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

Proceeding	91167259
Party	Defendant Boost Juice Holdings Pty Ltd; ACN 102 379 591 Boost Juice Holdings Pty Ltd; ACN 102 37 9 591 9 591 Suite 2 261-267 High Street AUX ASHBURTON VIC 3147,
Correspondence Address	JOSEPH D. LEWIS BARNES & THORNBURG LLP 750 17TH STREET, N.W. SUITE 900 WASHINGTON, DC 20006
Submission	Motion to Compel Discovery
Filer's Name	Joseph D. Lewis
Filer's e-mail	xlewis@btlaw.com
Signature	/JDL/
Date	11/03/2006
Attachments	Mot_to_Compel.pdf (39 pages)(1630540 bytes)

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

Booster Juice Limited Partnership,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91167259
)	
Boost Juice Holdings Pty Ltd.,)	
)	
Applicant.)	
_____)	

MOTION TO COMPEL

Pursuant to 37 C.F.R. § 2.120(e), Boost Juice Holdings Pty Ltd. (“Applicant”) respectfully requests that the Trademark Trial and Appeal Board issue an order to compel Booster Juice Limited Partnership (“Opposer”) to fully answer Applicant’s Interrogatories and produce documents in response to Applicant’s Document Requests. Specifically, Applicant moves that Opposer be compelled to answer in full Interrogatories Nos. 5, 6, 7, 8, 9, 10, 13, 14, and produce all documents and things requested by Applicant’s Document Requests Nos. 1-38.

In support of this Motion, Applicant states as follows:

1. Applicant has diligently sought discovery of information and documents from Opposer. However, in view of the imminent scheduled start of trial, this Motion has become necessary.

2. On April May 19, 2006, Applicant served its First Set of Interrogatories, First Set of Requests for Production of Documents and Things, and Requests for Admission on Opposer. (A copy of Applicant’s discovery requests is attached hereto as Exhibit A).

3. Opposer sought an extension of time in which to respond to the requests, and Applicant consented to the additional time. On June 30, 2006, Opposer served its "Response" to the discovery requests. (A copy of Opposer's Answers and Objections to the discovery requests is attached as Exhibit B).

4. Opposer objected to the entirety of Applicant's Interrogatories Nos. 6, 7, 8, 9, and 10. Opposer refused to supply any substantive answer on the ground of confidentiality.

5. In its Objections to Applicant's Document Requests, Opposer objected to Requests Nos. 16, 17, 19, 20, 23, 24, 26, 29, 30, and 35 in their entirety, on the grounds of being burdensome and seeking confidential information. Opposer objected to each of the other requests by stating that confidential documents would not be produced. Opposer stated that certain non-confidential documents would be provided (See, e.g., response to request no. 2); however, Opposer has not produced a single document responsive to any request.

6. Applicant has made a good faith effort to resolve this discovery dispute. Almost immediately upon receipt and review of Opposer's initial discovery responses, on July 7, 2006, counsel for Applicant wrote to counsel for Opposer and proposed that the parties enter into a suitable protective order. (A copy of this letter is attached as Exhibit C). Specifically, Applicant suggested that Opposer propose a form of protective order or, in the alternative, that the parties adopt the standard order published by the Trademark Trial and Appeal Board.

7. On or about July 11, 2006 Applicant's counsel followed up its July 7, 2006 letter with a telephone call to Opposer's counsel. Applicant's counsel was unable to reach Opposer's counsel and therefore left him a voicemail message.

8. Accordingly, because the original testimony period was to open on July 21, 2006, Applicant filed a motion to suspend proceedings on July 14, 2006, so that the parties could resolve the pending discovery issues.

9. By an Order issued on October 19, 2006, the Board imposed its standard protective order in this proceeding, and rather than suspending the proceedings, granted Opposer's alternative motion to extend the testimony period, with the 30-day testimony period for plaintiff to open November 5, 2006.

10. Even after the Board's Order of October 19, 2006, Opposer has failed to produce a single document.

11. On October 27, 2006, Applicant's counsel faxed a follow up letter demanding compliance with the Board's Order (see letter attached as Exhibit D). Opposer has not bothered to respond to this letter.

Discussion

As of November 3, 2006, the time of the filing of this motion, Opposer still has yet to produce a single document, confidential or otherwise, in response to any of the discovery requests served by Applicant. Indeed, even during the three month period in which Applicant's motion to suspend was pending, Opposer did not make any effort to produce any documents or supplemental responses to Applicant's interrogatories. Simply put, Opposer has been dodging its responsibility under the Federal Rules of Civil Procedure and those imposed by the Board.

In light of the above, and in consideration of the time-sensitive nature of this Opposition, Applicant requests that the Board compel Opposer to answer all non-responsive interrogatories, and produce documents that are responsive to all of Applicant's document requests. It is abundantly clear that Opposer has not fulfilled its discovery obligations, and has refused to resolve in good faith the open discovery issues. Consequently, it is appropriate that the Board issue an order compelling answers to the discovery requests.

Applicant has tried in vain to obtain details as to the background of, and the nature and extent to which, Opposer has used its asserted marks. Applicant long ago offered to enter into a

confidential disclosure agreement, and has been more than patient with Opposer's counsel. However, Opposer did not accept Applicant's offer to use the Board's "standard" confidentiality agreement, and did not offer any make any counter-proposal. Now that a Protective Order is in place, Opposer has continued to ignore its obligations to supplement its interrogatory responses and has still failed to produce any documents responsive to Applicant's requests.


Applicant submits that, by Opposer's failure to act, Opposer should be deemed to have waived or forfeited any objections, and should be compelled to produce all of the requested information and documents forthwith.

WHEREFORE, Applicant respectfully requests that its Motion to Compel be granted and that Opposer be ordered to fully answer the interrogatories and send copies of the produced documents to Applicant's counsel immediately.

Respectfully submitted,

BOOST JUICE HOLDINGS PTY LTD.

By: _____


Joseph D. Lewis
Mark B. Angres
BARNES & THORNBURG LLP
750 17th Street, N.W., Suite 900
Washington, D.C. 20006
(202) 289-1313
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing document was served on Steven M. Weinberg, Esq., at his address of record, Greenberg Traurig, LLP, The Water Garden, 2450 Colorado Avenue, Suite 400E, Santa Monica, CA 90404, by first class certified mail, return receipt request and postage prepaid, on this 3rd of November 2006.



Joseph D. Lewis

EXHIBIT A

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

Booster Juice Limited Partnership

Opposer

vs.

Boost Juice Holdings Pty.

Applicant

Opposition No.: 91167259

lmj
DOCKETED.

