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

Proceeding	91169740
Party	Plaintiff Sprint Communications Company L P Sprint Communications Company L P ,
Correspondence Address	Lawrence E. Abelman Abelman Frayne & Schwab 666 Third Avenue New York, NY 10017 UNITED STATES mamastrovito@lawabel.com
Submission	Motion to Compel Discovery
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Date	06/25/2007
Attachments	20070625180254119.pdf ( 26 pages )(1243349 bytes )

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

**In the Matter Of: Trademark Application No. 78/490750 for the mark MORE BARS  
IN MORE PLACES in the United States**

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**SPRINT COMMUNICATIONS COMPANY L.P.**

**Opposer,**

**v.**

**CINGULAR WIRELESS II, LLC**

**Applicant.**

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: **Opposition No. 91169740**  
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Commissioner for Trademarks  
P.O. Box 1451  
Alexandria, VA 22313-1451

**MOTION TO RESET TESTIMONY PERIODS  
AND TO COMPEL DISCOVERY RESPONSES**

Opposer, Sprint Communications Company LP (“Sprint”) hereby requests that the Board reset the testimony period which is currently scheduled to close on July 11, 2007, and that it compel discovery from Applicant Cingular Wireless II, LLC (“Cingular”) as requested below.

With respect to the Motion to Compel, Opposer’s attorney, Marie Anne Mastrovito has made a good faith effort by conference and correspondence with the Applicant’s attorney to resolve the issues presented in this Motion to Compel and have been unable to reach an agreement.

## **MOTION TO RESET TESTIMONY PERIODS**

Applicant requests that the start and end of the testimony period which is currently scheduled to end on July 11, 2007 be reset by the Board. Opposer did not receive Applicant's discovery responses until June 13, 2007 and those responses are believed to be deficient for the reasons discussed in the Motion to Compel, below. Thus, Opposer believes that in fairness, the testimony period should be reset to allow the parties sufficient time to resolve the outstanding discovery disputes.

Opposer acknowledges that pursuant to Rule 37 CFR 2.120(e) a motion to compel must be filed prior to the commencement of the first testimony period as originally set or reset. However, it is for this very reason that Opposer requests that the Board reset the testimony period.

In this case the parties conducted settlement discussions for many months and, as a result, the time for responding to discovery and trial periods were extended on several occasions. On April 26, 2007 Opposer's attorney made a final settlement proposal in hopes of resolving the conflict. Opposer's attorney followed up on the proposal on May 23, 2007 in an e-mail to Applicant's attorney. On May 25, 2007, Applicant's attorney telephoned and e-mailed Opposer's attorney advising her that the Opposer's settlement offer was not acceptable. At that time, the parties agreed that all discovery responses would be due two weeks later on June 13, 2007.

Opposer received Applicant's discovery responses on or about June 15, 2007. At that time, Opposer was surprised to find that Applicant did not produce a single document. Rather, Applicant's responses repeatedly state that documents "will" be

produced. No time or place of production is mentioned. Moreover, many interrogatory responses refer to the documents contained in the entire record of a National Advertising Division (“NAD”) proceeding in lieu of a specific written response. The references to the NAD record do not include any indication of the specific documents within the record where the responses to the interrogatories are deemed to lie. The deficiencies are discussed further in the Motion to compel, below.

Opposer submits that the need for resolution of the discovery issues warrants resetting of the trial periods. Opposer stresses that this motion is being filed only 10 days after the receipt of the discovery responses in question. Thus, Opposer has not delayed in raising the issues and this motion is being made within a reasonable time after the receipt of the inadequate responses. In this instance, due to the setting and resetting of discovery response dates during settlement talks, Opposer has not had the benefit of a 60 day period between the close of discovery and the opening of the testimony period. Thus, Opposer requests that the dates of the testimony period be reset by a sufficient period to allow the ruling on the Motion to Compel and Opposer’s receipt of further responses to discovery if the Board rules upon the Motion to Compel in Opposer’s favor.

