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

Proceeding	91188035
Party	Defendant Advance Watch Company Ltd.
Correspondence Address	MATTHEW R. MOWERS BROOKS KUSHMAN P.C. 1000 TOWN CTR FL 22 SOUTHFIELD, MI 48075-1183 UNITED STATES hshoevein@brookskushman.com, mmowers@brookskushman.com, lsavage@brookskushman.com
Submission	Opposition/Response to Motion
Filer's Name	Hope V. Shovein
Filer's e-mail	hshovein@brookskushman.com, mmowers@brookskushman.com, lsavage@brookskushman.com
Signature	/hope v shovein/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

GUESS? IP HOLDER L.P. and GUESS?, INC.,

Opposers

v.

Opposition No. 91188035
Application No. 77/304,064

ADVANCE WATCH COMPANY, LTD.,

Applicant.

**APPLICANT'S OPPOSITION TO
OPPOSERS' MOTION TO COMPEL**

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I. INTRODUCTION

Applicant, Advance Watch Company Ltd. (“Applicant” or “Advance Watch”), hereby responds to Opposers’, Guess? IP Holder L.P. and Guess?, Inc. (collectively referred to herein as “Opposers”), February 9, 2011 Motion to Compel.

Opposers can hardly claim a good faith attempt to resolve the subject discovery dispute, where they 1) grossly misrepresent the exchange between the parties – on January 27, 2010¹ and October 29, 2010² Applicant asked that Opposers identify more specific issues with Applicant’s responses – and 2) seek the Board to compel responses to 209 requests (25 of 36 Interrogatories, 86 of 94 Document Requests, and 98 of 119 Admission Requests), including overwhelmingly over broad requests such as Interrogatory No. 24 (“Identify *all* entities of which you are aware that sell *any* goods in association with *any* mark containing the term GC or *any* similar term” (*emphasis added*)).

Indeed, Opposers attach as the final Exhibit Z to their February 9, 2011 motion the last correspondence between the parties, yet conveniently refrain from making any mention of such correspondence in either their brief or Mr. Steve Lauridsen’s Declaration. Rather, Opposers imply that correspondence between the parties ended with Applicant’s November 4, 2010 supplemental responses. However, Opposers’ Exhibits T and Z clearly show that *Applicant* made an effort to narrow the dispute between the parties, requesting on January 27, 2010 and October 29, 2010 more specific information regarding the information Opposers hoped to obtain. Opposers responded on November 2 and 11, 2010 (**Applicant’s attached Exhibit 1**), indicating

¹ See Opposers’ Exhibit T, January 27, 2010 letter from H. Shovein: “[W]e note that the objections to Opposers’ Requests for Admission ‘are not well taken,’ apparently, as a whole. If you have a specific example, we expect that you will identify it in a good faith attempt to resolve the matter before filing a motion to test the sufficiency of any of Applicant’s response to Opposers’ Admission Requests.”

² See Opposers’ Exhibit Z and Applicant’s attached Exhibit 1, including H. Shovein’s October 29, 2010 e-mail to S. Lauridsen: “If you have more specific issues with Applicant’s responses, such as the items raised above regarding Opposers’ responses, please identify those issues.”

that they would further specify their requests. On December 7, 2010 – 6 days before their deadline for serving pretrial disclosures – Opposers requested a 60 day extension “[i]n light of the parties’ ongoing discovery efforts and the upcoming holidays.”

Opposers have not clarified nor limited their requests. Instead, Opposers filed the instant Motion to Compel – 2 days before their extended deadline for serving pretrial disclosures – regarding 209 requests. Moreover, the subject motion is the first Applicant has heard anything about Opposers’ apparent dissatisfaction with Applicant’s September 9 and 10 document production.

It should go without saying that nitpicking over the language of 209 over broad and/or redundant requests is unproductive, yet Opposers’ counsel appears to prefer nitpicking over obtaining any meaningful discovery. Such actions are quite contrary to established practice in Board proceedings, where “the Board has neither the time nor the personnel to handle motions to compel involving substantial numbers of requests for discovery which require tedious examination.” *Sentrol, Inc. v. Sentex Sys., Inc.*, 231 USPQ 666, 667 (TTAB 1986). In fact, “it is generally the policy of the Board to intervene in disputes concerning discovery... only where it is clear that the parties have in fact followed the aforesaid process and have *narrowed the amount of disputed requests for discovery, if any, down to a reasonable number.*” *Id* (*emphasis added*).