Response Due 6/23/06
(Sheirs)

**APPLICANT'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS,
AND REQUESTS FOR ADMISSION
TO OPPOSER**

Pursuant to Rules 33, 34 and 36 of the Federal Rules of Civil Procedure and Rule 2.10 of the Trademark Rules of Practice, Boost Juice Holdings Pty., through undersigned counsel, hereby propounds upon Booster Juice Limited Partnership the following interrogatories, requests for production of documents and things, and requests for admission. Opposer shall provide its written reply to these discovery requests within 35 days of the date of service hereof, and produce the documents requested at 10:00 a.m. on June 26, 2006 at the offices of Applicant's counsel, Barnes & Thornburg LLP, 750 17th Street, N.W., Washington, D.C. 20006.

II. INSTRUCTIONS AND DEFINITIONS

A. These interrogatories, requests for production of documents and things, and requests for admission require responses which are complete and accurate as of the date when such responses are made.

B. The interrogatories are continuing in character so as to require Opposer to supplement its responses as to:

1. the identity of persons having knowledge of discoverable matters; and
2. the identity of each person expected to be called as an expert witness at trial, the subject matter on which the expert is expected to testify, and the substance of the expert's testimony. Fed.R.Civ.P. 26(e)(1).

C. Opposer has a duty to amend a response if Opposer learns that the response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Opposer during the discovery process or in writing. Fed.R.Civ.P. 26(e)(2).

D. If Opposer opts to produce business records in lieu of a written response to an interrogatory, Opposer must indicate for each business record provided, the number of the interrogatory to which it is responsive. Fed. R. Civ. P. 33(d).

E. If any information is withheld under a claim of privilege, Opposer should please so state, indicate the nature of the privilege claimed and provide sufficient information to permit a full determination of whether the claim is valid. For allegedly privileged documents, Opposer should please include: an identification of the sender and the recipients of the document; the date of the document; a description of the contents or nature of the document; the number of the discovery request to which the document is responsive; and a statement of the basis for the asserted claim of privilege.

F. If Opposer objects to any subpart or portion of a request for information or objects to providing certain information requested, Opposer should please state its objection and answer the unobjectionable subpart(s) of the request for information and/or supply the unobjectionable information requested.

G. As used herein, the following definitions apply:

1 "Opposer". The term "Opposer" shall mean Booster Juice Limited Partnership and, where applicable, its present and former partners, directors, employees, agents, representatives and other persons under the control of the Opposer, and any predecessor in interest.

2 "Opposer's Mark". Unless otherwise specified, the phrase "Opposer's Mark" refers to the unregistered designation JOOST as it is intended to be used, is used or has been used by Opposer, alone or in combination with other words, designs, or other matter, in connection with Opposer's Services and/or on or in connection with any goods offered by Opposer.

3 "Opposer's Services". Unless otherwise specified, the phrase "Opposer's Services" refers to Fast-food restaurants, snackbars, restaurant services, and retail stores.

4 "Opposer's Goods". Unless otherwise specified, the phrase "Opposer's Goods" refers to healthy meal alternatives, fresh fruit and vegetable based juice drinks, smoothies, and non-alcoholic beverages or smoothies containing fruit, vegetable, herbal, vitamin, or dairy products.

5 "Applicant". The term "Applicant" shall mean Boost Juice Holdings Pty and, where applicable, its officers, directors, employees, agents and representatives.

6 "Communication". The term "communication(s)" means the information that has been transmitted (in the form of facts, ideas, inquiries, or otherwise), regardless of means utilized.

7 "Document". The term "document(s)" has the meaning ascribed to it in Fed.R.Civ.P. 34(a), and includes, but is not limited to, every writing or record of every type and description, including electronic mail and other electronic records, that is or has been in the

possession, control, or custody of Opposer or which Opposer has knowledge, including without limitation: originals, masters and every copy of writings, including handwritings, electronic messages and other records stored on computers or stored electronically, and printed, typed or other graphic or photographic matter including film or microfilm, video tape, recordings (tape, disc or other), correspondence, communications, contracts, agreements, assignments, licenses, purchase orders, invoices, statements, memoranda, notes (in pencil, ink, typewritten or electronic), letters, notebooks, reports, photographs, drawings, tracings, sketches, charts, catalogs, brochures, advertisements, records of communications (oral and otherwise), instructions, telegrams, studies, surveys, minutes, reports, calendars, inter-office communications, price lists, bulletins, circulars, statements, manuals, summaries, maps, charts, graphs, invoices, canceled or voided checks, bills or statistical material. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.

8 **"Data"**. The term "data" shall mean any facts, documents or communications, oral or otherwise, of which Opposer has knowledge, information or belief.

9 **"Identify" or "Specify"**. As used herein, "identify" or "specify" when used in reference to:

(a) a person who is an individual shall mean to state his or her full name, present or last known residence address (designating which), and present or last known position or business affiliation (designating which), job title, employment address, and business and residence telephone numbers;

(b) a person that is a firm, partnership, corporation, proprietorship, association, or other organization or entity shall mean to state its full name, present or last known (designating which) address, telephone number, legal form of such entity or organization, (including state and country of incorporation or organization) and the identity of its present and former officers, directors, controlling shareholder(s) and all employees, agents, and staff members who have responsibilities relating to use of trademarks;

(c) data, shall mean to state: in the case of a document, the title (if any), the date, author(s), sender(s), recipient(s), the identity of the persons signing it, type of document (i.e., a letter, memorandum, book, telegram, chart, etc.) or some other means of identifying it, its present location or custodian and whether Opposer is in the possession of the original, master, or a copy of the document, and if not in possession of the original, master or copy to furnish the name and last known address of the custodian of the original, master or copy; in the case of an oral communication, the date, subject matter, communicator, the recipient of the communication, nature of communication, whether it was recorded, and the identity of any witness thereto; and in the case of a fact, the source thereof.

10 The words/phrases "identity", "circumstances", "detail(s)", and "all information", whether used alone or in connection with any other words, shall include, but are not limited to, identifying all facts, persons, places, dates, events, documents, physical items of any kind, time periods, geographical locations, data, communications of any kind, or any other information in any way related to, pertaining to, connected with or otherwise responsive to the interrogatory or document request such that all information shall be brought within the scope of the

interrogatory or document request which may otherwise be deemed not to be covered by the interrogatory or document request.

11 The words/phrases “respecting”, “relating”, “referring to”, or “regarding”, whether used alone or in connection with any other words, shall mean making a statement about, referring to, mentioning, discussing, describing, reflecting, dealing with, consisting of, comprising, recording or in any other way pertaining to the subject either in whole or in part directly or indirectly.

12 “Person”. The term “person” shall include without limitation, any natural person or any business, business association, business entity, partnership, corporation, legal, or governmental entity. Whenever an interrogatory requests identification of persons, as to those individuals named in response to the interrogatory now in the employ of or associated with Opposer, state the title or position, duties and present residence and business addresses of each such individual. As to those “persons” who have previously been but are not now in the employ of or associated with Opposer, state the periods of employment or association with Opposer, the person’s title or positions during that period, and the last known residences and business address of such persons. As to all “persons” state their residence and business addresses.