As a final note, Opposer notes that both parties have included a claim of business confidentiality as to some documents and information. Opposer is preparing a Protective Order which shall be forwarded to Applicant tomorrow. Nevertheless, the parties have not yet signed or entered a Protective Order. Thus, the resetting of the testimony period is further warranted to allow the parties time to enter the Protective Order and to receive and review confidential documents.

## **MOTION TO COMPEL**

Opposer requests that the Board issue an order compelling Applicant to provide supplemental responses to the interrogatories and document requests discussed below. In support of this Motion to Compel Opposer has attached copies of the interrogatories and document requests in question and Applicant's responses thereto.

Also attached are copies of Opposer's letter of June 19, 2007 and Applicant's reply of June 22, 2007. Applicant's reply of June 22, 2007 followed a telephone conference in which the parties discussed their disagreements as to the sufficiency of the responses provided. No real headway was made during that conference other than to agree to work out a Protective Order and that Cingular would continue its effort to locate advertisements showing use of the mark.

In view of the correspondence and conference noted above, Opposer submits that a good faith effort has been made to resolve the discovery disputes. Unfortunately, the parties have not been able to reach an agreement on several key issues. Moreover, Applicant's failure to provide full responses and inability to submit samples of current advertising for Applicant's goods and services is highly prejudicial to Opposer.

Although Opposer originally objected to Applicant's responses to Interrogatory No. 1(a) and 1(b) Opposer at this time is willing to accept the supplemented response provided in Applicant's letter of June 22, 2007 in which Applicant provided copies of the referenced NAD documents and specified page numbers on which the response to the interrogatory allegedly can be divined. The following issues are among those still to be resolved:

**1. INTERROGATORY NO. 5:**

For Interrogatory No. 5, Opposer requested that the Applicant identify the date of its first use of Applicant's Mark in interstate commerce in connection with each of the goods named in answer to Interrogatory No. 1. The reference to Interrogatory No. 1 was a typographical error. This should have been Interrogatory No. 4. As a result, Applicant responded that the Interrogatory failed to identify with reasonable particularity the information sought because Interrogatory No. 1 does not call for a response referring to any particular products. It is Opposer's position that Applicant should have been able to conclude that the reference was intended to be to Interrogatory No. 4 which directly precedes Interrogatory No. 5 and specifically requests that the Applicant list the goods with which it uses or intends to use the mark. At any rate, the meaning of the Interrogatory has been clarified in Applicant June 19 letter and in the subsequent telephone conference. Opposer therefore submits that Applicant should provide a response to this Interrogatory; however, they have not yet done so.

**2. INTERROGATORY NO. 18:**

Interrogatory No. 18 requests an explanation of whether Applicant has changed the manner or method of use of the alleged trademark since use began and if so when the change was made, why it was made and the geographical area in which the change was effective. Opposer also requested that Applicant identify each variation of the alleged trademark used by Applicant, the period of time of use and the products or services with which each variation was used, including any related disclosures.

In response Applicant states that it has always used the mark as a single word mark “although it has appeared in a variety of advertising medium and presentations.” The different presentations are not specified

Cingular barely provides any information in response to this request but promises that Cingular will produce representative examples of advertising. In a follow up telephone conference, however, Applicant’s attorney stated that they have not been able to locate any copies of advertising even though their search is continuing. Applicant submits that it is disingenuous for Applicant to seek to respond to an Interrogatory by exercising its option to produce business records under Rule 33(d) and then to state that no business records are available. If Cingular is not able to locate advertisements, then they should provide a written response to the questions posed.

Moreover Opposer submits that, on information and belief ,advertisements for some products are currently being run on television. Thus, Applicant should be able to locate some samples of advertising.

### **3. INTERROGATORY NO. 20:**

In Interrogatory No. 20 Opposer has requested that applicant identify and locate any documents that support Applicant’s claim of superior network quality and geographical network coverage in comparison to its competitors including but not limited to market research studies and analyses.

In response Cingular refers to all documents filed in the NAD case. In Opposer subsequent letter and telephone conference with Applicant, Opposer stated her opinion that Rule 33(d) requires that Applicant both produce the referenced documents and refer to the specific documents deemed to be responsive rather than an entire record of a

proceeding. In response, Applicant has now provided 70 pages from the NAD proceeding however, the documents provided do not appear to include supporting documents, and Applicant has not provided a reference to the specific documents within this 70 page record which it believes to be responsive to this interrogatory. Opposer submits that at the very least, Opposer should provide page numbers of the documents believe to be responsive.

