

ESTTA Tracking number: **ESTTA151892**

Filing date: **07/19/2007**

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

Proceeding	91163323
Party	Defendant Gravity Co., Ltd. Gravity Co., Ltd. 5th Floor, Shingu Bldg. 620-2 Seoul 135-894,
Correspondence Address	HAROLD V. STOTLAND SEYFARTH SHAW 131 S. DEARBORN STREET, SUITE 2400 CHICAGO, IL 60603 UNITED STATES hstotland@seyfarth.com, cwilson@seyfarth.com
Submission	Motion to Compel Discovery
Filer's Name	Harold V. Stotland
Filer's e-mail	hstotland@seyfarth.com, cwilson@seyfarth.com
Signature	/Harold V. Stotland/
Date	07/19/2007
Attachments	motioncompel.pdf ( 18 pages )(544295 bytes )

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

OUTDOOR LIFE NETWORK, L.L.C.,            )  
  )  
  Opposer,            )  
  )  
  v.                            )  
  )  
GRAVITY CO., LTD.,                        )  
  )  
  Applicant.            )  
  )

Opposition No. 91163323

GCL'S MOTION TO COMPEL

Gravity Co., Ltd. ("GCL"), by its undersigned attorneys, moves the TTAB for an order compelling Outdoor Life Network, L.L.C. ("OLN") to provide a response to Applicant's First Request for Documents and production of the requested documents.

BACKGROUND

1. Prior to about May 9, 2007, the parties had been engaged in settlement discussions but those settlement discussions ended.
2. On May 21, 2007, GCL served upon OLN Applicant's First Request for Documents (the "First Request"), attached as Exhibit A.
3. On May 29, 2007, GCL's undersigned attorney wrote to OLN's attorney by e-mail informing him that the First Request was served on him and that a response and the documents themselves would be due by June 25. Attached as Exhibit B is that e-mail.
4. On July 2, 2007, GCL's undersigned attorney wrote to OLN's attorneys by e-mail inquiring as to the status of the response to the First Request and the documents themselves, as 30 days plus the additional 5 days pursuant to 37 C.F.R. § 2.120(a) and Fed. R. Civ. P. 33(b)(3) and 34(b) had passed. Attached as Exhibit C is a copy of that e-mail.
5. To date, GCL's undersigned attorneys have not received OLN's response to the

First Request or the documents themselves, nor has GCL received a response to its July 2, 2007 e-mail.

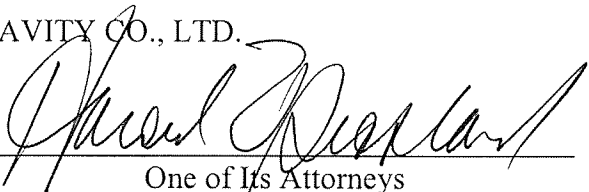
6. GCL, by its attorneys, has made a good faith effort to have OLN respond.

WHEREFORE, pursuant to Rule 37 of the Federal Rules of Civil Procedure and 37 C.F.R. Section 2.120(e), GCL moves the TTAB for an order compelling OLN to provide a response to the first Request and the requested documents.

Respectfully submitted,

GRAVITY CO., LTD.

By



One of Its Attorneys

Harold V. Stotland  
Kelley A. Lynch  
SEYFARTH SHAW LLP  
131 S. Dearborn Street, Suite 2400  
Chicago, Illinois 60603  
312-460-5000  
Attorneys for Applicant

EXHIBIT A

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

OUTDOOR LIFE NETWORK, L.L.C.,            )  
  )  
  Opposer,            )  
  )  
  v.                            )  
  )  
GRAVITY CO., LTD.,                        )  
  )  
  Applicant.            )  
  )

Opposition No. 91163323

**APPLICANT’S FIRST REQUEST FOR DOCUMENTS**

In accordance with Rule 34 and other applicable provisions of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Gravity Co., Ltd. by its undersigned attorneys, requests Outdoor Life Network, L.L.C. to produce the documents defined in the below-identified categories at Seyfarth Shaw, 55 East Monroe Street, Suite 4200, Chicago, Illinois 60603 and to submit a response.

**DEFINITIONS**

- A. The term “Opposer” shall mean Outdoor Life Network, L.L.C. and any predecessor in interest with respect to Opposer’s Marks, and all of its parents and subsidiaries.
- B. The term “Applicant” shall mean Gravity Co., Ltd.
- C. The term “Opposer’s Registrations and Applications” shall mean U.S. reg. nos. 2,872,255, 2,522,255, 2,531,919 and application nos. 76/201,328 and 75/578,961.
- D. The term “Opposer’s Marks” shall mean the marks in Opposer’s Registrations and Applications and all other marks comprised in whole or in part of the term GRAVITY used by Opposer.
- E. The term “Opposer’s Goods and Services” shall mean those goods and services sold and/or offered for sale by Opposer under or in connection with Opposer’s Marks.