13 “And” and “Or”. The connectives’ “and” and “or” shall be construed broadly, both conjunctively and disjunctively, to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

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

15 The term “third party” shall refer to any person other than Opposer and Applicant.

16 “Number”. The use of the singular form of any word includes the plural and vice versa.

II. INTERROGATORIES

INTERROGATORY NO. 1

Identify each product and service which Opposer has marketed under or by reference to the Opposer’s Mark.

INTERROGATORY NO. 2

Identify the product that is referred to as “one of its products” in paragraph 1 of the notice of opposition.

INTERROGATORY NO. 3

For each product or service identified in answer to Interrogatory No. 1, provide the date when such product and/or service was first offered under or by reference to the Opposer's Mark, and describe the circumstances of such first use in commerce.

INTERROGATORY NO. 4

Provide the complete address of each restaurant, bar, or other service establishment at which Opposer or any person authorized by Opposer now provides or ever has provided any service under the Opposer's Mark in the United States.

INTERROGATORY NO. 5

For each location identified in answer to Interrogatory No. 3, provide the date when such services were first offered under or by reference to the Opposer's Mark.

INTERROGATORY NO. 6

Identify the top five (by sales volume) distributors, retailers and other sellers of each of Opposer's Goods.

INTERROGATORY NO. 7

Identify the top five (by sales volume) suppliers of Opposer for products used in connection with the manufacture or sale of Opposer's Goods or Opposer's Services.

INTERROGATORY NO. 8

Identify each third party that has cooperated in any way with Opposer in research and development of food or beverage products marketed or intended to be marketed through or under the Opposer's Mark from 2003 to the present, and describe the food products that are or were the subject of such research and development.

INTERROGATORY NO. 9

State separately with respect to Opposer's Services by type of media and by date, the dollar amounts, which have been expended by Opposer in advertising and promoting Opposer's Services in connection with the Opposer's Mark for each calendar year from 2003 through to the present date.

INTERROGATORY NO. 10

For each of the products comprising Opposer's Goods which Opposer has sold under Opposer's Mark, state, by unit and dollar volume, the amount of sales in the United States for each calendar year from 2003 through to the present date.

INTERROGATORY NO. 11

With respect to each product and service identified in the answer to Interrogatory No. 1, state the dates of each period of time during which Opposer ceased commercial use of the Opposer's Mark for more than six months, and describe the circumstances under which commercial use of the Opposer's Mark ceased, was suspended and/or resumed.

INTERROGATORY NO. 12

Identify the person or persons most knowledgeable about: (a) the marketing and advertising of services and goods by Opposer or its agents under or by reference to the Opposer's Mark, (b) the development of new products intended to be marketed under or by reference to the Opposer's Mark, and (c) the sale of products and services by Opposer or its agents under or by reference to the Opposer's Mark.

INTERROGATORY NO. 13

To the extent of Opposer's knowledge, identify each person or entity, including third parties, that uses or has used in the United States a trademark or service mark that consists of or includes the designation JOOST in connection with the marketing of any goods or services, and describe Opposer's relationship to such persons and entities.

INTERROGATORY NO. 14

Identify each person whom Opposer intends to call as a witness in the captioned proceeding, including, but not limited to, expert witnesses, and describe the nature of each witness's expected testimony, including the identification of all documents about which each witness is expected to testify.

INTERROGATORY NO. 15

State the date and circumstances under which Opposer first learned of Applicant's use of Applicant's Mark.

INTERROGATORY NO. 16

For each and every Interrogatory above, identify the individual or individuals answering the Interrogatory, and each person who provided any information, opinions, advice, reports, studies, or facts on which your answer to any of the foregoing Interrogatories was based, specifying each Interrogatory to which he or she contributed information.

III. REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Opposer is hereby requested to produce for inspection and/or copying by Applicant, or to cause copies to be provided to Applicant, the documents and things specified hereunder, to the extent that such documents and things are in the possession, custody or control of Opposer:

REQUEST NO. 1.

Any documents, other than those subject to attorney-client privilege, identified in response to the preceding interrogatories and/or in response to the requests for admission, below, or used in the preparation of responses to the preceding responses or the requests for admission, below.

REQUEST NO. 2.

Documents which identify and describe each product or service which has been offered by Opposer or any person authorized by Opposer under or by reference to the Opposer's Mark.

REQUEST NO. 3.

For each product marketed under or by reference to the Opposer's Mark, a sample from each year from 2003 to date, of each different package, label, tag, wrapper, instructional manual, package insert or other form of packaging or labeling on which any of the Opposer's Mark have appeared.

REQUEST NO. 4.

For each product marketed under or by reference to the Opposer's Mark, a sample from each year from 2003 to date of each different advertisement, sales catalog, direct mail piece, brochure, internet web page or other item of promotional material which Opposer has prepared, caused to be prepared and/or distributed in connection with the advertising and promotion of Opposer's Goods.

REQUEST NO. 5.

For each of Opposer's Services advertised under or by reference to the Opposer's Mark, representative samples of advertisements and promotional materials which Opposer has distributed in connection with the advertising and promotion of such establishment during each year from 2003 through the present time.

REQUEST NO. 6.

For each sample of promotional material produced in response to Request Nos. 3, 4, and 5 above, documents which set forth, establish, or substantiate the periods of time during which Opposer or any predecessor in interest marketed goods or services in connection with such materials.

REQUEST NO. 7.

Documents which evidence, refer to, or otherwise relate to the number and location of establishments at which Opposer has offered Opposer's Services under or by reference to the Opposer's Mark in the United States.

REQUEST NO. 8.

Documents which evidence, refer to, or otherwise relate to the number and location of establishments at which Opposer's Goods have been offered under or by reference to the Opposer's Mark in the United States.

REQUEST NO. 9.

Documents that refer to or relate to the channels of trade that Opposer has used to promote and/or sell each of Opposer's Goods.

REQUEST NO. 10.

Documents that refer to or relate to the channels of trade that Opposer has used to promote and/or sell each of Opposer's Services.

REQUEST NO. 11.

Such documents as will permit the identification of:

- (a) all outlets for sale of each product and service which has been offered by Opposer under or by reference to the Opposer's Mark;

(b) all distributors, licensees and franchisees offering products or services under or by reference to the Opposer's Mark; and

(c) any other outlets for each product and service which has been offered by Opposer or its agents, under or by reference to the Opposer's Mark.

REQUEST NO. 12.

All documents, other than those subject to attorney-client privilege, relating to any investigation conducted by or on behalf of Opposer in relation to, use by others of the designation JOOST in connection with the marketing of any food or beverages or restaurant services, including copies of any reports resulting from such investigation.

REQUEST NO. 13.

