ESTTA Tracking number: **ESTTA309244**

Filing date: **10/01/2009**

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

| | |
|---|---|
| Proceeding | 91188294 |
| Party | Plaintiff<br>European Wax Center, Inc. |
| Correspondence Address | David A. Gast<br>Malloy & Malloy, PA<br>2800 SW 3rd Avenue<br>Miami, FL 33129<br>UNITED STATES<br>dgast@malloylaw.com, litigation@malloylaw.com |
| Submission | Reply in Support of Motion |
| Filer's Name | David A. Gast |
| Filer's e-mail | dgast@malloylaw.com, litigation@malloylaw.com |
| Signature | /s/David A. Gast |
| Date | 10/01/2009 |
| Attachments | Reply Second Extension Discovery Responses 91188294.pdf ( 4 pages )(17163 bytes )<br>Responses to First Request Docs 91188294 v1.pdf ( 23 pages )(49898 bytes ) |

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

In the matter of Trademark Application Serial No. 77/497,861
For the mark "THE SECRET IS OUR WAX"

| | |
|---|---|
| EUROPEAN WAX CENTER, INC.<br><br>Opposer,<br><br>vs.<br><br>UKW HOLDING COMPANY,<br><br>Applicant. | Opposition No. 91188294 |

**OPPOSER'S REPLY TO MOTION FOR SECOND ENLARGEMENT OF TIME TO RESPOND TO APPLICANT'S DISCOVERY**

COMES NOW the Opposer, European Wax Center, Inc. ("EWC" or "Opposer"), and responds to Applicant's opposition to Opposer's motion for an enlargement of time to respond to Applicant UKW Holding Company's ("UKW" or "Applicant") Applicant's First Request to Opposer for Production of Documents and Things ("Requests"), the grounds for which are as follows:

1. On September 25, 2009, Opposer served Opposer's Responses To Applicant's First Request for Production of Documents. A copy of same is attached hereto as Exhibit A. Accordingly, Opposer has complied with the extension sought in the motion.

2. Applicant's objections to the sought extension appear to be based on a potential prejudice in that Applicant will not

have sufficient time to serve follow-up discovery. This issue was not raised when Opposer contacted Applicant's counsel requesting the extension. All the same, such an issue may be resolved by extending the discovery deadline, for which Opposer does not object.

3. Applicant has also expressed the desire to move this matter along as fast as possible, and thus not extend the discovery deadline. See Response, p. 5. The reason for such a rapid pace likely stems from Applicant's failure to properly respond to Opposer's discovery. Similarly, Applicant has not provided dates when Applicant is available for deposition. As such, Opposer will be moving to extend the deadline shortly.

4. For example, to date, Applicant has provided a mere 53 pages of discovery for Opposition No. 91188571 ("THE SECRET IS IN THE WAX") and 19 pages for Opposition No. 91188294 ("THE SECRET IS OUR WAX") – some of which is redundant. Applicant has specifically objected to 53 of Opposer's 55 requests for production, lodged eleven general objections to every response, provided no documents in support of its affirmative defenses, provided no documents demonstrating Applicant's dates of first use (except for an undated brochure).

5. Turning to the allegations of negligence, Applicant boldly claims the undersigned and firm have acted with negligence and have been "remiss" in failing to review

discovery. See Response, ¶7. These accusations are wholly unfounded and without any basis. In response to such outlandish claims, the undersigned requested that opposing counsel provide the evidence for such claims; which, not surprisingly, opposing counsel never provided.

6. Lastly, Applicant has not provided any good faith basis to object to the motion for extension. Accordingly, Opposer respectfully requests that the motion been granted.

Dated: October 1, 2009

By:/s/David A. Gast

John Cyril Malloy, III
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David A. Gast
Florida Bar No. 176,567
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Telephone: (305) 858-8000
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing reply was served upon the following by United States mail, postage pre-paid this 1st of October, 2009.