F. The term “Applicant’s Mark” shall mean the mark GRAVITY and design depicted in application no. 76/507,407.

G. The term “Applicant’s Goods and Services” shall mean those goods and services set forth in application serial no. 76/507,407.

H. The term “document” is synonymous in meaning and equal in scope to the use of this term in Rule 34(a) of the Federal Rules of Civil Procedure and shall include all documents Opposer has in its possession, custody or control, or which Opposer has the right to obtain upon request or demand. Without limiting the generality of the foregoing, the term “document” shall include, without limitation, every original (any copy of any original and any copy which differs in any way from any original) of every writing and recording, photograph, or other memorialization, of every kind or description, whether handwritten, typed, drawn, sketched, printed or recorded by any physical, mechanical, magnetic, optical, electronic, or electrical means whatsoever, and shall include, by way of illustration only and not by way of limitation, notes, correspondence, communications of any nature, telegrams, memoranda, advertisements, notebooks, blueprints, maps, surveys, graphs, charts, plans, summaries or records of personal conversations, appointment books, diaries, routing slips, reports, publications, photographs, minutes or records of meetings, transcripts of oral testimony or statements, reports and/or summaries of interviews, negotiations or investigations, agreements and contracts, including all modifications and/or revisions thereof, court papers, brochures, pamphlets, press releases, drafts, revisions of drafts and translations of any documents, tape recordings, audio recordings, video recordings, records, dictation belts, e-mail, deleted e-mail, voice mail, computer records, personal digital assistants, data bases, facsimiles, and/or labels. Any document with any marks on any sheet or side thereof, including by way of illustration only and not by way of limitation,

initials, stamped indicia, any comment or any notation of any character and not part of the original text, or any reproduction thereof, is to be considered a separate document for purposes of these requests.

I. The terms “trademark” and “mark” shall be construed so as to include trademarks and service marks.

J. The terms “relating” and “concerning” shall mean referring, regarding, reflecting, containing, constituting, describing, discussing, stating, assessing, analyzing, recording or having any connection with.

K. The term “person” shall mean any natural person or any business, legal or governmental entity or association.

L. The term “communication” means the transmittal or transfer of information, ideas, opinions, facts or thoughts by any means.

M. The term “date” shall mean the exact date, month and year, if ascertainable, or if not, the best approximation, including the chronological relationship to other events.

N. The term “third party” shall include any party other than Opposer and Applicant.

O. Where appropriate, the singular form of a word should be interpreted in the plural and vice versa, to obtain its broadest possible meaning.

P. A masculine, feminine or neuter pronoun shall not exclude the other genders.

Q. The connectives “and” and “or shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

## INSTRUCTIONS

A. If any documents responsive to any category are not readily available to Opposer, provide those documents that are available and state when Opposer expects to provide such unavailable documents to Applicant.

B. If Opposer objects to, or otherwise declines to respond to, any portion of a category, provide all documents called for by that portion of the request to which Opposer does not object or to which Opposer does not decline to respond. If Opposer objects to a category on the ground that it is too broad (i.e., that it calls both for documents which are relevant to the subject matter of the action and documents which are not), provide such documents as are concededly relevant. If Opposer objects to a category on the ground that to provide documents would constitute an undue burden, provide such requested documents as can be supplied without undertaking an undue burden.

C. If Opposer objects to any category on privilege grounds, Opposer shall specify the specific privilege upon which such objection is made, state the portion of the category to which the privilege is claimed, provide sufficient information to allow an evaluation of the propriety of the privilege claim, and provide all responsive documents to the category that does not fall within Opposer's claim of privilege.

D. Documents shall be produced as they are kept in the usual course of business or shall be organized and labeled to correspond with the categories set forth below.

E. This request is intended to cover all documents in Opposer's possession, custody or control. If any document described in the categories was, but no longer is in Opposer's custody or control, or in existence, state whether:

1. It is missing or lost;
2. It has been destroyed;



3. It has been transferred, voluntarily or involuntarily, to others; or
4. It has been disposed of otherwise.

In each instance, explain the circumstances surrounding such disposition and identify the person(s) directing or authorizing same, and the date(s) thereof, including but not limited to a copy of the document retention policy. Identify each document by listing its author, the author's address, type of document, date, subject matter, present location(s) and custodian(s), and state whether the document (or copies) are still in existence.

F. If a requested document is known to exist, but Opposer does not possess or have custody or control over the document, it shall be so indicated along with the name of the person who has possession, custody or control of the document.

G. Opposer shall produce the printed as well as the electronic versions of the contents of all means of storing and recording data, for example, audio/video tapes, compact discs or computer software that are produced.