All documents, other than those subject to attorney-client privilege, relating to any efforts by Opposer to enforce its rights in the Opposer's Mark against third parties that had allegedly made unauthorized use of trademarks or service marks in connection with the marketing of any goods or services, including any communications or any filings in courts, in the U.S. Patent and Trademark Office, or in any other judicial or administrative forum.

REQUEST NO. 14.

Documents from each of the last three years, which identify the price for each product and/or service which has been offered by Opposer under or by reference to the Opposer's Mark, including, but not limited to, price lists, catalogs and fee schedules.

REQUEST NO. 15.

All documents, other than those subject to attorney-client privilege, that refer or relate to any instances wherein a person has been confused, mistaken or deceived as to the source of products and/or services offered under or by reference to the Opposer's Mark.

REQUEST NO. 16.

Copies of the findings resulting from any market research or competitive research done by or for Opposer in relation to the Opposer's Mark.

REQUEST NO. 17.

Copies of the findings resulting from any market research or competitive research done by or for Opposer in relation to the Opposer's Goods or Opposer's Services.

REQUEST NO. 18.

Such documents as will permit the identification of all persons, firms, including but not limited to advertising or sales agents that have promoted the sale of the Opposer's Goods or Opposer's Services.

REQUEST NO. 19.

Such documents as will permit the identification of all persons, firms, or other entities that have manufactured, designed, or developed the Opposer's Goods intended to be marketed under or by reference to the Opposer's Mark.

REQUEST NO. 20.

Any marketing plans which Opposer has developed and/or utilized in relation to each product and service which has been offered by Opposer under or by reference to the Opposer's Mark.

REQUEST NO. 21.

Documents which set forth, establish, or substantiate the date upon which Opposer commenced use of the Opposer's Mark in connection with Opposer's Services.

REQUEST NO. 22.

Documents which set forth, establish, or substantiate the date upon which Opposer commenced use of the Opposer's Mark in connection with Opposer's Goods.

REQUEST NO. 23.

Documents which substantiate continuity of use of the Opposer's Mark in connection with Opposer's Services from the date of first use of such mark to the present.

REQUEST NO. 24.

Documents which substantiate continuity of use of the Opposer's Mark in connection with Opposer's Goods from the date of first use of such mark to the present.

REQUEST NO. 25.

All documents relating to the cessation of the commercial offering of any product or service that had previously been offered under or by reference to the Opposer's Mark.

REQUEST NO. 26.

Copies of the results of any survey, poll or similar investigation conducted by or on behalf of Opposer relating to recognition of the Opposer's Mark or of Opposer by the public or the trade.

REQUEST NO. 27.

All documents evidencing or relating to any unsolicited publicity or recognition obtained or received by Opposer in relation to Opposer's Services or Opposer's Goods offered under or by reference to the Opposer's Mark.

REQUEST NO. 28.

All documents evidencing or relating to any solicited publicity or recognition obtained or received by Opposer in relation to Opposer's Services or Opposer's Goods offered under or by reference to the Opposer's Mark.

REQUEST NO. 29.

Documents which evidence, refer to, or otherwise relate to Opposer's actual annual gross sales, in terms of units and dollars, of each product and service which has been offered by Opposer under or by reference to the Opposer's Mark for each year from 2003 through the present time.

REQUEST NO. 30.

Documents which evidence, refer to or otherwise relate to any monetary expenditures which Opposer has made in connection with the advertising and promotion of Opposer's Services and

Opposer's Goods offered under or by reference to the Opposer's Mark for each year from 2003 through the present time.

REQUEST NO. 31.

All correspondence between any advertising agencies and Opposer relating or referring to the advertising or promotion of Opposer's Services and Opposer's Goods offered under or by reference to the Opposer's Mark.

REQUEST NO. 32.

All documents relating or referring to the adoption, creation, selection and selection process of the Opposer's Mark.

REQUEST NO. 33.

All documents, other than documents subject to attorney-client privilege, wherein Applicant or any trademark of Applicant is referred to or mentioned.

REQUEST NO. 34.

Copies of all letters and other communications published, sent to and/or addressed to third parties by Opposer relating or referring to the subject matter of this opposition proceeding.

REQUEST NO. 35.

All documents, other than those subject to attorney-client privilege, referring or relating to any investigation, including any inquiry, survey, poll, credit check or other type of investigation Opposer has ever conducted or caused to be conducted involving:

- (a) Applicant's business;
- (b) any trademark of Applicant; or
- (c) Applicant.

REQUEST NO. 36.

All documents, other than those subject to attorney-client privilege, relating to any trademark searches conducted by or on behalf of Opposer or by any predecessor in interest of Opposer in relation to the Opposer's Mark, including copies of the results produced by each such search.

REQUEST NO. 37.

All documents, other than those subject to attorney-client privilege, which refer to or relate to the circumstances surrounding Opposer's becoming aware of the existence of Applicant and Applicant's Mark.

REQUEST NO. 38.

Copies of all documents, other than those subject to attorney-client privilege, referring or relating to any application for or any registration of the Opposer's Mark.

IV. REQUESTS FOR ADMISSION

Applicant hereby requests that Opposer admit, for purposes of this opposition proceeding only, the truth of the matters set forth below. In accordance with Fed. R. Civ. P. 36(a), the answer must admit the matter; or specifically deny the matter; or set forth in detail the reasons why Opposer cannot truthfully admit or deny the matter. Opposer may not give lack of information or knowledge as a reason for failure to admit or deny unless Opposer states that it has made reasonable inquiry and that the information known or readily obtainable by Opposer is insufficient to enable it to admit or deny.

REQUEST FOR ADMISSION NO. 1.

Opposer did not use the trademark JOOST in the United States in connection with Opposer's Goods or Opposer's services during the year 2002.

REQUEST FOR ADMISSION NO. 2.

Opposer did not use the trademark JOOST in the United States in connection with Opposer's Goods or Opposer's services during the year 2003.

REQUEST FOR ADMISSION NO. 3.

Opposer did not use the trademark JOOST in the United States in connection with Opposer's Goods or Opposer's services during the year 2004.

REQUEST FOR ADMISSION NO. 4.

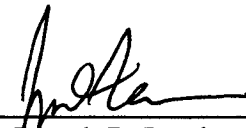
Opposer did not use the trademark JOOST in the United States in connection with Opposer's Goods or Opposer's services during the year 2005.

REQUEST FOR ADMISSION NO. 5.

Opposer did not use the trademark JOOST in the United States in connection with Opposer's Goods or Opposer's services during the year 2006.

Respectfully submitted,
Boost Juice Holdings Pty

By: _____


Joseph D. Lewis
Attorney for Opposer
Barnes & Thornburg LLP
750 17th Street, N.W.
Washington, D.C. 20006
(202) 289-1313

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **APPLICANT'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS, AND REQUESTS FOR ADMISSION TO OPPOSER** has been served on counsel of record for Booster Juice Limited Partnership by mailing said copy on May 19, 2006, via First Class Mail, postage prepaid to: Benjamin D. Knaupp, P.C., 4900 SW Griffith Drive, Suite 165, Beaverton, Oregon 97005.