The present motion is premature. The discovery dispute is not ready for Board intervention – Opposers have not made any effort to narrow their requests. To the extent that Opposers’ blatant mischaracterization of its alleged efforts to resolve any discovery disputes might not be sufficient for the Board to deny Opposers’ Motion to Compel, the following addresses the wants identified in Opposers’ motion.

II. AN ORDER COMPELLING DISCOVERY FROM APPLICANT IS UNWARRANTED

For the foregoing reasons, Applicant respectfully requests that the Board deny Opposers' motion.

A. "Boilerplate" Objections

Opposers cite to Ninth Circuit, Western District of New York and Central District of California decisions regarding boilerplate objections as insufficient to defeat a motion to compel, yet Opposers provided the following boilerplate in response to Applicant's Requests for Production Nos. 1-14, 15-17 and 19 (in part for Nos. 4, 15-17, and 19) and a similar boilerplate in response to Applicant's Interrogatories Nos. 4-11:

Opposers object to this request to the extent that it purports to require the disclosure of information that is not relevant to the claim or defense of any party or is not reasonably calculated to lead to the discovery of admissible evidence. Opposers further object to this request as vague and ambiguous and as overly broad and unduly burdensome. Opposers also object to this request to the extent it purports to require the disclosure of information that is protected by attorney-client privilege, work-product doctrine, or other applicable privilege or protection from disclosure. Opposers additionally object to this request to the extent that it purports to require the disclosure of information that constitutes or contains trade secrets or other confidential research, development, or commercial information. Opposers object to this request to the extent that it purports to require the disclosure of information that does not exist or is not in Opposers' possession, custody, or control.

Subject to and without waiving these objections, Opposer respond as follows: Opposers will produce all relevant, non-privileged documents in their possession, custody, or control, to the extent those documents exist.

Given that discovery is ongoing and that Opposers have not yet filed their first amended notice of opposition as directed by the Board, Opposers reserve the right to amend or supplement their response.

Opposers cannot make a non-specific, blanket complaint of boilerplate objections, in particular, where Opposers repeated the above boilerplate and never supplemented their discovery responses.

B. Specific Objections to Interrogatories

1. Interrogatory No. 9 – “meaning or connotation”

Opposers claim that Applicant’s objection to Opposers’ Interrogatory No. 9 (“[e]xplain the meaning or connotation of AWC’s mark”) is unfounded, yet Opposers objected to Applicant’s Interrogatory No. 15 (“[i]dentify what the letters ‘G’ and ‘C’ stand for in the mark that is the subject of” Opposers’ asserted registration), in part, by claiming that “it purports to require the disclosure of information that is not relevant to the claim or defense of any party or is not reasonably calculated to lead to the discovery of admissible evidence.”

Opposers further note that “Opposers have propounded interrogatories related to the GC mark’s sound (which AWC answered).” Indeed, Applicant also responded to Opposers’ Interrogatory No. 8 (“[e]xplain how AWC’s Mark was conceived or developed”), stating that “Applicant conducts business as Geneva Watch Group and Geneva Clock Co.”

Subject to objections, Applicant supplements its response to Opposers’ Interrogatory No. 9 to state that Applicant’s subject mark was derived from Applicant’s GENEVA CLOCK COMPANY trademark.

2. Interrogatory Nos. 13-21 and 33 – sales figures, geographic areas, annual advertising expenditures, class of consumers, “all goods you sell”, range of retail prices, all retail outlets (“only carry your product”; “carry your goods... but that do not carry other brands of timepieces”; and “carry your goods... and that also carry Guess’ goods sold in association with Guess’ mark”), and “the level of sophistication of consumers”

Opposers’ Interrogatory No. 13 requests “[f]or each year in which you have sold goods in association with AWC’s Mark, provide your approximate sales figures in dollars and in units for all goods you sold in association with AWC’s Mark.” Applicant will supplement its response with relevant, confidential sales information.

Opposers' Interrogatory No. 14 asks Applicant to "[i]dentify all geographic areas in which you advertise or promote your products bearing AWC's Mark." Applicant's clocks bearing the mark that is the subject of this proceeding are distributed nationwide.

Opposers' Interrogatory No. 15 asks Applicant to "[i]dentify your approximate annual advertising expenditures in dollars for goods sold in association with AWC's Mark." Apart from its website, Applicant does not advertise.

Opposers' Interrogatory No. 16 asks Applicant to "[i]dentify the class of consumers who purchase your goods sold in association with AWC's Mark." Inasmuch as the subject application is not limited to a class of consumers, all classes of consumers are likely relevant.

