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

Proceeding	91188035
Party	Plaintiff Guess? IP Holder L.P. and Guess?, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
TRADEMARK TRIAL AND APPEAL BOARD**

Guess?, Inc. and Guess? IP Holder L.P.  Opposers,  v.  Advance Watch Company Ltd.  Applicant.	Opposition No. 91188035  Trademark: GC Serial No.: 77/304,064 Filed: October 15, 2007
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**OPPOSERS' REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION TO  
COMPEL RESPONSES TO DISCOVERY AND TO DETERMINE THE SUFFICIENCY  
OF RESPONSES**

**I. INTRODUCTION**

Advance Watch Company (“AWC”) argues against the propriety of Opposers’ motion to compel despite the fact that the parties have met and conferred over the course of fourteen months while only making little progress in resolving the underlying dispute. After fourteen months of debate between the parties, this discovery dispute is ripe for disposition by the Board.

Notwithstanding its objections as to the propriety of this motion, AWC has nevertheless provided in its opposition brief supplemental responses to many of the discovery requests at issue, and AWC has otherwise agreed to supplement a number of other responses in the future. In the interest of resolving this dispute as expeditiously as possible, Opposers request that the Board issue an order directing AWC to provide all of these supplemental responses as formal, written discovery responses and to serve signed verifications for the interrogatories within thirty days of the date the Board rules on Opposers’ motion.

For the remaining discovery requests at issue, Opposers request that the Board compel responses and the production of documents or, in the alternative, issue an order preventing AWC from relying at trial on documents responsive to these requests that AWC has not produced prior to the deadline for Opposers to serve their pretrial disclosures.

Finally, Opposers request that the Board extend all pretrial deadlines by sixty days after ruling on this motion to allow Opposers adequate time to prepare for trial.

**II. OPPOSERS' HAVE COMPLIED WITH THE BOARD'S MEET AND CONFER REQUIREMENTS**

AWC asserts that Opposers' motion to compel is premature because Opposers purportedly have not made a good faith effort to resolve the underlying discovery dispute, and AWC goes so far as to accuse Opposers of misrepresenting the exchange between the parties' respective counsel. AWC further accuses Opposers of failing to make their dispute with AWC's discovery responses clear and of failing to narrow their requests. AWC's arguments are specious for three reasons.

**A. Applicant Has Made It Clear That It Will Not Adequately Respond To Discovery Absent Board Intervention**

It is undisputed that AWC's discovery responses were due in the fall of *2009*. It is also undisputed that, on December 21, 2009, Opposers' counsel sent AWC's counsel a *six page* letter detailing the deficiencies in AWC's discovery responses. It is further undisputed that Opposers have attempted to resolve this dispute without Board intervention over a period of *fourteen months* while making little to no progress other than receiving mostly unfulfilled promises from AWC and requests that Opposers restate the positions laid out in their December 21, 2009 letter. Fourteen months is long enough for Opposers to wait for adequate discovery responses, and the Board should therefore grant Opposers' motion.

**B. AWC Has Misrepresented The Exchange Between The Parties' Counsel**

In its opposing papers, AWC accuses Opposers of "conveniently refrain[ing] from

making any mention of [meet and confer correspondence occurring after November 4, 2010] in either their brief or in Mr. Lauridsen's Declaration." [Opp. at 1.] AWC then argues that, in this correspondence, AWC requested further clarification of Opposers' position and that Opposers promised to provide this clarification but did not. [Opp. at 1-2 (citing Opp. Ex. 1).] This is simply untrue.

First, Opposers explicitly refer to this correspondence in pages 3 and 4 of their motion, and they attached relevant portions of this correspondence to Mr. Lauridsen's declaration filed in support of their motion to compel. [Motion at 3-4 (citing Lauridsen Decl. Exs. T-Z).] Opposers can hardly be accused of "conveniently refrain[ing] from making any mention" of this correspondence.