#### CATEGORIES

The documents to produce are as follows:

1. One sample of each and every label, tag, wrapper, container, sign, stationery and/or other document which Opposer has used, uses or intends to use bearing Opposer's Marks.
2. All documents which relate to the selection, adoption, searching, and clearance of Opposer's Marks.
3. All documents that contain or refer to any opinion from Opposer's legal counsel or any other person concerning possible trademark conflict(s) with Applicant, or the absence thereof, arising out of Applicant's adoption, use and/or application to register and/or registration of Applicant's Mark.

4. Documents which disclose Opposer's total annual volume of sales of goods and services sold in connection with Opposer's Marks.
5. Documents which identify the types of purchasers or intended purchasers of Opposer's goods and services sold under Opposer's Marks.
6. All documents relating to any activities undertaken by Opposer to market, advertise, distribute, license and/or sell any goods or services using Opposer's Marks.
7. All documents which describe the manner by which and channels of trade through which Opposer has provided, provides or intends to provide its goods and services under or in association with Opposer's Marks.
8. Documents which provide information on the channels of trade and markets for Opposer's products and services.
9. Documents which provide information on the annual amounts Opposer has spent on advertising and promoting its goods and services provided or intended to be provided under or in association with Opposer's Marks.
10. Documents which identify each publication or other media in which Opposer has advertised or promoted its products and services under Opposer's Marks.
11. All documents which relate to or bear upon each person who has ever been affiliated with Opposer who has used Opposer's Marks in connection with goods or services of any kind.
12. All documents which relate to infringement allegations, charges, lawsuits, oppositions, cancellations and other disputes relating to Opposer's Marks.
13. All documents which relate to the use by any person other than Opposer of Opposer's Marks in connection with goods or services of any kind.

14. All documents which relate to assignments and/or transfers of or relating to Opposer's Marks.
15. All documents which relate to any program, formal or informal, by which Opposer monitors use of marks by third parties.
16. All documents which refer or relate to use by third parties of marks Opposer considers to be similar to any of Opposer's Marks.
17. All documents evidencing Opposer's date of first use of Opposer's Marks in connection with each good and service offered by Opposer under Opposer's Marks.
18. All advertisements, price lists and brochures for Opposer's goods and services sold in connection with Opposer's Marks, including, without limitation, print advertisements, radio and television advertisements, Internet advertisements, and posters.
19. All documents which evidence, refer or relate to consent, authorization or permission given by Opposer to any person to use any of Opposer's Marks and the scope of that consent, authorization or permission.
20. All documents which relate to licenses granted by Opposer to any person to use Opposer's Marks in connection with any product or service, including all amendments or modifications to any such licenses.
21. Documents which indicate the organizational structure of Opposer.
22. All studies, surveys, market research tests, formal or informal research, polls, focus groups or memoranda including, but not limited to demographic or consumer profile studies, relating to the purchasers or potential purchasers of Opposer's goods and services sold, offered for sale, advertised or promoted under Opposer's Marks.

23. All studies, surveys, market research tests, formal or informal research, polls, focus groups or memoranda and other documents relating thereto, relating or referring to the use of Opposer's Marks in connection with any goods or services sold, offered for sale, advertised or promoted by Opposer, including, without limitation, those relating to confusion or likelihood of confusion between Applicant's and Opposer's respective goods and services.

24. All documents that relate to the fame, if any, of Opposer's Marks.

25. All documents relating to any instance in which a person has inquired about or commented upon (a) any relationship between Applicant's goods and Opposers' goods and services or (b) any relationship between Applicant and Opposer.

26. All documents which relate to reports of witnesses retained or specifically employed by Opposer to provide expert opinion testimony.

27. All documents Opposer has provided to or received from expert witnesses in this Opposition.

28. All witness statements Opposer has obtained regarding matters involved in this Opposition.

29. All documents not already produced in response to this First Request upon which Opposer will rely in this Opposition.

30. All documents which support the allegations in Paragraph 5 of the Notice of Opposition.

31. All documents which support the allegations in Paragraph 7 of the Notice of Opposition.

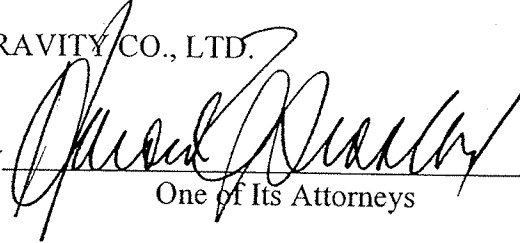
32. All documents which support the allegations in Paragraph 8 of the Notice of Opposition.

33. All documents which support the allegations in Paragraph 9 of the Notice of Opposition.

Respectfully submitted,

GRAVITY CO., LTD.

By

A handwritten signature in black ink, appearing to read "Harold V. Stotland", is written over a horizontal line.