Opposers' Interrogatory No. 17 asks Applicant to "[i]dentify all goods you sell in association with AWC's Mark." Applicant sells clocks, mantel clocks, and parts and accessories for the same, in association with the mark identified in the subject application.

Opposers' Interrogatory No. 18 asks Applicant to "[i]dentify the range of retail prices for each good you sell in association with AWC's Mark." The range of retail prices for the relevant goods is approximately \$12.99 to \$79.99 US.

Opposers' Interrogatory No. 19 asks Applicant to "[i]dentify all retail outlets of which you are aware that only carry your products sold in association with AWC's Mark." Applicant previously identified all retail outlets.

Opposers' Interrogatory No. 20 asks Applicant to "[i]dentify all retail outlets of which you are aware that carry your goods sold in association with AWC's Mark but that do not carry other brands of timepieces." See the following section.

Opposers' Interrogatory No. 21 asks Applicant to "[i]dentify all retail outlets of

which you are aware that carry your goods sold in association with AWC's Mark and that also carry Guess' goods sold in association with Guess' mark." To the best of Applicant's knowledge, no retail outlets carry both parties' goods.

Opposers' Interrogatory No. 33 asks Applicant to "[e]plain in detail the level of sophistication of consumer who purchase goods sold in association with AWC's Mark." Applicant cannot sufficiently define the level of sophistication of consumers, though products are sold to general consumer retail markets.

3. Interrogatory No. 20 – all retail outlets (“carry your goods... but that do not carry other brands of timepieces”)

Although it is entirely unclear what Opposers gain from their distinction between 1) retail outlets that only carry Applicant's goods and 2) retail outlets that carry Applicant's goods “but that do not carry other brands of timepieces,” Applicant supplements its response to state that it is not aware of a retail outlet that carries Applicant's clocks bearing the subject mark but do not carry other brands of timepieces.

4. Interrogatory No. 23 – actual confusion

Applicant stated that it was not aware of any instances of confusion.

5. Interrogatory No. 24 – the prime example of “over broad”

Interrogatory No. 24 asks that Applicant “[i]dentify all entities of which you are aware that sell any goods in association with any mark containing the term GC or any similar term.” Opposers argue that Applicant's awareness of third-party uses is discoverable. Applicant does not disagree. Indeed, Applicant responded to Opposers' Interrogatory No. 22 (“[i]dentify third-party uses of which you are aware of any mark containing the word GC for timepieces or similar goods”) with a list nine (9) third-party marks. Applicant also produced a search report containing relevant third-party marks. To the extent that Opposers' Interrogatory No. 24 seeks

additional, discoverable information, Opposers should be required to clarify their request.

To the extent that research conducted in connection with defending this Opposition reveals additional third-party uses of marks containing the term GC for the same or similar goods, Applicant will supplement its response to Opposers' Interrogatory No. 22.

6. Interrogatory No. 26 and 31 – basis for first affirmative defense and denial of Par. 5

Interrogatory No. 26 requests a detailed explanation regarding the basis of Applicant's first affirmative defense ("Opposers' Notice of Opposition fails to state a claim upon which relief can be granted, and in particular, fails to state legally sufficient grounds for sustaining the opposition").

Paragraph 5 of Opposers' December 3, 2008 Notice of Opposition alleged:

Applicant's Mark so resembles Opposers' GC Marks, previously used in commerce by Opposers and not abandoned, as to be likely, when applied to the goods of Applicant, to cause confusion or to cause mistake or to deceive.

Paragraph 5 of Opposers' November 2, 2009 Renewed Amended Notice of Opposition alleged:

Applicant's goods for which it seeks to register the mark GC (stylized) are so closely related to the goods of Opposers under the mark GC.

Paragraph 5 of Opposers' November 2, 2009 Renewed Amended Notice of Opposition previously appeared as Paragraph 4 of Opposers' December 3, 2008 Notice of Opposition. Opposers served their first discovery requests on August 19, 2009 and Applicant responded October 23, 2009. Opposers' request was limited to the language contained in Paragraph 5 of the original Notice of Opposition, as it was served before the amended notice of opposition. The Board's November 18, 2009 Order clearly stated that "opposers are precluded from taking any further discovery in this case." Opposers did not issue a discovery request

regarding the basis of Applicant's denial of Paragraph 4, and are precluded from taking any discovery on such denial. "[A] party will not be permitted to obtain, through a motion to compel, discovery broader in scope than that actually sought in the discovery request(s) to which the motion pertains." TBMP 402.02, citing *Fisons Ltd. v. Capability Brown Ltd.*, 209 USPQ 167, 170 (TTAB 1980).