Lisa N. Kaufman, Esq.
Frank Herrera, Esq.
ROTHSTEIN ROSENFELDT ADLER
401 East Las Olas Blvd. Suite 1650
Ft. Lauderdale, Florida 33301

Respectfully submitted,

By: /s/David A. Gast
David A. Gast
Florida Bar No. 176,567

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# EXHIBIT A

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

In the matter of Trademark Application Serial No. 77/497,861
For the mark "THE SECRET IS OUR WAX"

| | |
|---|---|
| EUROPEAN WAX CENTER, INC.<br><br>Opposer,<br><br>vs.<br><br>UKW HOLDING COMPANY,<br><br>Applicant. | Opposition No. 91188294 |

**OPPOSER'S RESPONSES TO APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

COMES NOW the Opposer, European Wax Center, Inc. ("EWC" or "Opposer"), and propounds the following responses to Applicant, UKW Holding Company's ("UKW" or "Applicant") First Request to Opposer for Production of Documents and Things ("Requests"), as follows:

**GENERAL OBJECTIONS**

Opposer interprets the Requests to not seek responses and documents containing trial preparation or work product material of counsel. To the extent such material is sought, Opposer objects on the grounds of work product and pursuant to Fed.R.Civ.P. 26(b)(3).

Opposer interprets the requests as not seeking responses or documents reflecting communications between Opposer and present

or past counsel. To the extent any requests is intended to seek such communications, Opposer objects on the grounds of attorney-client privilege.

Opposer reserves the right to supplement its responses upon further discovery and investigation.

**OBJECTIONS AND RESPONSES**

**REQUEST NO. 1.**

All documents filed with the United States Patent and Trademark Office relating to Opposer's Mark.

**RESPONSE TO REQUEST NO. 1.**

Opposer will make responsive documents available to Applicant for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 2.**

Representative samples of all documents that refer to or describe Opposer's products and services offered under Opposer's Mark, including but not limited to labels and packaging, schedules, listings or menus of services, brochures, advertisements, promotional materials and trade show displays.

**RESPONSE TO REQUEST NO. 2.**

Opposer will make responsive documents available to Applicant for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they

become available and/or identified.

**REQUEST NO. 3.**

All documents relating to Opposer's first use of Opposer's Mark.

**RESPONSE TO REQUEST NO. 3.**

Opposer will make responsive documents available to Applicant for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 4.**

All labels, advertising and promotional materials showing use of Opposer's Mark.

**RESPONSE TO REQUEST NO. 4.**

Opposer objects on the grounds that Interrogatory No. 4 is overbroad with respect to the term "all" and therefore unduly burdensome. Notwithstanding, Opposer will make one copy of each of the above requested items available to Applicant for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 5.**

Containers and packaging for any products sold by Opposer using Opposer's Mark.

**RESPONSE TO REQUEST NO. 5.**

Opposer offers services under the mark. As such no containers or packaging for products exists.

**REQUEST NO. 6.**

Product samples of all products sold under Opposer's Mark.

**RESPONSE TO REQUEST NO. 6.**

To the extent such products exist, Opposer will make responsive documents available to Applicant for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 7.**

Representative samples of advertising and promotional materials Opposer has used or plans to use in connection with Opposer's Mark, including but not limited to online and print advertisements, press releases, scripts of television and radio commercials, scripts of speeches, direct mail. Pamphlets, circulars, and price lists.

**RESPONSE TO REQUEST NO. 7.**

Opposer objects to Request No. 7 on the grounds that documents about Opposer's future plans are confidential business records and/or trade secret information and will not be produced. Regarding past and current items, Opposer will make responsive documents available to Applicant for inspection at a mutually agreeable time and place, and/or copies will be

submitted for your inspection as they become available and/or identified.

**REQUEST NO. 8.**

Documents sufficient to identify Opposer's past, current, and/or planned annual advertising and promotional expenses for products or services offered under Opposer's Mark.