Joseph D. Lewis

EXHIBIT B

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

Booster Juice Limited Partnership,

Opposer,

vs.

Boost Juice Holdings Pty.

Applicant.

Opposition No.: 91167259

**RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES,
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS,
AND REQUESTS FOR ADMISSION
TO OPPOSER**

Opposer Booster Juice Limited Partnership hereby responds to Applicant's First Set Of Interrogatories, Requests For Production Of Documents And Things, And Requests For Admissions as follows.

General Objections

Opposer objects to each and every interrogatory, request for production and request for admission to the extent that they request information or documents that are:

1. Subject to a privilege, including the attorney-client or work product privileges;
2. Confidential, or contain confidential information;
3. Not relevant within the meaning of FRCP 26;
4. Vague or overly burdensome; and/or
5. Not in Opposer's possession, custody or control or have been destroyed.
6. Opposer also objects to each interrogatory and document request to the extent that they purport to impose upon Opposer obligations beyond those required under

the Federal Rules of Civil Procedure, the Federal Rules of Evidence, or applicable substantive law. Opposer does not comply with any part of the Interrogatories which imposes obligations upon it not required by such rules.

7. Each of the objections set forth above (the "General Objections") is hereby incorporated into each of the specific responses set forth below.

INTERROGATORY RESPONSES

INTERROGATORY NO. 1

Identify each product and service which Opposer has marketed under or by reference to the Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 1

Franchise services and juice based beverages

INTERROGATORY NO. 2

Identify the product that is referred to as one of its products in paragraph 1 of the notice of opposition.

RESPONSE TO INTERROGATORY NO. 2

Juice based products.

INTERROGATORY NO. 3

For each product or service identified in answer to Interrogatory No. 1, provide the date when such product and/or service was first offered under or by reference to the Opposer's Mark, and describe the circumstances of such first use in commerce.

RESPONSE TO INTERROGATORY NO. 3

At least as early as October 31, 2003 in connection with the marketing of Booster juice products in Boise Idaho.

INTERROGATORY NO. 4

Provide the complete address of each restaurant, bar, or other service establishment at which Opposer or any person authorized by Opposer now provides or ever has provided any service under the Opposer's Mark in the United States.

RESPONSE TO INTERROGATORY NO. 4

None, except to the extent that the JOOST mark also is used in marketing the Booster Juice retail stores.

INTERROGATORY NO. 5

For each location identified in answer to Interrogatory No. 3, provide the date when such services were first offered under or by reference to the Opposer's Mark..

RESPONSE TO INTERROGATORY NO. 5

See Response to No. 4.

INTERROGATORY NO. 6

Identify the top five (by sales volume) distributors, retailers and other sellers of each of Opposer's Goods.

RESPONSE TO INTERROGATORY NO. 6

Opposer objects to this request as calling for confidential information, and therefore declines to provide same.

INTERROGATORY NO. 7

Identify the top five (by sales volume) suppliers of Opposer for products used in connection with the manufacture or sale of Opposer's Goods or Opposer's Services.

RESPONSE TO INTERROGATORY NO. 7

Opposer objects to this request as calling for confidential information, and therefore declines to provide same.

INTERROGATORY NO. 8

Identify each third party that has cooperated in any way with Opposer in research and development of food or beverage products marketed or intended to be marketed through or under the Opposer's Mark from 2003 to the present, and describe the food products that are or were the subject of such research and development.

RESPONSE TO INTERROGATORY NO. 8

Opposer objects to this interrogatory as being overly burdensome and not seeking relevant information within the meaning of FRCP 26, as well as for calling for confidential information, and therefore Opposer declines to respond to this interrogatory.

INTERROGATORY NO. 9

State separately with respect to Opposer's Services by type of media and by date, the dollar amounts, which have been expended by Opposer in advertising and promoting Opposer's Services in connection with the Opposer's Mark for each calendar year from 2003 through to the present date.

RESPONSE TO INTERROGATORY NO. 9

Opposer objects to this request as calling for confidential information, and therefore declines to provide same.

INTERROGATORY NO. 10

For each of the products comprising Opposer's Goods which Opposer has sold under Opposer's Mark, state, by unit and dollar volume, the amount of sales in the United States for each calendar year from 2003 through to the present date.

RESPONSE TO INTERROGATORY NO. 10

Opposer objects to this request as calling for confidential information, and therefore declines to provide same.

INTERROGATORY NO. 11

With respect to each product and service identified in the answer to Interrogatory No. 1, state the dates of each period of time during which Opposer ceased commercial use of the Opposer's Mark for more than six months, and describe the circumstances under which commercial use of the Opposer's Mark ceased, was suspended and/or resumed.

RESPONSE TO INTERROGATORY NO. 11

None.

INTERROGATORY NO. 12

Identify the person or persons most knowledgeable about: (a) the marketing and advertising of services and goods by Opposer or its agents under or by reference to the Opposer's Mark, (b) the development of new products intended to be marketed under or by reference to the Opposer's Mark, and (c) the sale of products and services by Opposer or its agents under or by reference to the Opposer's Mark.

RESPONSE TO INTERROGATORY NO. 12

Jon Amack.

INTERROGATORY NO. 13

To the extent of Opposer's knowledge, identify each person or entity, including third parties, that uses or has used in the United States a trademark or service mark that consists of or includes the designation JOOST in connection with the marketing of any goods or services, and describe Opposer's relationship to such persons and entities.

RESPONSE TO INTERROGATORY NO. 13

Opposer franchisees.

INTERROGATORY NO. 14

Identify each person whom Opposer intends to call as a witness in the captioned proceeding, including, but not limited to, expert witnesses, and describe the nature of each witness's expected testimony, including the identification of all documents about which each witness is expected to testify.

RESPONSE TO INTERROGATORY NO. 14

Not yet decided.

INTERROGATORY NO. 15

State the date and circumstances under which Opposer first learned of Applicant's use of Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 15

Opposer is not aware that Applicant has started suing the JOOST mark in the United States.

INTERROGATORY NO. 16

For each and every Interrogatory above, identify the individual or individuals answering the Interrogatory, and each person who provided any information, opinions, advice, reports, studies, or facts on which your answer to any of the foregoing Interrogatories was based, specifying each Interrogatory to which he or she contributed information.

RESPONSE TO INTERROGATORY NO. 16

John Amack.

RESPONSES TO REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

REQUEST NO. 1.

Any documents, other than those subject to attorney-client privilege, identified in response to the preceding interrogatories and/or in response to the requests for admission, below, or used in the preparation of responses to the preceding responses or the requests for admission, below.