7. Interrogatory No. 28-30 – bases for third, fourth and fifth affirmative defenses

Interrogatory Nos. 28-30 request detailed explanations regarding the bases of Applicant's third, fourth and fifth affirmative defenses.

Applicant alleged as its Third Affirmative Defense: "Opposers' purported rights, enigmatically identified in the Notice of Opposition as 'the mark GC,' would not encompass the letters 'GC' in standard characters, which are highly diluted as a trademark formative and hence weak absent distinctive stylization or the addition of a design element."

Applicant alleged as its Fourth Affirmative Defense: "Applicant's use of its mark will not mistakenly be thought by the public to derive from the same source as Opposers' services, nor will such use be thought by the public to be a use by Opposers with Opposers' authorization or approval."

Applicant alleged as its Fifth Affirmative Defense: "Applicant's mark in its entirety is sufficiently distinctly different from the letters GC to avoid confusion, deception or mistake as to the source, sponsorship or association of Applicant's goods."

Applicant's Third, Fourth and Fifth Affirmative defenses clearly amplify Applicant's denial of Opposers' claim of likelihood of confusion. Evidence of third party GC marks, the placement of products in stores (watches in display cases, clocks on shelves), and the fact that the parties' design marks are sufficiently distinct, form at least some of the bases of

Applicant's above-mentioned affirmative defenses.

8. Interrogatory No. 32 – channels of trade

As stated in Applicant's response to Opposers' Interrogatory No. 32, in view of the unrestricted identification of goods in the application, Applicant's goods must be presumed to travel in all the normal channels of trade for such goods. See *Kangol Ltd. v. KangaROOS U.S.A.*, 974 F.2d 161, 23 USPQ2d 1945 (Fed. Cir. 1992). Moreover, Opposers have the burden of proof as to what constitutes the normal channels of trade. See *Chase Brass & Copper Co., Inc. v. Special Springs, Inc.*, 199 USPQ 243 (TTAB 1978).

9. Interrogatory No. 36 – retailers/distributors

Opposers apparently distinguish between retailers and distributors without explaining their distinction. Retailers are distributors of a party's product, and distributors can sell at retail. Applicant identified its U.S. retailers in response to Interrogatory No. 34. Applicant's response contained the complete list.

10. Interrogatory Nos. 1-3 – who prepared?

The information furnished in Applicant's discovery responses came from public sources and Applicant's consultation with counsel. Susan Sequin, Director of Sales and Product Development for Geneva Clock Company, obtained product photographs and sales figures.

11. Verification

Opposers claim that Applicant has not provided a verification for its interrogatory responses. Applicant will provide such verifications, and looks forward to receiving Opposers' verifications for its responses to Applicant's First, Second and Third Interrogatories to Opposers.

C. Requests for Production

1. Request Nos. 1-5, 9, 11-15, 17, 19-25, 27, 28-29, 32-33, 35-38, 40, 41-45

Opposers move to compel the production of documents in response to these thirty-five (35) requests with no explanation nor argument specific to any of these requests, and Applicant previously addressed Opposers' complaint regarding some of these requests. See Opposers' Exhibit Z (including H. Shovein's October 4, 2010 e-mail to S. Lauridsen). Pursuant to 37 C.F.R. § 2.120(e), a motion to compel shall include "a copy of the request for production, any proffer of production or objection to production in response to the request, *and a list and brief description of the documents or things that were not produced for inspection and copying.*" (*Emphasis added.*) Opposers' motion falls far short of meeting this requirement in its blanket request that the Board compel responses to these 35 Requests for Production.

2. Request No. 20 – "buyers of goods"

Opposers' Document Request No. 20 seeks "[d]ocuments sufficient to show the buyers of goods and/or services sold, offered for sale, or provided under Your Mark and/or any other mark you use containing "GC." Opposers argue that "[t]he circumstances under which AWC's customers purchase AWC's goods is relevant to the likelihood of confusion analysis," but that is not the question presented in Opposers' Document Request No. 20.

Opposers also suggest that the Board's standard protective order allows for the review of the customer names only by the requesting party's attorney, though Opposers cannot point to such a provision in the Board's standard protective order. *Neville Chemical Co. v. Lubrizol Corp.*, 184 USPQ 689, 690 (TTAB 1975) (protective order must contain provision that customer names will be revealed only to applicant's attorneys). Applicant maintains its objection that the names of customers are not discoverable.