**4. DOCUMENT REQUEST NO. 3/ DOCUMENT REQUEST NO. 7:**

In document request no. 3 Opposer requests samples, photographs, or other depictions of each manner in which the Applicant's Mark has been or is now being used. In Document Request No. 7 Opposer requests representative documents relating to the packaging of Applicant's goods. In response to Document Request No. 3, Cingular states that it will produce representative samples of advertising but has not yet done so. In response to Document Request No. 7, Cingular states that it will produce representative samples of packaging on which the mark has appeared to the extent such packaging exists; however, no samples of packaging have been produced. Cingular does not deny that the mark has already been used in advertisements for some products, and the NAD documents produced verify that the mark has been used.

Opposer should not be prejudiced because Cingular needs additional time to locate documents. If additional time is required, the proceeding should be suspended until all files have been reviewed, including, those of Cingular's agents, such as the advertising agencies who prepared the advertisements on Cingular's behalf. Finally, if there are no copies of current or past advertisements, Applicant should provide a written statement: (i) describing in detail the nature of the lost or destroyed documents and their contents,



identifying the person(s) who prepared or authored the documents and, if applicable, the person(s) to whom the documents were sent, specifying the date on which the documents were prepared or transmitted; and specifying, if possible, the date on which the documents were lost or destroyed and, if destroyed, the conditions of and reasons for such destruction and the persons requesting and performing the destruction.

**5. DOCUMENT REQUEST NO. 4:**

As stated in Opposer's letter of June 19, Opposer has asked for documents "sufficient to show" the names and contact information of persons who participated in the selection of the Applicant's Mark. Applicant has stated that it does not have documents in the form requested. Opposer countered that no specific form has been requested; only that documents providing the names and contact information be produced. Applicant has not supplemented its response based on this clarification.

**6. DOCUMENT REQUEST NO. 23:**

In its response to Document Request No. 23 Cingular agreed to produce a privileged log concerning document protected from discovery, however, Cingular has not yet provided this.

For the reasons above, Opposer requests that the Board grant the instant Motion to reset the testimony period and to compel the discovery discussed above. Further, it is requested that the proceeding be suspended pending the ruling on this Motion to avoid prejudice to either party while awaiting a ruling on these essential issues.

Respectfully submitted,

  
MARIE-ANNE MASTROVITO

**ABELMAN, FRAYNE & SCHWAB**  
**666 THIRD AVENUE**  
**NEW YORK, NEW YORK 10017**  
**(212) 949-9022**

*Attorneys for Opposer,*  
*Sprint Communication Company L.P.*

Date: June 25, 2007

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of the foregoing **OPPOSER'S MOTION TO RESET TESTIMONY PERIODS AND MOTION TO COMPEL DISCOVERY RESPONSES** was served by first class mail, postage prepaid, this 25<sup>th</sup> day of 2007, upon counsel for the Applicant:

Virginia S. Taylor  
Kilpatrick Stockton LLP  
1100 Peachtree Street  
Atlanta, Georgia, 30309-4530

  
**MARIE-ANNE MASTROVITO**

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June 19, 2007

VIA E-MAIL AND FACSIMILE (404) 815-6555/404 541-3120

Olivia Maria Baratta, Esq.  
Kilpatrick Stockton LLP  
1100 Peachtree Street  
Atlanta, Georgia 30309-4530

WITHOUT PREJUDICE

Re: SPRINT COMMUNICATIONS COMPANY L.P. v.  
CINGULAR WIRELESS II, LLC  
Opposition No. 91169740 against  
MORE BARS IN MORE PLACES  
(Our Ref: 216703)

Dear Ms. Baratta:

We have reviewed your responses to our discovery requests and have a number of objections. We therefore ask that you supplement the responses as indicated below. We reserve the right to raise further objections and the absence of an objection to any of the responses should not be viewed as a waiver of the right to object.