**RESPONSE TO REQUEST NO. 8.**

Opposer objects to Request No. 8 on the grounds that the request seeks confidential business records and/or trade secret information. With respect to documents relative to "planned" expenses, such documents will not be produced. With respect to past and current expenses, to the extent such documents exist, Opposer will make available invoices for the brochures and posters, marked as Attorney's Eyes Only, for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified. A redacted version will also be produced, marked as Confidential.

**REQUEST NO. 9.**

All documents relating to any marketing proposals or business plans relating to Opposer's Mark.

**RESPONSE TO REQUEST NO. 9.**

Opposer objects to Request No. 9 on the grounds that the request seeks confidential and trade secret information.

**REQUEST NO. 10.**

All documents that describe or refer to the customers to whom Opposer's services as described in Paragraph 2 of the Notice of Opposition are provided, advertised, promoted, or distributed.

**RESPONSE TO REQUEST NO. 10.**

Opposer objects to Request No. 10 on the grounds that the request seeks confidential business records and trade secret information. Documents such as customer lists, client databases, etc. will not be produced. Opposer objects on the grounds that the request seeks information that is irrelevant and no likely to lead to the discovery of admissible evidence. Notwithstanding, and to the extent such documents exist, Opposer will produce documents which demonstrate the type of person who Opposer views a potential customer.

**REQUEST NO. 11.**

All documents concerning any and all different versions/modifications of Opposer's Mark from the dates of first use thereof (as set forth in the Notice of Opposition in this matter) to the present.

**RESPONSE TO REQUEST NO. 11.**

Opposer objects to Request No. 11 to the extent that the request may call for documents containing or relating to communications or the substance of communications with counsel,

or trial preparation material, which are protected by the attorney/client privilege and/or the doctrine of work product. Opposer further objects on the grounds that the request seeks confidential business records and trade secret information. Without waiving such objections, Opposer will make non privileged, non work product responsive documents available, namely the versions, if any, that have been publicly used, to Applicant for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 12.**

All documents relating to data Opposer collects concerning customers of its services described in Paragraph 2 of the Notice of Opposition.

**RESPONSE TO REQUEST NO. 12.**

Opposer objects to Request No. 12 on the grounds that Paragraph 2 of the Notice of Opposition does not describe "customers of its services," and therefore cannot respond. Opposer objects on the grounds that said information is confidential business information and a trade secret, and will not be produced.

**REQUEST NO. 13.**

All documents relating to any trademark searches, investigations, consumer studies or any surveys conducted by or

for Opposer concerning marks that consist in whole or in part of the combination of the words “Secret” and “Wax.”

**RESPONSE TO REQUEST NO. 13.**

Opposer further object on the grounds that the request may call for documents containing or relating to communications or the substance of communications with counsel, or trial preparation material, which are protected by the attorney/client privilege and/or the doctrine of work product. Notwithstanding, no such documents exist.

**REQUEST NO. 14.**

All documents relating to any objections or challenges (for example, cease and desist letters) to Opposer concerning Opposer’s Mark that consist in whole or in part of the combination of the words “Secret” and “Wax”.

**RESPONSE TO REQUEST NO. 14.**

Other than documents from Applicant’s counsel, no such documents exist.

**REQUEST NO. 15.**

All documents that refer or relate to any action taken by Opposer or on Opposer’s behalf as result of a belief by Opposer that there was a likelihood of confusion between Opposer’s Mark and any mark or name of any third party.

**RESPONSE TO REQUEST NO. 15.**

With respect to documents unrelated to Applicant, as

defined by Applicant, no such documents exist.

**REQUEST NO. 16.**

All documents and things which evidence, refer to or relate to the circumstances under which Opposer first became aware of Applicant's Mark.

**RESPONSE TO REQUEST NO. 16.**

Opposer further object on the grounds that the request may call for documents containing or relating to communications or the substance of communications with counsel, or trial preparation material, which are protected by the attorney/client privilege and/or the doctrine of work product. Notwithstanding, Opposer will make non-privileged responsive documents available to Applicant for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified, to the extent they exist.