3. Request Nos. 26 and 41-45 – knowledge of Opposers

Opposers' Document Request No. 26 seeks "[a]ll documents and things referring or relating to your knowledge or awareness of Guess' Mark [sic], including but not limited to when you first became aware of Guess or Guess' Mark." Applicant maintains its objections, and notes that Applicant provided a copy of its search report (which does not include Opposers' alleged GC Mark), and Opposers have a copy of the initial Notice of Opposition.

Opposers' Document Request No. 41 seeks "[a]ll documents referring or relating to any instances of actual or possible confusion between your use of Your Mark on the one hand and Guess' use of Guess' Mark on the other." Applicant already responded to Opposers' Interrogatory No. 23 that it is not aware of instances of confusion.

Opposers' Document Request No. 42 seeks "[a]ll documents referring or relating to Opposers." Applicant maintains its objections.

Opposers' Document Request No. 43 seeks "[a]ll communications referring or relating to Opposers' Mark." Applicant maintains its objections.

Opposers' Document Request No. 44 seeks "[d]ocuments depicting your use of Your Mark from your date of first use to present." Applicant produced responsive documents, including images of its products bearing Applicant's mark that is the subject of this proceeding.

Opposers' Document Request No. 45 seeks "[a]ll documents depicting your first use of Your Mark." Applicant maintains that such documents are encompassed by Document Request No. 44. Applicant's response asked that Opposers explain the difference, if they disagreed. Opposers have not explained.

4. Request No. 48 – everything "on which you intend to rely in this proceeding"

Opposers rely on 37 C.F.R. § 2.121 (regarding the assignment of times for taking

testimony) in arguing that Applicant is required to respond to Opposers' Document Request No. 48. Opposers specifically refer to the requirements for a party's pretrial disclosures. Indeed, 37 C.F.R. § 2.121(e) states that "[a] party need not disclose, prior to its testimony period, any notices of reliance it intends to file during its testimony period." However, a party must disclose in its pretrial disclosures the name of the witnesses from whom it intends to take testimony, as well as "a general summary or list of the types of documents and things which may be introduced as exhibits during the testimony of the witness." Applicant's Pretrial Disclosures are not yet due (the April 14, 2011 deadline will be reset in light of the current suspension of proceedings).

5. Request Nos. 49-94 – "proof of use" and "third party use"

Document Request No. 49 requests "a representative photograph showing AWC's Mark affixed to the good or to the container of the good," for each good listed in the subject application, and Document Request No. 50 requests "[a] sample of each good listed in AWC's Application." On September 9 and 10, 2010, Applicant produced photographs of its products bearing the subject mark, including the following:





Applicant's Documents AW1, AW16, AW39 and AW41.

The subject application covers "timepieces and chronometric instruments, namely, alarm clocks, wall clocks and parts therefore; clock accessories, namely, clock cabinets, housings, cases, gears, pendulums, hands, face inserts and dials." Opposers' Document Requests Nos. 53 – 80 go on to request proof of use in commerce and proof of first use in commerce for each listed item in the description of goods. Opposers' Document Requests Nos. 81 – 94 further request an invoice evidencing the sale of each listed item in the description of goods (which is arguably a form of proof of use).

Opposers merely allege "use of the mark GC in connection with the sale of chronometric instruments, jewelry, and watches," since "long prior to Applicant's priority date." See November 2, 2009 Renewed Amended Notice of Opposition. Applicant's "constructive use" priority date is the date of the application, October 15, 2007. *Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, 28 USPQ2d 1464, 1467 (TTAB 1993) (in the absence of proof of use, the filing date of the application, rather than the dates of use alleged in the application, is treated as the earliest use date on which applicant may rely). It is Opposers' burden to prove prior use. Therefore, it is puzzling that Opposers are so persistently chasing proof of Applicant's use of the

subject mark. Opposers appear to seek evidence to support a claim for fraud, which they did not allege.

Opposers' Document Requests Nos. 51 and 52 seek "all documents referring or relating to any third-party use in commerce of 'GC' in association with" watches and chronometric images. As noted in Applicant's response to Opposers' Document Request No. 34 ("[a]ll documents and/or things concerning your knowledge of any third party's use of Your Mark and/or any other mark containing 'GC'"), Applicant is aware of certain registrations for "GC" marks. Moreover, Applicant produced a 157 page search report (AW49 – AW205) for a "Design of a Stylized GG," which encompassed GC, G C, and CG marks (as shown in the report), which Opposers confusingly claim to be "irrelevant" in their Motion to Compel.