We note that your failure to answer numerous interrogatories and complete non-compliance with the document requests (to date we have not received a single document, nor any indication of when and where the documents will be made available) is prejudicial to our client in view of the onset of our testimony period. We therefore request that you immediately consent to a thirty day extension of both party's trial periods in order to allow sufficient time in which to resolve the discovery disputes. If we do not hear from you by **2 pm Thursday June 21**, we shall file an unconsented request for extension of the trial periods and a motion to compel the outstanding discovery.

The responses which require immediate supplementation are as follows:

1. Your response to Interrogatory Nos. 1(a) and 1(b) are insufficient.

First, we note that 1(a) is a simple yes or no question. Referring us to unspecified documents filed in a different proceeding in a different forum, is evasive. Please answer 1(a) either "yes," or "no," we should not be required to

June 19, 2007

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devine the answer to this question from pages of documents in an NAD proceeding.

Second, for both 1(a) and 1(b) we note that Rule 33(d) of the Federal Rules of Civil Procedure specifies that if a party elects to produce a business record in lieu of a written response to an interrogatory they must clearly specify the records from which the answer may be derived or ascertained in sufficient detail to permit the interrogating party to locate and to identify the record in question. Your response does not do this. Moreover, we believe that it is not appropriate for you to refer to documents of record in a different proceeding before a different forum. If you wish to rely on a document in response to this interrogatory we ask that you produce the document in question for our review.

3. With respect to Interrogatory No. 5, you have argued that the interrogatory fails to identify the information sought with reasonable particularity because Interrogatory No. 1 does not call for a response referring to any particular products. We submit that it is clear that the reference to Interrogatory No. 1 was a typographical error and that the interrogatory in question meant to refer to the list of goods and services asked to be provided in Interrogatory No. 4. Your feigned inability to undertand what information was sought by this interrogatory is disingenous. We therefore request that you list the actual goods and services with which the mark has been used and the date of first use of the mark on each of these goods and services.

4. Your response to Interrogatory No. 6(a) is insufficient for the same reasons expressed above as to Interrogatory No. 1(b). The documents which are allegedly responsive to this interrogatory should be identified with specificity and produced.

5. The response to Interrogatory No. 18 states that Cingular will produce representative examples of advertising featuring Applicant's Mark but Cingular has not done this. We note that not one single document has been provided despite numerous statements to this effect.

6. Your response to Interrogatory No. 20 is insufficient for the same reasons noted as to 1(b) and 6(a) above. The documents which are responsive to this Interrogatory must be identified with specificity and should be produced in this proceeding. Opposer's current counsel was not involved in the NAD proceeding and it is evasive and inappropriate to refer to unspecified documents in a different proceeding before a different forum. Please produce the documents which you allege to be responsive.

7. In response to many of the document requests, including the request for samples of advertising featuring your mark, you have indicated that you will produce documents. Nevertheless, you have not done so. As a result you have not fully complied with the discovery requests. Your tactic of promising documents which are not provided is evasive and dilatory. Please produce documents responding to all the document requests including the promised

June 19, 2007

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documents referred to in your responses to document request nos. 1, 2, 3, 7, 8, 9, 10, 11, 13, 14, 15, and 18.

8. With respect to Document Request No. 4 Opposer has merely asked for documents sufficient to show the names and contact information of the persons who participated in the selection, design and adoption of the mark. Your response that documents do not presently exist in the form requested is evasive. The request does not specify a form in which the documents need appear. Thus, we reiterate our request that you provide documents sufficient to show the names and contact information for the individuals involved in the selection design and adoption of the Applicant's Mark.

9. In its response to Document Request No. 23 Cingular agrees to produce a privileged log concerning documents protected from discovery, however, Cingular has not provided this. We request that you provide the log immediately for our review.

We look forward to hearing from you in response to the above. Absent your agreement to extend the testimony period, the supplemented responses should be provided to us by Express Mail so that we receive them by Friday morning. If the testimony period is extended we are amenable to working out a schedule for receiving the supplemented responses..