RESPONSE TO REQUEST NO. 1.

Responsive relevant, non-confidential and non-privileged documents will be provided for those interrogatories to which Opposer has not made complete objections.

REQUEST NO. 2.

Documents which identify and describe each product or service which has been offered by Opposer or any person authorized by Opposer under or by reference to the Opposer's Mark.

RESPONSE TO REQUEST NO. 2.

Relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 3.

For each product marketed under or by reference to the Opposer's Mark, a sample from each year from 2003 to date, of each different package, label, tag, wrapper, instructional manual, package insert or other form of packaging or labeling on which any of the Opposer's Mark have appeared.

RESPONSE TO REQUEST NO. 3.

Relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 4.

For each product marketed under or by reference to the Opposer's Mark, a sample from each year from 2003 to date of each different advertisement, sales catalog, direct mail piece, brochure, internet web page or other item of promotional material which Opposer has prepared, caused to be prepared and/or distributed in connection with the advertising and promotion of Opposer's Goods.

RESPONSE TO REQUEST NO. 4.

Opposer objects to this request as being overly burdensome. Samples of relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 5.

For each of Opposer's Services advertised under or by reference to the Opposer's Mark, representative samples of advertisements and promotional materials which Opposer has distributed in connection with the advertising and promotion of such establishment during each year from 2003 through the present time.

RESPONSE TO REQUEST NO. 5.

Opposer objects to this request as being overly burdensome. Samples of relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 6.

For each sample of promotional material produced in response to Request Nos. 3, 4, and 5 above, documents which set forth, establish, or substantiate the periods of time during which Opposer or any predecessor in interest marketed goods or services in connection with such materials.

RESPONSE TO REQUEST NO. 6.

Opposer objects to this request as being overly burdensome. Samples of relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 7.

Documents which evidence, refer to, or otherwise relate to the number and location of establishments at which Opposer has offered Opposer's Services under or by reference to the Opposer's Mark in the United States.

RESPONSE TO REQUEST NO. 7.

Relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 8.

Documents which evidence, refer to, or otherwise relate to the number and location of establishments at which Opposer's Goods have been offered under or by reference to the Opposer's Mark in the United States.

RESPONSE TO REQUEST NO. 8.

Relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 9.

Documents that refer to or relate to the channels of trade that Opposer has used to promote and/or sell each of Opposer's Goods.

RESPONSE TO REQUEST NO. 9.

Relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 10.

Documents that refer to or relate to the channels of trade that Opposer has used to promote and/or sell each of Opposer's Services.

RESPONSE TO REQUEST NO. 10.

Relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 11.

Such documents as will permit the identification of:

- (a) all outlets for sale of each product and service which has been offered by Opposer under or by reference to the Opposer's Mark;

(b) all distributors, licensees and franchisees offering products or services under or by reference to the Opposer's Mark; and

(c) any other outlets for each product and service which has been offered by Opposer or its agents, under or by reference to the Opposer's Mark.

RESPONSE TO REQUEST NO. 11.

Opposer objects to this request as being overly burdensome. Samples of relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 12.

All documents, other than those subject to attorney-client privilege, relating to any investigation conducted by or on behalf of Opposer in relation to, use by others of the designation JOOST in connection with the marketing of any food or beverages or restaurant services, including copies of any reports resulting from such investigation.

RESPONSE TO REQUEST NO. 12.

Opposer objects to this request on the ground that it calls for confidential documents and confidential information. Relevant, non-confidential, non-privileged responsive documents will be provided.

REQUEST NO. 13.

All documents, other than those subject to attorney-client privilege, relating to any efforts by Opposer to enforce its rights in the Opposer's Mark against third parties that had allegedly made unauthorized use of trademarks or service marks in connection with the marketing of any goods or services, including any communications or any filings in courts, in the U.S. Patent and Trademark Office, or in any other judicial or administrative forum.

RESPONSE TO REQUEST NO. 13.

Opposer objects to this request on the ground that it calls for confidential documents and confidential information. Relevant, non-confidential, non-privileged responsive documents will be provided.

REQUEST NO. 14.

Documents from each of the last three years, which identify the price for each product and/or service which has been offered by Opposer under or by reference to the Opposer's Mark, including, but not limited to, price lists, catalogs and fee schedules.

RESPONSE TO REQUEST NO. 14.

Opposer objects to this request as being overly burdensome and calling for confidential information. For purposes of furthering discovery, samples of relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 15.

All documents, other than those subject to attorney-client privilege, that refer or relate to any instances wherein a person has been confused, mistaken or deceived as to the source of products and/or services offered under or by reference to the Opposer's Mark.

RESPONSE TO REQUEST NO. 15.

None at this time.

REQUEST NO. 16.

Copies of the findings resulting from any market research or competitive research done by or for Opposer in relation to the Opposer's Mark.

RESPONSE TO REQUEST NO. 16.

Opposer objects to this request as calling for confidential documents, and therefore declines to provide same.

REQUEST NO. 17.

Copies of the findings resulting from any market research or competitive research done by or for Opposer in relation to the Opposer's Goods or Opposer's Services.

RESPONSE TO REQUEST NO. 17.

Opposer objects to this request as calling for confidential documents, and therefore declines to provide same.

REQUEST NO. 18.

Such documents as will permit the identification of all persons, firms, including but not limited to advertising or sales agents that have promoted the sale of the Opposer's Goods or Opposer's Services.

RESPONSE TO REQUEST NO. 18.

Relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 19.

Such documents as will permit the identification of all persons, firms, or other entities that have manufactured, designed, or developed the Opposer's Goods intended to be marketed under or by reference to the Opposer's Mark.

RESPONSE TO REQUEST NO. 19.

Opposer objects to this request as calling for confidential information, and therefore declines to provide same.

REQUEST NO. 20.

Any marketing plans which Opposer has developed and/or utilized in relation to each product and service which has been offered by Opposer under or by reference to the Opposer's Mark.

RESPONSE TO REQUEST NO. 20.

Opposer objects to this request as calling for confidential information, and therefore declines to provide same.

REQUEST NO. 21.

Documents which set forth, establish, or substantiate the date upon which Opposer commenced use of the Opposer's Mark in connection with Opposer's Services.

RESPONSE TO REQUEST NO. 21.

Relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 22.

Documents which set forth, establish, or substantiate the date upon which Opposer commenced use of the Opposer's Mark in connection with Opposer's Goods.

RESPONSE TO REQUEST NO. 22.

Relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 23.

Documents which substantiate continuity of use of the Opposer's Mark in connection with Opposer's Services from the date of first use of such mark to the present.

RESPONSE TO REQUEST NO. 23.

Opposer objects to this request as being vague and overly burdensome.

REQUEST NO. 24.

Documents which substantiate continuity of use of the Opposer's Mark in connection with Opposer's Goods from the date of first use of such mark to the present.