D. Requests for Admission

1. Request Nos. 5-32 – "admit you did not use"

Applicant initially objected to Opposers' Admission Requests Nos. 5 – 32 based on Opposers' definition of "AWC's Mark," where Opposers' Admission Requests Nos. 5 – 32 asked Applicant to admit that it "did not use AWC's Mark in interstate commerce prior to June 2007" and that it "did not use AWC's Mark prior to February 2007" in connections with each of the goods identified in the subject application. Applicant supplements its responses to Opposers' Admission Requests Nos. 5 – 32 to deny each request.

2. Request Nos. 33-36, 40-51, 60-67, 69, and 71-72

Applicant will amend its responses to these requests to state its understanding, and respond within Applicant's interpretation and limitation of each request.

3. Request Nos. 77-119 – "no third party"

Opposers' entire Second Set of Requests for Admission asked Applicant to "[a]dmit that no third party currently owns a registration for (or uses) 'GC' for" horological instruments, horological instruments and parts thereof, watches, watch bands, wrist watches,

pocket watches, and each of the goods identified in the subject application. Applicant responded to Opposers' Second Set of Requests for Admission that Applicant is unable to admit or deny as the requests are not limited to the United States. Moreover, "[i]nformation concerning a party's awareness of third-party use and/or registration of the same or similar marks for the same or closely related goods or services as an involved mark, is discoverable to the extent that the responding party has actual knowledge thereof (without performing an investigation)." TBMP 414.

However, Opposers now ask that Applicant respond within the limitation that Opposers' Second Set of Request for Admission are limited to the United States. Therefore, Applicant will amend its responses to reflect those uses and/or registrations it is aware of without performing an investigation. To the extent that other third-party uses and/or registrations come to Applicant's attention through research conducted in support of the defense of this Opposition, Applicant will further amend.

III. CONCLUSION

For the foregoing reasons, Applicant respectfully requests that the Board deny Opposers' motion.

Respectfully submitted,

BROOKS KUSHMAN P.C.

By: Hope Shovein

Mark A. Cantor
Matthew R. Mowers
Hope V. Shovein
1000 Town Center
Twenty-Second Floor
Southfield, Michigan 48075

Attorneys for Applicant

Dated: March 1, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of **APPLICANT'S OPPOSITION TO OPPOSERS' MOTION TO COMPEL** has been served on March 1, 2011 by:

delivering

mailing (via First-Class mail)

a copy to:

Steven E. Lauridsen
Christie, Parker & Hale, LLP
P.O. Box 7068
Pasadena, California 91109-7068

Attorney for Opposers



Hope V. Shovein

Exhibit 1

Hope V. Shovein

From: "Steven E. Lauridsen" <steven.lauridsen@cph.com>
Sent: Tuesday, November 02, 2010 2:07 PM
To: Hope V. Shovein
Cc: Michael.MacDermott@cph.com; Matthew R. Mowers; roxanne.gaines@cph.com
Subject: RE: Guess v. AWC - Meet and Confer Re: Insufficient Discovery Responses
Attachments: TEXT.htm; Mime.822

Hope,

I will discuss these matters with my client and get back to you. In the meantime, I recommend that we push back all pretrial dates by 30 days.

Please let me know if AWC will consent, and we will file the extension.

Also, I would like to get a date certain from you by which AWC will supplement its responses as indicated in your email.

Best regards,
Steven Lauridsen

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

From: Hope Shovein [mailto:HSHOVEIN@brookskushman.com]
Sent: Friday, October 29, 2010 2:00 PM
To: Steven E. Lauridsen
Cc: Matthew Mowers; Michael MacDermott; Roxanne Gaines
Subject: RE: Guess v. AWC - Meet and Confer Re: Insufficient Discovery Responses

Mr. Lauridsen:

While we work to supplement Advance Watch's responses to Opposers' interrogatories and requests for admission, to the extent supplemental responses are necessary at this time, we also ask that Opposers amend/supplement their discovery responses.

As an example, Opposers appear to deny that the stylized GC that is the subject of Registration No. 3605306 consists of the capital letter "G" to the left of a lower case letter "c", yet at the same time, Opposers allege common law rights in the letters "GC". See Opposers' Response to Admission Request. No. 45.

Opposers also deny that Opposers' stylized GC mark is an abbreviation for the phrase "Guess? Collection" or "Guess? Clothing", yet Opposers' Registration No. 2215792, for the same stylized GC and the disclaimed word COLLECTION, claims ownership of prior registrations 1271896, 1299580, and 1433022, each for the GUESS? logo. It would seem that the GUESS? logo is claimed as a prior registration because the letter "G" in the mark identified in Registration No. 2215792 stands for GUESS?. If this is incorrect, please explain.