Sincerely,

A handwritten signature in black ink, appearing to read "Marie Anne Mastrovito". The signature is fluid and cursive, with the first name "Marie" and last name "Mastrovito" being more prominent.

Marie-Anne Mastrovito



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June 22, 2007

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**Via E-Mail (Confirmation Copy by First Class Mail)**

Marie-Anne Mastrovito, Esq.  
Abelman Frayne & Schwab  
666 Third Avenue  
New York, NY 10017-5612

Re: Opposition No. 91169740  
*Sprint Communications Company LP v. Cingular Wireless II, LLC*  
U.S. Trademark Application Serial No. 78/490,750  
For the Mark MORE BARS IN MORE PLACES  
Our Reference: 46414/327545

Dear Marie-Anne:

Please find enclosed Cingular Wireless II, LLC's ("Cingular") documents responsive to Opposer's First Document Requests to Applicant and Opposer's First Interrogatories to Applicant.

Bates Nos. CIN 000001-CIN 000070 are documents filed in Case No. 4508 before The National Advertising Division of the Council of Better Business Bureaus, Inc., styled as *Sprint Nextel Corporation v. Cingular Wireless Corporation* ("NAD Case"). We have designated these documents as confidential pursuant to the confidentiality provisions of the NAD Case and in anticipation of a protective order in this Opposition proceeding. While both parties to this Opposition have equal access to the documents filed in the NAD Case, we are continuing to investigate whether our client can locate any of the exhibits and attachments referenced in the enclosed documents, and we will provide you with copies of any such documents that can be found.

With respect to Cingular's responses to Interrogatory Nos. 1(a) and (b), please see Cingular's January 25, 2006 response to the Complaint filed in the NAD Case (Bates Nos. CIN 000014 - CIN 000034). In particular, we would like to direct your attention to Cingular's discussion of its adoption of the MORE BARS IN MORE PLACES trademark starting on page 11 (Bates No. CIN 000024).

US2000 10117157.1

ATLANTA AUGUSTA CHARLOTTE LONDON NEW YORK RALEIGH STOCKHOLM WASHINGTON WINSTON-SALEM

Marie-Anne Mastrovito, Esq.  
June 22, 2007  
Page 2

We trust that this correspondence and the enclosed responsive documents resolve all of your concerns raised in our June 21, 2007 telephone conference regarding Cingular's responses to Sprint's discovery requests.

Best regards.

Sincerely,

A handwritten signature in cursive script, appearing to read "Olivia", written in black ink.

Olivia Maria Baratta

Enclosures

Cc: Virginia S. Taylor, Esq.  
Alicia Grahn Jones, Esq.



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

SPRINT COMMUNICATIONS COMPANY L.P.,	)	
	)	
Opposer,	)	Opposition No. 91169740
	)	
v.	)	Serial No. 78/490,750
	)	
CINGULAR WIRELESS II, LLC,	)	
	)	
Applicant.	)	

**APPLICANT'S RESPONSES TO OPPOSER'S FIRST INTERROGATORIES**

Applicant Cingular Wireless II, LLC ("Applicant" or "Cingular") states the following objections and responses to the first set of interrogatories of Sprint Communications Company L.P. ("Opposer" or "Sprint").

**GENERAL RESPONSES AND OBJECTIONS**

1. Cingular objects to each interrogatory to the extent that it attempts to impose obligations upon Cingular inconsistent or greater than the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

2. Cingular objects to each definition preceding the interrogatories to the extent that it attempts to impose obligations upon Cingular inconsistent or greater than the Federal Rules of Civil Procedure or the Trademark Rules of Practice.

3. Cingular objects to each interrogatory to the extent that the information sought is protected from discovery by the attorney-client privilege or the work product doctrine or would disclose the mental impressions, conclusions, opinions or legal theories of counsel and, as such are protected from discovery.

4. Cingular objects to each interrogatory to the extent that it seeks information not within Cingular's possession, custody, or control.

5. Cingular objects to each interrogatory to the extent that it seeks the disclosure of information that is irrelevant to the subject matter of this Opposition and not within the categories reasonably calculated to lead to the discovery of admissible evidence.