Second, and more importantly, in this exchange, Opposers did not, as AWC claims, indicate "that they would further specify their requests." [See Opp. at 2.] Instead, Opposers repeated their concerns, asked AWC when it would supplement its responses, and explained that Opposers would consider AWC's contentions regarding Opposers' own discovery responses. This exchange – and not the one described by AWC – is reflected in the parties correspondence, when taken in context:

[From Mr. Lauridsen on September 29, 2010:]

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.

[From Ms. Shovein on October 4, 2010:]

Steven: What additional documents do you believe are missing? [Detail of documents produced and objections maintained.] Regarding Applicant's responses to Opposer's [*sic*] interrogatories and requests for admission, Applicant will supplement its responses to certain interrogatories and requests for admission.

[From Mr. Lauridsen on October 15, 2010:]

Hope, 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 are therefore missing all documents and things that we have requested in our [December 21, 2009] 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.

[From Mr. Lauridsen on October 27, 2010:]

Hope, What is the status of this?

[From Ms. Shovein on October 29, 2010:]

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. [List of requests for supplementation.] If you have more specific issues with Applicant's responses, such as the items raised above regarding Opposers' responses, please identify those issues.

[From Mr. Lauridsen on November 2, 1010:]

I will discuss these matters with my client and get back to you. . . . Also, I would like to get a date certain from you by which AWC will supplement its responses as indicated in your email.

[From Mr. Lauridsen on December 7, 2010:]

Hope, We will supplement our written discovery responses as appropriate. . . . In your email, you stated that AWC would further supplement its interrogatory and request for admission responses. What is the status of that supplementation?

[Opp at. Ex. 1; Lauridsen Decl. Ex. Z.]

In context, it becomes apparent that Opposers maintained their December 21, 2009 position regarding AWC's deficiencies in its document production and that Opposers also maintained their position regarding the requirement that AWC supplement its written responses. It also becomes apparent that Opposers' counsel agreed to confer with Opposers regarding supplementing their own discovery responses, not about narrowing Opposers discovery requests.

Nevertheless, notwithstanding any purported misunderstanding by AWC regarding this exchange, as Opposers have explained, the meet and confer process has lasted about fourteen months with almost no progress, and Board intervention is now required.

**C. AWC's Opposition Brief Makes It Clear That AWC Understands The Present Discovery Dispute**

AWC's position that Opposers' motion is premature is undermined by the fact that, in response to Opposers' motion, AWC has either supplemented its responses or has maintained its previously stated objections. After fourteen months without progress, AWC has finally indicated which responses it will supplement and which objections it will maintain, thus indicating that adjudication of this discovery dispute by the Board is appropriate.

**III. OPPOSERS' ALLEGEDLY DEFICIENT DISCOVERY RESPONSES ARE NOT AT ISSUE HERE AND DO NOT EXCUSE AWC FROM RESPONDING TO OPPOSERS' DISCOVERY**

AWC raises as an excuse for its deficient discovery responses Opposers' own allegedly deficient responses. Although Opposers disagree with AWC's characterization, Opposers' discovery responses are not before the Board and do not provide an excuse for AWC to comply with its own discovery obligations. Once the Board has ruled on Opposers' motion, AWC should properly raise any alleged deficiencies in Opposers' responses in its own motion to compel, if it believes one is warranted. Opposers' responses, whether deficient or not, do not provide a basis for the Board to deny Opposers' motion.

**IV. AWC SHOULD BE ORDERED TO VERIFY THE SUPPLEMENTAL RESPONSES CONTAINED IN ITS BRIEF, AND AWC SHOULD BE LIMITED TO THOSE RESPONSES**

**A. Interrogatories**

In its opposing papers, AWC provides supplemental responses to Interrogatory Nos. 1-3, 9, 14-21, 23-24, 28-30, 33, and 36.<sup>1</sup> AWC should be ordered to serve these responses as formal, supplemental discovery responses with a signed verification under penalty of perjury, and Opposers request that the Board further order that AWC be bound from introducing at trial any facts or evidence not contained in these responses. *See* Fed. R. Civ. P. 37(c).

