other than "the fields of oil and gas industries, utilities, mining, metal."

In addition, we wish to address your comments regarding your statement about NCE's discovery requests. During your conversation with Jonathan, you informed us that you did not read the Trademark Trial and Appeal Board's October 4, 2005 Order as requiring Resmark to provide proper responses to NCE's discovery requests. You advised us that Resmark was under no obligation to supplement its responses and that you would supplement them if you deemed it necessary. We disagree with your understanding of the October 4, 2005 Order. In the October 4, 2005 Order, the Board repeatedly stated that Resmark's discovery responses disregard its discovery

Krobb Martens Olson & Bear LLP

Mr. Don B. Finkelstein

December 9, 2005

Page -3-

obligations in the proceeding.¹ Thus, it is clear that the Board considers Resmark's blanket objections to be improper and that Resmark must serve appropriate responses to comply with its discovery obligations as set forth in the FRCP and TBMP. In fact, the October 4, 2005 Order all but invites NCE to file a renewed motion to compel if Resmark fails to supplement its responses in accordance with its discovery obligations.

In light of your previous long delays in providing us with Resmark's responses regarding settlement, we again wish to advise you that NCE is not willing to suspend the opposition or extend any deadlines based on any settlement discussions occurring at this time. Thus, you should not try to use the fact that the parties are exploring settlement as a basis for shirking Resmark's discovery obligations. If it appears that the parties have made any real and timely progress towards settlement, our client may reconsider its position regarding suspending the proceeding.

We look forward to hearing from you shortly and receiving your client's revised responses to the outstanding discovery requests and responsive documents within the next two weeks. If we do not receive your client's revised responses and responsive documents within that time period, we will have no choice but to file a renewed motion to compel.

Sincerely,



Stacey R. Halpern

cc: Kenneth McKay
Jonathan A. Hyman

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¹ See October 4, 2005 Order at Page 3 (The Board "finds that by making the blanket assertion that all of opposer's discovery requests are 'overly broad, burdensome and harassing, are outside the scope of the issue here and not submitted in good faith,' applicant has disregarded its discovery obligations in this proceeding.") and October 4, 2005 Order at Page 4 ("In addition, the Board again finds that applicant's blanket objections to opposer's admission requests indicate that applicant has disregarded its discovery obligations in this proceeding.").

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March 2, 2006

VIA ELECTRONIC MAIL AND U.S. MAIL

Mr. Don B. Finkelstein
Law Offices of Don Finkelstein
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Re: U.S. Service Mark Opposition
Mark: INVESTING IN BUILDING RELATIONSHIPS
Opposition No.: 91159046
Your Client: Resmark Equity Partners, LLC
Our Reference No.: SIMMC35.01ZUS16

Dear Don:

We note that you have not responded to our letter dated December 9, 2005. Additionally, your client, Resmark Equity Partners, LLC ("Resmark") has not provided supplemental responses to NCE Resources Group, Inc.'s ("NCE") discovery requests, as required by the Trademark Trial and Appeal Board's October 4, 2005 Order (the "October 4, 2005 Board Order").

As was discussed in our previous communications, the October 4, 2005 Board Order stated that Resmark's blanket objections were improper and that Resmark must serve appropriate responses to comply with its discovery obligations as set forth in the FRCP and TBMP. As was also discussed in our previous communications, the October 4, 2005 Board Order all but invites NCE to file a renewed motion to compel if Resmark fails to supplement its responses in accordance with its discovery obligations. Nonetheless, Resmark has failed to provide any additional responses to the discovery requests.

Despite our repeated efforts to resolve this matter without the Board's intervention, it has now been almost five months since the issuance of the October 4, 2005 Board Order. Accordingly, NCE has no choice but to file a renewed motion to compel.

Sincerely,


Stacey R. Halpern

cc: Kenneth McKay
Jonathan A. Hyman

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