6. Cingular objects to each interrogatory to the extent that it seeks disclosure of confidential or proprietary business information or trade secrets of Cingular.

7. The following responses are based on the plain meaning of the interrogatories without regard to the definitions or instructions.

8. The following responses are based on information presently known by Cingular, and Cingular reserves the right to supplement the responses to these interrogatories.

9. "NAD Case" shall mean Case No. 4508 before The National Advertising Division of the Council of Better Business Bureaus, Inc., styled as *Sprint Nextel Corporation v. Cingular Wireless Corporation*.

10. "Applicant's Mark" shall mean Cingular Wireless II, LLC's application to register the mark MORE BARS IN MORE PLACES (Serial No. 78/490,750).

### **SPECIFIC RESPONSES**

#### **Interrogatory No. 1:**

- (a) Was the alleged trademark created specifically to convey a message to the public?

**Interrogatory No. 4:** List and describe each product on or in connection with which Applicant uses, intends to use or has ever used Applicant's MARK alone or as part of another mark.

**Response to Interrogatory No. 4:** In addition to the general objections, Cingular objects to this interrogatory to the extent that it seeks Cingular's confidential and proprietary information. Subject to these objections, Cingular responds that it uses, intends to use or has used Applicant's Mark in connection with the goods and services in Classes 9 and 38 set forth in the application for Applicant's Mark.

**Interrogatory No. 5:**

- (a) Identify Applicant's first use of Applicant's MARK in interstate commerce in connection with each of the goods named in answer to Interrogatory No. 1, including the date of such use, the goods on which Applicant's MARKS [sic] were first used, details of any *bona fide* sales involved, and the customer, if any, which purchased the specific product.
- (b) For each matter identified in (a) above, identify the persons having the most knowledge of such use.

**Response to Interrogatory Nos. 5(a) and (b):** In addition to the general objections, Cingular objects to this interrogatory on the ground that it is vague and fails to identify the information sought with reasonable particularity because Interrogatory No. 1 does not call for a response referring to any particular products. Cingular further objects to this interrogatory on the ground that it is overbroad and unduly burdensome. Subject to these objections, Cingular responds that Applicant's Mark was first used in advertising for

**Interrogatory No. 18:**

- (a) Has Applicant changed its manner or method of use of the alleged trademark since use began? If so, explain when the change was made, why it was made and the geographical area where the change was effective.
- (b) Identify each variation of the alleged trademark that Applicant has used. With respect to each variation, identify the period of time of use and the products or services each variation was used on or in connection with, including any related disclosures.

**Response to Interrogatory Nos. 18(a) and (b):** Subject to the general objections, Cingular responds that it has always used Applicant's Mark as a single word mark although it has appeared in a variety of advertising medium and presentations. Cingular further states that pursuant to Fed. R. Civ. P. 33(d), Cingular will produce representative examples of advertising featuring Applicant's Mark.

**Interrogatory No. 19:**

- (a) Has Applicant ever caused to make a survey or conducted a study for Applicant's internal or external use to determine how prospective purchasers understand the meanings of MORE BARS IN MORE PLACES? If so, explain the results of the survey or study and identify and locate all related documents
- (b) Has Applicant ever caused to make a survey or conducted a study for Applicant's internal or external use to determine what message, if any, prospective purchasers believe the alleged trademark conveys? If so, explain the results of the survey or study and identify and locate all related documents.

- (c) Has Applicant ever caused to make a study or survey for Applicant's internal or external use to determine if network and signal strength are key factors that influence consumers' decisions regarding the purchase or telecommunications products and services? If so, explain the results of the survey or study and identify and locate all related documents.

**Response to Interrogatory Nos. 19(a) and (b):** In addition to the general objections, Cingular objects to this interrogatory to the extent that it seeks Cingular's confidential and proprietary information. Cingular further objects to this interrogatory on the ground that it calls for information protected from discovery by the attorney-client privilege, the work product doctrine, or Fed. R. Civ. P. 26(b). Subject to these objections, Cingular responds that it is not aware of any surveys with respect to Applicant's Mark.