**REQUEST NO. 17.**

Any and all documents sufficient to identify Opposer's corporate structure, including but not limited to Articles of Incorporation, corporate diagrams or charts, and business or divisions of Opposer.

**RESPONSE TO REQUEST NO. 17.**

Opposer objects on the grounds that the request seeks confidential business records and trade secret information.

Without waiving such objections, Opposer will make non privileged, non work product responsive documents available to Applicant for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 18.**

All license agreements, franchise agreements, settlement agreements or other contracts that Opposer has entered into that relate to the use of Opposer's Mark.

**RESPONSE TO REQUEST NO. 18.**

Opposer objects on the grounds that the request seeks documents that are irrelevant and not likely to lead to the discovery of admissible evidence. Opposer will make available a redacted representative sample of a franchise agreement, and the assignment, to Plaintiff marked as Attorney's Eyes Only, for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

With respect to the term "other contracts," Opposer objects on the grounds that the request is overbroad, and therefore unduly burdensome. Opposer requests clarification of the types of documents it seeks. For example, every contract that Opposer enters into in some what relates to the marks at issue.

**REQUEST NO. 19.**

All documents concerning Opposer's selection, creation and/or adoption of Opposer's Mark including without limitation all documents in which the selection, creation and/or adoption of such mark was discussed, suggested or mentioned.

**RESPONSE TO REQUEST NO. 19.**

Opposer objects on the grounds that the request seeks confidential and trade secret information. Without waiving such objections, Opposer will make non privileged, non work product responsive documents, to the extent they exist, available to Applicant for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 20.**

All documents which evidence, refer to, or relate to Opposer's choice of the combination of the words "Secret" and "Wax" as a trademark for Opposer's goods and/or services.

**RESPONSE TO REQUEST NO. 20.**

To the extent they exist, Opposer will make responsive documents available to Applicant for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 21.**

All documents which support Opposers' contention that there is [a] likelihood of confusion between the Opposer's Mark and

Applicant's Mark.

**RESPONSE TO REQUEST NO. 21.**

Opposer further objects to the extent that the request may call for documents containing or relating to communications or the substance of communications with counsel, or trial preparation material, which are protected by the attorney/client privilege and/or the doctrine of work product. Without waiving said objection, Opposer will make non-privileged responsive documents available to Applicant for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 22.**

All documents and things which support Opposer's contentions in Paragraph 3 of Opposer's Notice of Opposition.

**RESPONSE TO REQUEST NO. 22.**

Opposer objects on the grounds that the request is overbroad, and therefore unduly burdensome. Notwithstanding, and without waiving said objection, Opposer will product documents that demonstrate Opposer's continuous use of the mark, namely a sampling of invoices, and said documents will be available to Applicant for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 23.**

All documents and things which support Opposer's contentions in Paragraph 5 of the Notice of Opposition herein.

**RESPONSE TO REQUEST NO. 23.**

Opposer objects on the grounds that the request is overbroad, and therefore unduly burdensome. Notwithstanding, and without waiving said objection, Opposer will product documents that demonstrate Opposer's expenditures on advertising of the mark and said documents will be available to Applicant for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 24.**

All documents which refer to or relate to Applicant and/or Applicant's predecessors, Applicant's principals (including but limited to Noemi Grupenmager) and Applicant's Mark.

**RESPONSE TO REQUEST NO. 24.**

Opposer objects on the grounds that documents which refer to or relate to Application, Applicant's predecessors, and Applicant's principals are irrelevant and not likely to lead to the discovery of admissible evidence. Further, Opposer objects on the grounds that documents relating to the above-persons/entities is overbroad, and therefore unduly burdensome, and therefore will not be produced. Moreover, documents that do not mention or refer to the trademarks at issue will not be

produced. Notwithstanding, and without waiving said objection, Opposer will make responsive documents relating to Applicant's Mark available to Applicant for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 25.**

All documents relating to each expert witness that Opposer expects to testify on its behalf in this proceeding, including but not limited to the expert witness' qualifications, opinions and bases for opinions, the experts' fee arrangement, all publications and documents the expert has reviewed in connection with formulating opinions in this proceeding.