RESPONSE TO REQUEST NO. 24.

Opposer objects to this request as being vague and overly burdensome.

REQUEST NO. 25.

All documents relating to the cessation of the commercial offering of any product or service that had previously been offered under or by reference to the Opposer's Mark.

RESPONSE TO REQUEST NO. 25.

None.

REQUEST NO. 26.

Copies of the results of any survey, poll or similar investigation conducted by or on behalf of Opposer relating to recognition of the Opposer's Mark or of Opposer by the public or the trade.

RESPONSE TO REQUEST NO. 26.

Opposer objects to this request as calling for confidential information, and therefore declines to provide same.

REQUEST NO. 27.

All documents evidencing or relating to any unsolicited publicity or recognition obtained or received by Opposer in relation to Opposer's Services or Opposer's Goods offered under or by reference to the Opposer's Mark.

RESPONSE TO REQUEST NO. 27.

Relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 28.

All documents evidencing or relating to any solicited publicity or recognition obtained or received by Opposer in relation to Opposer's Services or Opposer's Goods offered under or by reference to the Opposer's Mark.

RESPONSE TO REQUEST NO. 28.

Relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 29.

Documents which evidence, refer to, or otherwise relate to Opposer's actual annual gross sales, in terms of units and dollars, of each product and service which has been offered by Opposer under or by reference to the Opposer's Mark for each year from 2003 through the present time.

RESPONSE TO REQUEST NO. 29.

Opposer objects to this request as calling for confidential information, and therefore declines to provide same.

REQUEST NO. 30.

Documents which evidence, refer to or otherwise relate to any monetary expenditures which Opposer has made in connection with the advertising and promotion of Opposer's Services and Opposer's Goods offered under or by reference to the Opposer's Mark for each year from 2003 through the present time.

RESPONSE TO REQUEST NO. 30.

Opposer objects to this request as calling for confidential information, and therefore declines to provide same.

REQUEST NO. 31.

All correspondence between any advertising agencies and Opposer relating or referring to the advertising or promotion of Opposer's Services and Opposer's Goods offered under or by reference to the Opposer's Mark.

RESPONSE TO REQUEST NO. 31.

Opposer objects to this request as being overly burdensome and calling for documents containing confidential information. Samples of relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 32.

All documents relating or referring to the adoption, creation, selection and selection process of the Opposer's Mark.

RESPONSE TO REQUEST NO. 32.

Opposer objects to this request as being overly burdensome and calling for documents containing confidential information. Samples of relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 33.

All documents, other than documents subject to attorney-client privilege, wherein Applicant or any trademark of Applicant is referred to or mentioned.

RESPONSE TO REQUEST NO. 33.

Opposer objects to this request as being overly burdensome. Samples of relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 34.

Copies of all letters and other communications published, sent to and/or addressed to third parties by Opposer relating or referring to the subject matter of this opposition proceeding.

RESPONSE TO REQUEST NO. 34.

Relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 35.

All documents, other than those subject to attorney-client privilege, referring or relating to any investigation, including any inquiry, survey, poll, credit check or other type of investigation Opposer has ever conducted or caused to be conducted involving:

- (a) Applicant's business;
- (b) any trademark of Applicant; or
- (c) Applicant.

RESPONSE TO REQUEST NO. 35.

Opposer objects to this request as being overly burdensome and calling for documents containing confidential information.

REQUEST NO. 36.

All documents, other than those subject to attorney-client privilege, relating to any trademark searches conducted by or on behalf of Opposer or by any predecessor in interest of Opposer in relation to the Opposer's Mark, including copies of the results produced by each such search.

RESPONSE TO REQUEST NO. 36.

Opposer objects to this request as being overly burdensome and calling for documents containing confidential information. Samples of relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 37.

All documents, other than those subject to attorney-client privilege, which refer to or relate to the circumstances surrounding Opposer's becoming aware of the existence of Applicant and Applicant's Mark.

RESPONSE TO REQUEST NO. 37.

Opposer objects to this request as being overly burdensome and calling for documents containing confidential information. Samples of relevant, non-confidential and non-privileged responsive documents will be provided.

REQUEST NO. 38.

Copies of all documents, other than those subject to attorney-client privilege, referring or relating to any application for or any registration of the Opposer's Mark.

RESPONSE TO REQUEST NO. 38.

Relevant, non-confidential and non-privileged responsive documents will be provided.

RESPONSES TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1.

Opposer did not use the trademark JOOST in the United States in connection with Opposer's Goods or Opposer's services during the year 2002.

RESPONSE TO REQUEST FOR ADMISSION NO. 1.

Admit.

REQUEST FOR ADMISSION NO. 2.

Opposer did not use the trademark JOOST in the United States in connection with Opposer's Goods or Opposer's services during the year 2003.

RESPONSE TO REQUEST FOR ADMISSION NO. 2.

Deny.

REQUEST FOR ADMISSION NO. 3.

Opposer did not use the trademark JOOST in the United States in connection with Opposer's Goods or Opposer's services during the year 2004.

RESPONSE TO REQUEST FOR ADMISSION NO. 3.

Deny.

REQUEST FOR ADMISSION NO. 4.

Opposer did not use the trademark JOOST in the United States in connection with Opposer's Goods or Opposer's services during the year 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 4.

Deny.

REQUEST FOR ADMISSION NO. 5.

Opposer did not use the trademark JOOST in the United States in connection with Opposer's Goods or Opposer's services during the year 2006.

RESPONSE TO REQUEST FOR ADMISSION NO. 5.

Deny.

As to Objections:

By: _____



Steven M. Weinberg
Attorneys for Opposer Booster Juice Limited
Partnership
Greenberg Traurig, LLP
2450 Colorado Avenue, Suite 400E
Santa Monica, CA 90404
310-586-7700

VERIFICATION**STATE OF CALIFORNIA, COUNTY OF LOS ANGELES**

I have read the foregoing **RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS, AND REQUESTS FOR ADMISSION TO OPPOSER [FIRST SET]** and know its contents.

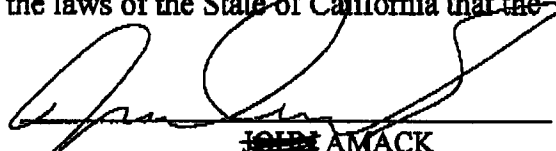
☐ I am a party to this action. The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☒ I am ☐ an Agent ☐ a president ☒ an Officer of BOOSTER JUICE LP, a party to this action, and am authorized to make this verification for and on its behalf, and I make this verification for that reason. ☒ I am informed and believe and on that ground allege that the matters stated in the foregoing document are true. ☐ The matters stated in the foregoing document are true of my own knowledge except as to those matters which are stated on information and belief, and as to those matters I believe them to be true.