**Response to Interrogatory No. 19(c):** In addition to the general objections, Cingular objects to this interrogatory to the extent that it seeks Cingular's confidential and proprietary information. Cingular further objects to this interrogatory on the ground that it calls for information protected from discovery by the attorney-client privilege, the work product doctrine, or Fed. R. Civ. P. 26(b). Subject to these objections, Cingular responds that it is not aware of any surveys to determine whether network and signal strength influence consumers' decisions regarding the purchase of Applicant's telecommunications products and services.

**Interrogatory No. 20:** Identify and locate any documents that support Applicant's claim of superior network quality and geographical network coverage in comparison to its

competitors as implied by the alleged trademark MORE BARS IN MORE PLACES, including but not limited to market research studies and analyses.

**Response to Interrogatory No. 20:** Subject to the general objections, Cingular responds that Opposer is in possession of all documents filed in the NAD Case and refers Opposer to those documents, if any, which are responsive to this interrogatory.

**Interrogatory No. 21:**

- (a) Has Applicant or any person acting for or on its behalf obtained any statements or opinions regarding any of the issues in this opposition proceeding?
- (b) If so, identify the person or persons who rendered each statement or opinion, state whether it was oral or in writing, and identify all documents which refer or relate thereto.

**Response to Interrogatory Nos. 21(a) and (b):** In addition to the general objections, Cingular objects to this interrogatory on the ground that it calls for information protected from discovery by the attorney-client privilege, the work product doctrine, or Fed. R. Civ. P. 26(b). Subject to these objections, Cingular responds that it has not identified any persons to provide opinions or statements regarding the issues in this Opposition proceeding. Cingular reserves the right to supplement this response.

**Interrogatory No. 22:** Identify the witnesses Applicant intends to call to testify on its behalf and identify the documents upon which Applicant intends to rely in connection with this opposition proceeding.

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

SPRINT COMMUNICATIONS COMPANY L.P.,	)	
	)	
Opposer,	)	Opposition No. 91169740
	)	
v.	)	Serial No. 78/490,750
	)	
CINGULAR WIRELESS II, LLC,	)	
	)	
Applicant.	)	

**APPLICANT'S RESPONSES TO OPPOSER'S FIRST DOCUMENT REQUESTS**

Applicant Cingular Wireless II, LLC ("Applicant" or "Cingular") states the following objections and responses to the first document requests of Sprint Communications Company L.P. ("Opposer" or "Sprint").

**GENERAL RESPONSES AND OBJECTIONS**

Cingular hereby incorporates by reference its General Responses and Objections in Applicant's Responses to Opposer's First Interrogatories. Additionally, the statement that responsive documents will be produced, if any, does not necessarily indicate that Cingular in fact has any responsive documents presently within its possession, custody, or control.

**SPECIFIC RESPONSES**

**Document Request No. 1:** All documents and things requested to be identified by "Opposer's Interrogatories to Applicant" served concurrently herewith.

**Response:** In addition to the general objections, Cingular incorporates by reference its objections asserted in Applicant's Responses to Opposer's First Interrogatories. Subject

to these objections, Cingular responds that it will produce non-privileged responsive documents, if any, within Cingular's possession, custody or control.

**Document Request No. 2:** All documents showing, concerning, evidencing, relating or referring to Applicant's selection, design and adoption, of Applicant's Mark including, without limitation, any documentation of meetings or discussions held concerning the selection, design and adoption of Applicant's Mark, any documentation relating to the reasons for selecting Applicant's Mark, and any documentation concerning the consideration and rejection of using another mark.

**Response:** In addition to the general objections, Cingular objects to this request to the extent that it seeks documents protected from discovery by the attorney-client privilege, the work product doctrine, or Fed. R. Civ. P. 26(b). Cingular also objects to this request to the extent that it seeks Cingular's confidential and proprietary information. Subject to these objections, Cingular responds that it will produce non-privileged responsive documents, if any, within Cingular's possession, custody or control.

**Document Request No. 3:** A sample, copy, photograph, illustration, sketch or other depiction of each different logotype, design, font of type or style in which Applicant's Mark or any variation thereof has been or now is being used by Applicant.