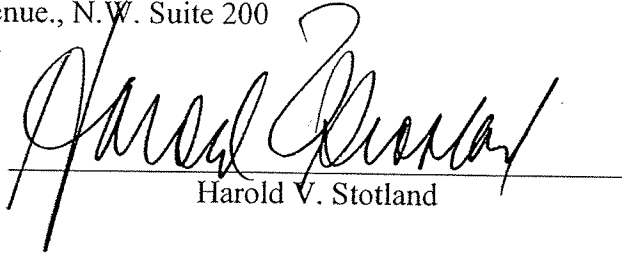
One of Its Attorneys

Harold V. Stotland  
Kelley A. Lynch  
SEYFARTH SHAW LLP  
55 East Monroe Street, Suite 4200  
Chicago, Illinois 60603  
(312) 346-8000  
Attorneys for Applicant

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that, on 5/21/07, a copy of the above Applicant's First Request for Documents was served on Opposer by mailing a copy by first-class mail, postage prepaid in an envelope addressed to:

David M. Silverman, Esq.  
Cole, Raywid & Braverman, L.L.P.  
1919 Pennsylvania Avenue., N.W. Suite 200  
Washington, DC 20006

  
Harold V. Stotland

## EXHIBIT B

Stotland, Harold

---

**From:** Stotland, Harold  
**Sent:** Monday, July 02, 2007 9:12 AM  
**To:** 'Silverman, David'  
**Subject:** RE: OLN v. GCL

David,

I'm writing to inquire why you have not responded to applicant's First Request for Documents and have not provided the requested documents. These papers were due by June 25. Please let me hear from you immediately.

Regards, Harold.

Harold V. Stotland  
Seyfarth Shaw LLP  
Suite 2400  
131 South Dearborn Street  
Chicago, Illinois 60603  
phone: 312-460-5971  
fax: 312-460-7971  
e-mail: hstotland@seyfarth.com

-----Original Message-----

**From:** Stotland, Harold  
**Sent:** Tuesday, May 29, 2007 9:05 AM  
**To:** Silverman, David  
**Subject:** OLN v. GCL

David,

Not having received a response to my e-mail of May 9, 2007, I have resent to you Applicant's First Request for Documents, by mail. By my calculations, OLN's response and the documents themselves are due by June 25. Let me know if you have any questions.

Regards, Harold.

Harold V. Stotland  
Seyfarth Shaw LLP  
Suite 2400  
131 South Dearborn Street  
Chicago, Illinois 60603  
phone: 312-460-5971  
fax: 312-460-7971  
e-mail: hstotland@seyfarth.com



## EXHIBIT C

Stotland, Harold

---

**From:** Stotland, Harold  
**Sent:** Monday, July 02, 2007 9:12 AM  
**To:** 'Silverman, David'  
**Subject:** RE: OLN v. GCL

David,

I'm writing to inquire why you have not responded to applicant's First Request for Documents and have not provided the requested documents. These papers were due by June 25. Please let me hear from you immediately.

Regards, Harold.

Harold V. Stotland  
Seyfarth Shaw LLP  
Suite 2400  
131 South Dearborn Street  
Chicago, Illinois 60603  
phone: 312-460-5971  
fax: 312-460-7971  
e-mail: hstotland@seyfarth.com

-----Original Message-----

**From:** Stotland, Harold  
**Sent:** Tuesday, May 29, 2007 9:05 AM  
**To:** Silverman, David  
**Subject:** OLN v. GCL

David,

Not having received a response to my e-mail of May 9, 2007, I have resent to you Applicant's First Request for Documents, by mail. By my calculations, OLN's response and the documents themselves are due by June 25. Let me know if you have any questions.

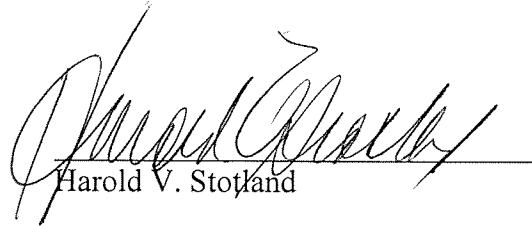
Regards, Harold.

Harold V. Stotland  
Seyfarth Shaw LLP  
Suite 2400  
131 South Dearborn Street  
Chicago, Illinois 60603  
phone: 312-460-5971  
fax: 312-460-7971  
e-mail: hstotland@seyfarth.com

CERTIFICATE OF SERVICE BY MAIL

I hereby certify that, on 7/19/07, a copy of the foregoing GCL Motion to Compel was served on Opposer by mailing a copy by first-class mail, postage prepaid in an envelope addressed to:

David M. Silverman  
Cole, Raywid & Braverman, L.L.P.  
1919 Pennsylvania Avenue., N.W. Suite 200  
Washington, DC 20006

  
Harold V. Stotland