AWC also states that it will verify its prior interrogatory responses. AWC should be ordered to do so within thirty days of the Board order regarding Opposers' motion.

**B. Requests For Admission**

In its opposing papers, AWC provides supplemental responses to Request for Admission Nos. 5-32. AWC should be ordered to formally serve supplemental responses within thirty days of the Board's order regarding Opposers' motion.

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<sup>1</sup> Since filing its opposition, AWC has supplemented its response to Interrogatory No. 13, so

Also, AWC promises in its opposing papers to supplement its responses to Request for Admission Nos. 33-36, 40-51, 60-67, 69, 71-72, and 77-119. Again, Opposers request that the Board set a date certain, preferably within thirty days of the Board's order, for AWC to formally serve its supplemental responses.

**V. REMAINING INTERROGATORIES AT ISSUE**

**A. Interrogatory Nos. 26 and 31**

AWC refuses to respond to these discovery requests on the basis that they refer to the factual contentions contained in Opposers' notice of opposition, which was later superseded by an amended pleading, and in AWC's answer to the original notice of opposition. [Opp. at 7.] Because the amended pleading was filed after the Board issued an order ending the discovery period for Opposers, AWC contends that it does not have to respond to these requests. Nothing in the Board's order, however, indicates that it intended to allow AWC to avoid responding to discovery concerning the factual contentions contained in the pleadings. Opposers therefore request that the Board order AWC to respond substantively to these requests.

**B. Interrogatory No. 32**

Interrogatory No. 32 requests that AWC identify its channels of trade. AWC responds by arguing that Opposers bear the burden of proving the parties' channels of trade. [Opp. at 7.] Opposer cannot be expected to show what channels of trade AWC's goods travel in unless it is allowed to take discovery on the issue. AWC should therefore be ordered to respond to this interrogatory.

**VI. REMAINING REQUESTS FOR PRODUCTION AT ISSUE**

AWC has objected to a large number of Opposers' requests for production. As Opposers explained in their moving papers, AWC's objections are specious, and AWC should be ordered to supplement its production. Alternatively, the Board should issue an order barring AWC from introducing at trial any evidence in support of its case that would have been responsive to the

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Opposers withdraw this portion of their motion.

requests at issue and that have not been produced by the deadline for Opposers to serve their pretrial disclosures.

**VII. AN EXTENSION OF THE PRETRIAL DEADLINES IS APPROPRIATE**

In their moving papers, Opposers requested that the Board extend all pretrial deadlines by sixty days to allow them to properly prepare their pretrial disclosures once AWC has complied with all of its discovery obligations. AWC raised no arguments against this request in its opposing papers, and Opposers therefore request that the Board consider this issue conceded.

**VIII. CONCLUSION**

To the extent that AWC has agreed to supplement its discovery responses, Opposers request that the Board order AWC to serve formal, written responses within thirty days of the date the Board issues its order on Opposers' motion to compel. Opposers also request that the Board order AWC to respond to Opposers' remaining requests at issue and to supplement its document production accordingly.

Respectfully submitted,

CHRISTIE, PARKER & HALE, LLP

Date March 21, 2011

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**CERTIFICATE OF TRANSMISSION AND SERVICE**

I certify that on March 21, 2011, the foregoing **OPPOSER'S REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION TO COMPEL RESPONSES TO DISCOVERY AND TO DETERMINE THE SUFFICIENCY OF RESPONSES** is being electronically transmitted to:

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

I certify that on March 21, 2011, the foregoing **OPPOSER'S REPLY MEMORANDUM IN SUPPORT OF THEIR MOTION TO COMPEL RESPONSES TO DISCOVERY AND TO DETERMINE THE SUFFICIENCY OF RESPONSES** is being served by mailing a copy thereof by first-class mail addressed to:

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