**Response:** In addition to the general objections, Cingular objects to this request on the ground that it is overbroad and unduly burdensome. Subject to these objections, Cingular responds that it will produce representative samples of advertising featuring Applicant's Mark.



**Document Request No. 4:** Provide documents sufficient to show the names, titles and addresses of each and every person who participated in the Applicant's selection, design and adoption of Applicant's Mark, including, specifically, the name(s) of the person and persons who first suggested that Applicant adopt and use Applicant's Mark for Applicant's goods.

**Response:** In addition to the general objections, Cingular objects to this request on the ground that it seeks documents that Applicant believes do not presently exist in the form requested.

**Document Request No. 5:** All documents showing, concerning, evidencing, relating or referring to any searches, investigations or any other inquiries, whether formal or informal, conducted by Applicant relating to Applicant's Mark was available for use with respect to any mark, trade names, corporate names, or other users by others.

**Response:** In addition to the general objections, Cingular objects to this request to the extent that it seeks documents protected from discovery by the attorney-client privilege, the work product doctrine, or Fed. R. Civ. P. 26(b). Subject to these objections, Cingular responds that to the best of its knowledge, it believes that it does not have any responsive documents in its possession.

**Document Request No. 6:** Representative documents showing, concerning, evidencing, relating or referring to the production of Applicant's Goods, including, without limitation, documentation identifying every place of business where Applicant's Goods are (or will be) produced or manufactured and any documents describing the process of producing or manufacturing such goods.

**Document Request No. 21:** All documents showing, concerning, evidencing, relating, or referring to any and all statements and/or opinions of any expert obtained by applicant or any person acting for or on behalf of applicant regarding any of the issues involved in this opposition proceeding.

**Response:** In addition to the general objections, Cingular objects to this request to the extent that it seeks documents protected from discovery by the attorney-client privilege, the work product doctrine, or Fed. R. Civ. P. 26(b). Subject to these objections, Cingular responds that it has no non-privileged documents responsive to this request.

**Document Request No. 22:** Copies of all agreements, contracts or other arrangements between Applicant and any third-party which refer or relate to or comment on Applicants right to Applicant's Mark.

**Response:** Subject to the general objections, Cingular responds that it has no non-privileged documents responsive to this request.

**Document Request No. 23:** With respect to each document or thing which is withheld from production, whether under a claim of privilege or otherwise, and which is otherwise responsive to any of the production requests, provide: (a) the date, identity, and general subject matter of such document or thing; (b) the grounds asserted in support of the failure to produce such document or thing; (c) the identity of each person other than stenographic or clerical assistants) participating in the preparation of such document or thing; (d) the identity of each person to whom the contents of such document or thing were communicated by copy, distribution, reading or substantial summarization; (e) a description of any document or thing or other material transmitted with or attached to such document or

thing; (f) the number of pages in such document; (g) the particular request to produce to which such document or thing is responsive; and (h) whether any business or non-legal matter is contained or discussed in such document or thing.

**Response:** In addition to the general objections, Cingular objects to this request to the extent that it seeks to impose obligations upon Cingular inconsistent or greater than the Federal Rules of Civil Procedure or the Trademark Rules of Practice. Subject to these objections, Cingular responds that it will produce a privilege log concerning any documents protected from discovery by the attorney-client privilege, the work product doctrine, or Fed. R. Civ. P. 26(b) withheld from production, if any.

**Document Request No. 24:** All documents, other than those produced in response to any of the foregoing requests, upon which Applicant intends to rely in connection with this Opposition proceeding.

**Response:** Subject to the general objections, Cingular responds that it has not yet determined the documents upon which Applicant will rely in this Opposition proceeding. Cingular reserves the right to supplement its response to this request.

**Document Request No. 25:** All documents, other than those produced in response to any of the foregoing requests, which were examined, reviewed or inspected by Applicant or any person acting for or on behalf of Applicant's [sic] in connection with the preparation of Applicant's responses to Opposer's Interrogatories to Applicant.

**Response:** In addition to the general objections, Cingular objects to this request to the extent that it seeks documents protected from discovery by the attorney-client privilege,