In addition, Opposers have not admitted nor denied Applicant's Requests for Admission Nos. 15 or 16. Please do so, or we will move to have them deemed admitted. Should Opposers deny Applicant's Admission Request No. 15, we look forward to receiving specimens in response to Applicant's Document Request No. 18.

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If you have more specific issues with Applicant's responses, such as the items raised above regarding Opposers' responses, please identify those issues.

We look forward to hearing from you.

Kind regards,

Hope

Hope V. Shovein
Brooks Kushman PC
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Southfield, MI 48075-1238
General: (248) 358-4400
Direct: (248) 226-2805
Fax: (248) 358-3351
hshovein@brookskushman.com

>>> On 10/27/2010 at 2:08 PM, in message <22B9EBC297CE694AA5BE883B50BB4F481B665B@cphpas-exchg.CPH.COM>, "Steven E. Lauridsen" <steven.lauridsen@cph.com> wrote:

Hope,

What is the status of this?

Best regards,
Steven

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

From: Steven E. Lauridsen
Sent: Friday, October 15, 2010 4:19 PM
To: 'Hope Shovein'
Cc: Matthew Mowers; Michael MacDermott; Roxanne Gaines
Subject: RE: Guess v. AWC - Meet and Confer Re: Insufficient Discovery Responses

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Your email below indicates that certain documents have been withheld because AWC is maintaining its objections. Your email also states that certain documents have yet to be produced. We therefore are missing all documents and things that we have requested in our meet and confer letter which have not yet been produced. As we have stated in our letter, we do not believe that AWC's objections are valid.

Also, you state that AWC will supplement AWC's responses to Guess' interrogatories and requests for admission. Please provide us a date certain by which AWC will serve its supplemental responses. We will need adequate time before the newly reset pretrial disclosure deadline to determine whether we still need to file a motion to compel. We therefore request that AWC supplement its responses no later than 2 weeks before the pretrial disclosure deadline, which is currently set for November 13.

Best regards,
Steven Lauridsen

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

From: Hope Shovein [mailto:HSHOVEIN@brookskushman.com]

Sent: Monday, October 04, 2010 4:12 PM

To: Steven E. Lauridsen

Cc: Matthew Mowers; Joseph E. Reed; Michael MacDermott; Roxanne Gaines

Subject: RE: Guess v. AWC - Meet and Confer Re:

Insufficient Discovery Responses

Steven:

What additional documents do you believe are missing?

Document Request Nos. 6,9, 10, 14, 16, 18-22, 26, 30, 31, 34, 59, 50, and 53-57 sought the following:

6 -- "All documents referred to in your initial disclosures."

Advance Watch identified the following documents in its initial disclosures:

1. documents and things concerning Applicants federal trademark Application No. 77/304,064 for GC in a distinctive, stylized form.
2. documents and things concerning Applicants use of its distinctive, stylized GC trademark; and
3. documents and things concerning third-party uses and registrations of stylized GC marks in International Class 14.

Subject to its objections, Applicant produced a search report, as well as documents showing use of Applicant's mark in connection with the relevant goods.

Subject to its objections, Applicant will provide additional non-privileged, relevant, responsive documents evidencing third-party registration and/or use of stylized marks containing the letters 'G' and 'C' in connection with jewelry and watches, to the extent such documents exist.

9 -- "All documents referring or relating to any of your affiliates' use of the GC mark."

Subject to its objections, Applicant produced documents showing use of Applicant's mark in connection with the relevant goods.

10 -- "All documents and things referring or relating to any study, search, investigation, opinion or request for opinion referring or relating to Your Mark and/or any other mark containing 'GC,' including without limitation all trademark and service mark search reports and the results of any computer searches."

Subject to its objections, Applicant produced a search report.

14 -- "Documents and things sufficient to identify any authorization, license, franchise, assignment, or grant from you to any other person or entity giving that person or entity the right to use Your Mark and/or any other mark used by you containing 'GC' or to market products or services under Your Mark and/or any other mark used by you and containing 'GC.'"

Applicant maintains its objections. Subject to objections, to the extent any non-privileged, relevant "authorization, license, franchise, assignment, or grant" from Advance Watch "to any other person or entity giving that person or entity the right to use" the mark identified in Application Serial No. 77/304,064 exist, they will be produced.

16 -- "To the extent not otherwise produced, all documents and things sufficient to show how Your Mark and/or any other mark used by you and containing 'GC' is currently being used."