**RESPONSE TO REQUEST NO. 25.**

Opposer objects to the extent that the request may call for documents containing or relating to communications or the substance of communications with counsel, or trial preparation material, which are protected by the attorney/client privilege and/or the doctrine of work product. Opposer further objects on the grounds that the request seeks confidential and trade secret information. Without waiving such objections, no such documents exist.

**REQUEST NO. 26.**

All documents identified in response to Applicant's Interrogatories or Requests for Admissions, or that relate to

any information sought by Applicant in those Interrogatories or Requests.

**RESPONSE TO REQUEST NO. 26.**

Opposer objects to the extent that the request may call for documents containing or relating to communications or the substance of communications with counsel, or trial preparation material, which are protected by the attorney/client privilege and/or the doctrine of work product. Opposer further objects on the grounds that the request seeks confidential and trade secret information. Opposer further objects and reasserts each and every objection as it is set forth in the referred Interrogatories or Requests for Admissions. Opposer further objects on the grounds that Applicant improperly suggests that Opposer was required to identify documents in its responses to the Requests for Admissions.

**REQUEST NO. 27.**

All documents and things consisting of, or referring to or relating to evidence Opposer may introduce in this Opposition.

**RESPONSE TO REQUEST NO. 27.**

Opposer objects to the extent that the request may call for documents containing or relating to communications or the substance of communications with counsel, or trial preparation material, which are protected by the attorney/client privilege and/or the doctrine of work product. Opposer further objects on

the grounds that the request seeks confidential and trade secret information. Opposer further objects on the grounds that the request is overbroad and vague, and therefore unduly burdensome.

**REQUEST NO. 28.**

All documents, Opposer relied upon, referred to or reviewed in answering Applicant's Interrogatories or Requests for Admission.

**RESPONSE TO REQUEST NO. 28.**

Opposer objects to the extent that the request may call for documents containing or relating to communications or the substance of communications with counsel, or trial preparation material, which are protected by the attorney/client privilege and/or the doctrine of work product. Opposer further objects on the grounds that the request seeks confidential and trade secret information. With respect to non-privileged/trade secret information, Opposer will make responsive documents available to Applicant for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 29.**

All documents describing the record retention policy of Opposer.

**RESPONSE TO REQUEST NO. 29.**

Opposer will product responsive documents, to the extent

they exist, for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 30.**

The specimens used to support registration of the trademarks which are the subject of U.S. Trademark Application No. 77523191.

**RESPONSE TO REQUEST NO. 30.**

Opposer objects on the grounds that the request is vague, and therefore unduly burdensome. If Applicant requests the specimen for the pending application Serial No. 77523191, said document is available online. Notwithstanding, Opposer will product the file history for said application, for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 31.**

All documents concerning any temporary or permanent discontinuance of use by Opposer of any marks consisting of or containing any combination of the words “Secret” and “Wax”.

**RESPONSE TO REQUEST NO. 31.**

No such documents exist.

**REQUEST NO. 32.**

All documents concerning sales in the U.S. with respect to

products or services offered or sold using Opposer's Mark.

**RESPONSE TO REQUEST NO. 32.**

Opposer objects on the grounds that the request is overbroad and vague, and therefore unduly burdensome. Theoretically, every document every created in Opposer's possession, custody, or control, may be deemed "concerning sales." Opposer objects on the grounds that the request is irrelevant as the parties do not dispute a likelihood of confusion between the marks. Notwithstanding, sample documents demonstrating sales, namely invoices, will be produced at a mutually agreeable time and place.