☐ I am one of the attorneys for _____, a party to this action. Such party is absent from the county of aforesaid where such attorneys have their offices, and I make this verification for an on behalf of that party for that reason. I am informed and believe and on that ground allege that the matters stated in the foregoing document are true.

Executed on June 30, 2006, at Lake Oswego, Oregon.

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.


~~JOHN~~ AMACK
JOHN

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the **RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES, REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS, AND REQUESTS FOR ADMISSION TO OPPOSER** was served by being deposited with the United States Postal Service via first class mail, postage prepaid on June 30, 2006, Applicant's counsel:

JOSEPH D. LEWIS
BARNES & THORNBURG LLP
750 17th STREET, N.W. SUITE 900
WASHINGTON, DC 20006
Telephone: (202) 289-1313
Email: jdlewis@btlaw.com



Laila Z. Possani
Santa Monica, CA
Dated: June 30, 2006

EXHIBIT C

BARNES & THORNBURG LLP

<http://www.btlaw.com>

750 17th Street N.W.
Suite 900
Washington, DC 20006-4607

Switchboard: (202) 289-1313
Fax: (202) 289-1330

Joseph D. Lewis

E-mail: joe.lewis@btlaw.com

July 7, 2006

VIA FAX [(310) 586-7800] AND REGULAR MAIL

Steven M. Weinberg, Esq.
Greenberg Traurig, LLP
2450 Colorado Avenue
Suite 400E
Santa Monica, CA 90404

Re: Booster Juice / Boost Juice TTAB Proceedings
Oppositions 91166584 (BOOST) and 91167259 (JOOST)
Our Refs.: 40837-44561 and 40837-44562

Dear Mr. Weinberg:

We acknowledge receipt of your responses to the discovery requests in the above-referenced matters.

In view of the lack of substantive information that has been provided in these documents, it is difficult to ascertain at this time the extent to which your client intends to meet its discovery obligations. Consequently, this letter is intended to address some general issues that pervade the responses. We reserve the right to raise additional issues, but wanted to send you these general points as soon as possible.

We note that much of the requested information has been objected to as constituting confidential information or documents. We recognize that your client may have a legitimate interest in preserving the confidentiality of certain information. We ask that you present to us a proposed protective order which you believe will meet your client's needs. On our side, we indicate that our client is willing to abide by the standard agreement that appears on the website of the TTAB.

We note that many responses indicate that "non-privileged" documents or information will be provided. However, the responses do not indicate whether any information or documents would be responsive, in the absence of a claim of privilege. Consequently, in accordance with the applicable rules, we ask that you provide a listing of documents with identifying information, relating to each document for which a privilege is asserted.

Steven M. Weinberg, Esq.

July 7, 2006

Page 2 of 2

Lastly, we note that you have indicated that certain documents will be produced. It appears that the documents which you have agreed to produce at this point are relatively few in number. Therefore, in accordance with customary practice before the TTAB, we ask that you send to us copies of the produced documents, and our client will reimburse you for the reasonable costs of reproduction. If this is not acceptable, please advise us as how you propose to produce the documents.

We look forward to hearing from you.

Very truly yours,

BARNES & THORNBURG LLP

A handwritten signature in black ink, appearing to read "Joe Lewis", written over the printed name.

Joseph D. Lewis

JDL/chb

Confirmation Report - Memory Send

Page : 001
Date & Time: 07-07-06 04:32pm
Line 1 : 2022891330
Line 2 : 2022891330
Machine ID : BARNES & THORNBURG

Job number : 136
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To : 13105867800
Number of pages : 002
Start time : 07-07 04:32pm
End time : 07-07 04:32pm
Pages sent : 002
Status : OK
Job number : 136

*** SEND SUCCESSFUL ***

BARNES & THORNBURG LLP
<https://www.btdaw.com>

Joseph D. Lewis

750 17th Street N.W.
Suite 900
Washington, DC 20006-4407
Switchboard: (202) 289-1313
Fax: (202) 289-1330
E-mail: joe.lewis@btdaw.com

July 7, 2006
VIA FAX [(310) 526-7800] AND REGULAR MAIL

Steven M. Weinberg, Esq.
Greenberg Traurig, LLP
2450 Colorado Avenue
Suite 400E
Santa Monica, CA 90404

Re: Booster Juice / Boost Juice TTAB Proceedings
Oppositions 91166584 (BOOST) and 91167259 (JOOST)
Our Refs.: 40837-44561 and 40837-44562

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EXHIBIT D

BARNES & THORNBURG LLP

<http://www.btlaw.com>

750 17th Street N.W.
Suite 900
Washington, DC 20006-4607

Switchboard: (202) 289-1313
Fax: (202) 289-1330

E-mail: joe.lewis@btlaw.com

Joseph D. Lewis

October 27, 2006
VIA FAX [310 586 0222] AND REGULAR MAIL

Steven M. Weinberg, Esq.
Greenberg Traurig, LLP
2450 Colorado Avenue, Suite 400E
Santa Monica, CA 90404

Re: Booster Juice v. Boost Juice
Opposition No. 91167259 (JOOST)
Our Ref.: 40837-44562

Dear Mr. Weinberg:

We trust that you have received the Board's order of October 19, 2006. In accordance with that order, the objections that you raised based upon confidentiality no longer are operative. Accordingly, we request that you forward to us any documents and information that were being withheld on the ground of confidentiality.

We also point out that we have not received any non-confidential documents, and reiterate our request that you send these to us.

Very truly yours,

BARNES & THORNBURG LLP



Joseph D. Lewis

JDL/chb

Confirmation Report - Memory Send

Page : 001
Date & Time: 10-27-06 05:20pm
Line 1 : 2022891330
Line 2 : 2022891330
Machine ID : BARNES & THORNBURG

Job number : 454
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To : 13105860222
Number of pages : 001
Start time : 10-27 05:20pm
End time : 10-27 05:20pm
Pages sent : 001
Status : OK

Job number : 454

*** SEND SUCCESSFUL ***

BARNES & THORNBURG LLP
<http://www.btlaw.com>

Joseph D. Lewis

750 17th Street N.W.
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October 27, 2006
VIA FAX [310 886 0222] AND REGULAR MAIL

Steven M. Weinberg, Esq.
Greenberg Traurig, LLP
2450 Colorado Avenue, Suite 400B
Santa Monica, CA 90404

Re: Booster Juice v. Boost Juice
Opposition No. 91167259 (JOOST)
Our Ref: 40837-44562

Dear Mr. Weinberg:

We trust that you have received the Board's order of October 19, 2006. In accordance with that order, the objections that you raised based upon confidentiality no longer are operative. Accordingly, we request that you forward to us any documents and information that were being withheld on the ground of confidentiality.

We also point out that we have not received any non-confidential documents, and reiterate our request that you send these to us.

Very truly yours,

BARNES & THORNBURG LLP


Joseph D. Lewis

JDL/chb