Subject to its objections, Applicant produced documents showing use of Applicant's mark in connection with the relevant goods.

18 -- "Specimens sufficient to show how Your Mark or any other mark used by you containing 'GC' is used in connection with each of Applicants Goods."

Subject to its objections, Applicant produced documents showing use of Applicant's mark in connection with the relevant goods.

19 -- "Documents sufficient to show the conditions under which goods and/or services are sold, offered for sale, or provided under Your Mark and/or any other mark you use containing 'GC.'"

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Applicant maintains its objections. Moreover, this request assumes certain restrictions with regard to Applicant's goods and its channels of trade.

21 -- "Documents and things sufficient to show the channels of distribution of the goods and services with which you use or intend to use Your Mark, including the channels of trade through which you offer, have offered, or intend to offer products and services for sale under Your Mark."

Applicant maintains its objections. Moreover, this request assumes certain restrictions with regard to Applicant's goods and its channels of trade. Subject to our objections, we've produced documents indicating where Applicant's relevant products are sold.

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Applicant maintains its objections. Subject to our objections, we've produced documents showing use of Applicant's mark in connection with the relevant goods, including website printouts.

31 -- "Documents and things sufficient to show all of goods or services provided at any Internet website owned by, operated by, or affiliated with you."

Applicant maintains its objections.

34 -- "All documents and/or things concerning your knowledge of any third party's use of Your Mark and/or any other mark containing 'GC.'"

Subject to its objections, Applicant identified numerous third-party registrations for stylized GC marks in response to Opposer's Document Request No. 34. In addition, Applicant produced a search report identifying additional third-party applications and registrations for stylized GC, "CG", "CC", and/or "GG" marks.

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Applicant maintains its objections.

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Applicant maintains its objections.

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Applicant maintains its objections.

Regarding Applicant's responses to Opposer's interrogatories and requests for admission, Applicant will supplement its responses to certain interrogatories and requests for admission.

Applicant hereby consents to an additional 30-day extension of the trial calendar.

Kind regards,

Hope

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>>> On 9/29/2010 at 5:55 PM, "Steven E. Lauridsen"
<steven.lauridsen@cph.com> wrote:

Hope,

Thank you for your document production. Although these documents satisfy some of our demands from our meet and confer requests, below, there are still a number of deficiencies. For instance, AWC has not supplemented its interrogatories, nor has it supplemented its responses to Opposers' requests for admission. Further, although it appears that the documents you produced may at least partially satisfy Document Request Nos. 6,9, 10, 14, 16, 18-22, 26, 30, 31, 34, 59, 50, and 53-57, there are still a number of documents missing. I would like to discuss the deficiencies in detail over the telephone.

As you know, Opposers' pretrial disclosures are due on October 14, so once again, Opposers are in a position where AWC's lack of disclosure in discovery has prejudiced their ability to prepare for trial and to complete their pretrial disclosures. Please let me know when before Monday, October 4, you will be available to meet and confer by telephone in an effort to resolve these issues. As part of that conference, we will again be asking to extend all pretrial deadlines.

If, on the other hand, AWC has completed its document production and does not intend to further supplement its responses, we will have no choice but to proceed with a motion to compel and a motion to test the sufficiency of AWC's RFA responses. If we do not hear from you by 5:00 p.m. California time on Monday, we will assume this to be the case.

Best regards,
Steven Lauridsen

Hope V. Shovein

From: "Steven E. Lauridsen" <steven.lauridsen@cph.com>
Sent: Thursday, November 11, 2010 6:57 PM
To: Hope V. Shovein
Cc: Michael.MacDermott@cph.com; Matthew R. Mowers; roxanne.gaines@cph.com
Subject: RE: Guess v. AWC - Meet and Confer Re: Insufficient Discovery Responses
Attachments: TEXT.htm; Mime.822

Hope,

I just wanted to let you know that I'm working on this and will get back to you shortly.

Best regards,
Steven

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

From: Hope Shovein [mailto:HSHOVEIN@brookskushman.com]
Sent: Friday, October 29, 2010 2:00 PM
To: Steven E. Lauridsen
Cc: Matthew Mowers; Michael MacDermott; Roxanne Gaines
Subject: RE: Guess v. AWC - Meet and Confer Re: Insufficient Discovery Responses

Mr. Lauridsen:

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As an example, Opposers appear to deny that the stylized GC that is the subject of Registration No. 3605306 consists of the capital letter "G" to the left of a lower case letter "c", yet at the same time, Opposers allege common law rights in the letters "GC". See Opposers' Response to Admission Request. No. 45.

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