**REQUEST NO. 33.**

All documents showing the source of the wax used by Opposer in connection with its services described in Paragraph 2 of its Notice of Opposition herein.

**RESPONSE TO REQUEST NO. 33.**

Opposer objects on the grounds that the request seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Opposer objects on the grounds that the request seeks confidential and trade secret information. Accordingly, Opposer will not produce responsive documents.

**REQUEST NO. 34.**

All documents sufficient to identify all vendors or

suppliers of any goods or services offered or used in connection with Opposer's Mark.

**RESPONSE TO REQUEST NO. 34.**

Opposer objects on the grounds that the request seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Opposer objects on the grounds that the request seeks confidential and trade secret information. Accordingly, Opposer will not produce responsive documents.

**REQUEST NO. 35.**

All documents showing the specific constitution and ingredients of the wax used by Opposer in connection with its services described in Paragraph 2 of its Notice of Opposition herein.

**RESPONSE TO REQUEST NO. 35.**

Opposer objects on the grounds that the request seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Opposer objects on the grounds that the request seeks confidential and trade secret information. Accordingly, Opposer will not produce responsive documents.

**REQUEST NO. 36.**

All documents referring or relating to Opposer's policies for use of its wax and disposal of its wax in connection with

its services described in Paragraph 2 of its Notice of Opposition.

**RESPONSE TO REQUEST NO. 36.**

Opposer objects on the grounds that the request seeks information that is irrelevant and not likely to lead to the discovery of admissible evidence. Opposer objects on the grounds that the request seeks confidential and trade secret information. Accordingly, Opposer will not produce responsive documents.

**REQUEST NO. 37.**

Any and all documents pertaining to media coverage or commentary directed either to Opposer's Mark or to Opposer's products or services sold under Opposer's Mark.

**RESPONSE TO REQUEST NO. 37.**

To the extent they exist, Opposer will product responsive documents for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 38.**

Any and all documents pertaining to any instance in which any person has:

(a) by word or deed, suggested a belief that, or inquired as to whether, Opposer is licensed, sponsored by, or otherwise associated or connected with Applicant or Applicant's services

or products, or vice-versa;

(b) by word or deed, suggested a belief that, or inquired as to whether, Opposer's products or services are offered by or under the control of, or in any manner related to Applicant's products or services, or vice-versa;

(c) been in any way confused, mistaken, or deceived as to the origin or sponsorship of any product or service offered for sale or sold by Opposer.

**RESPONSE TO REQUEST NO. 38.**

Opposer will product responsive documents for inspection at a mutually agreeable time and place, and/or copies will be submitted for your inspection as they become available and/or identified.

**REQUEST NO. 39.**

All documents that refer or relate to any businesses arrangement or relationship between Opposer and/or Opposer's principals and/or Opposer's predecessor's in interest and Noemi Grupenmager or any company in which Noemi Grupenmager had an ownership interest.

**RESPONSE TO REQUEST NO. 39.**

Opposer objects on the grounds that the request seeks documents which are irrelevant and not likely to lead to the discovery of admissible evidence. Notwithstanding, no such documents exist.

Respectfully submitted,

Dated: September 25, 2009 By: David Gast

John Cyril Malloy, III
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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that a true and correct copy of the foregoing OPPOSER'S RESPONSES TO APPLICANT'S FIRST SET OF REQUESTS FOR PRODUCTION TO OPPOSER was served upon the following by United States mail, postage pre-paid this 25th day of September, 2009.

Lisa N. Kaufman, Esq.
Frank Herrera, Esq.
ROTHSTEIN ROSENFELDT ADLER
401 East Las Olas Blvd. Suite 1650
Ft. Lauderdale, Florida 33301

Respectfully submitted,

By: David Gast
David A. Gast
Florida Bar No. 176,567

C:\Documents and Settings\David\My Documents\Work\5752-09 European Wax Center\EWC Discovery Responses\Responses to First Request Docs 91188294 v1.doc