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

IN THE MATTER OF APPLICATION SERIAL NO. 77/537,516
PUBLISHED IN THE OFFICIAL GAZETTE ON DECEMBER 23, 2008

LUSTER PRODUCTS, INC., Opposer, v. PEACHYPINK, INC. Applicant.	Opposition No.:91190005

MOTION FOR FIRST EXTENSION OF OPPOSER'S TESTIMONY PERIOD AND FOR LEAVE TO SERVE DISCOVERY THAT WAS APPARENTLY MIS-SERVED

Opposer, Luster Products, Inc. by and through its attorneys Burton S. Ehrlich of Ladas & Parry LLP hereby files a first request for any extension of time in these proceedings and specifically this first request for an extension of the Opposer's testimony period. Opposer herein sets forth the following grounds in support of a sixty (60) day extension of the open of the Opposer's testimony period from the date of the Board's Order and to allow for leave instanter to serve a set of discovery materials which apparently were not received by the Applicant's counsel:

Opposer served a set of Interrogatories and Requests for Documents on Applicant and the first and last pages of the discovery set of materials that were served is attached as Exhibits A and B. These papers were served upon counsel for the Applicant by mail on January 5, 2010 as shown by the certificate

03-10-2010

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of service page. The discovery materials were served within the discovery time period and on the last date of discovery.

Previously there was some discussion with counsel for the Applicant about the possible settlement of the opposition proceedings. However, follow-up communications were not received and in the absence of such communications the Opposer served a set of discovery upon counsel for the Applicant.

When no timely responses were received to the outstanding discovery served upon counsel for the Applicant, it was believed by counsel for the Opposer that it was likely that Applicant had lost interest in these proceedings. Moreover, it was planned that unless some communication was received that a Motion to Compel, with a contemplated Motion for a default would be served. When by mid-February the Answers would have already been past due, it seemed to be apparent that the Applicant had lost interest in the proceedings and that the Motion to Compel and/or for default would be appropriate.

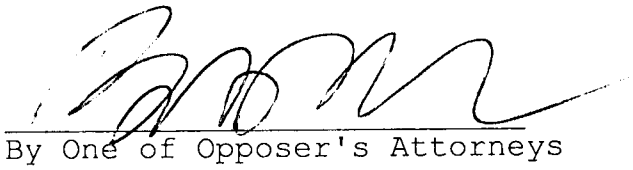
However, on or about February 17, 2010 the attached envelope, Exhibit C was returned to counsel for the Opposer which had served the Interrogatories and Requests for Documents upon counsel for the Applicant. The returned envelope identified that the package was undeliverable as addressed with no forwarding order on file, see Exhibit C.

A subsequent check of the Trademark Office records in these proceedings revealed that Applicant's counsel had changed its

address as of October 5, 2009. The change of address was electronically filed with the Trademark Trial and Appeal Board and showed that a copy of the paper was served by first class mail on the date of the change of address. Unfortunately, counsel for the Opposer has no record of receiving the change of address and did not receive the change of address electronically from counsel for the Applicant. Furthermore, there were no prior communications or subsequent communications with counsel for the Applicant that would have revealed a change of address. The certificate of service on the discovery which was served was consistent with the Applicant's prior address. Counsel for the Opposer is careful with correspondence received and even kept a copy of the envelope which previously served the answer to the Opposition Petition. A copy of that envelope postmarked June 5, 2009 (Exhibit D) was kept in the file and it shows that it was sent from the Hope Law Group, an address or entity name that was not shown on Applicant's counsel's prior address. Obviously, if counsel for the Opposer was aware of the new address then it would have served counsel for the Applicant with the use of the new address. Furthermore, it appears that although the address change had only occurred a relatively short time prior to the mailing of the envelope, there was apparently no forwarding of the envelope on file with the Post Office for the Opposer's envelope.

Under the circumstances involved it is requested that counsel for the Opposer be given leave to serve the Interrogatories and Requests for Documents and the open of the Opposer's testimony period be extended by at least an addition sixty (60) days so that answers to the discovery being sought will be obtained. This time period will also allow the parties to potentially address whether settlement opportunities may still exist in this action. The leave to serve the Interrogatories and Requests for documents is being sought from the date of the Order being entered in these proceedings, as well as the sixty day extension of the open of the Opposer's testimony period and all subsequent dates.

Based upon the foregoing it is respectfully requested that the Board enter an Order allowing instanter for the Opposer to serve the set of discovery materials and extend the date from the date of the Board's Order for at least sixty (60) days for the open of the Opposer's testimony period and similarly extend all subsequent dates.



By One of Opposer's Attorneys

Burton S. Ehrlich
Ladas & Parry LLP
224 South Michigan Avenue
Suite 1600
Chicago, Illinois 60604
(312) 427-1300

CERTIFICATE OF MAILING

I hereby certify that this correspondence is being deposited with the United States Postal Service as First Class Mail addressed to ATTN: TTAB- NO FEE, Commissioner for Trademarks, U.S. Trademark Office, P.O. Box 1451, Alexandria, VA 22313-1451 on March 5, 2010.

Burton S. Ehrlich

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing MOTION FOR FIRST EXTENSION OF OPPOSER'S TESTIMONY PERIOD AND FOR LEAVE TO SERVE DISCOVERY THAT WAS APPARENTLY MIS-SERVED was served by first class mail upon counsel for Applicant, by depositing same with the United States Postal Service, first class mail, postage prepaid, on March 5, 2010 in an envelope addressed to:

Thomas D. Suh
601 S. Figueroa Street
Suite 4025
Los Angeles, CA 90017

By One Of Opposer's Attorneys

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BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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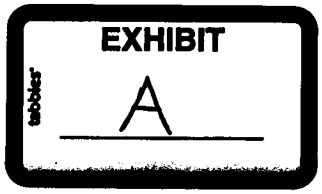
LUSTER PRODUCTS, INC.,	) Opposition No.:91190005
Opposer,	)
v.	)
PEACHYPINK, INC.	)
Applicant.	)

OPPOSER'S FIRST SET
OF INTERROGATORIES TO APPLICANT

I. INSTRUCTIONS AND DEFINITIONS

A. These interrogatories seek answers as of the date they are answered. Applicant should supply any additional information relating in any way to these interrogatories which Applicant acquires or which becomes known to the Applicant up to and including the time of trial promptly after such information is acquired or becomes known.

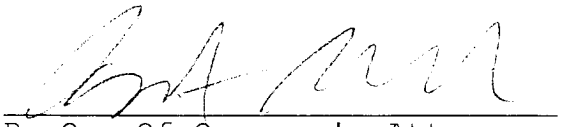
B. Reference to the term "Opposer" refers to Luster Products, Inc., it's employees and agents, and all other persons acting on their behalf or under their direction or control, including their representatives or any person acting on their behalf, or the officers, directors, agents, employees, attorneys, sales representatives, or any person acting on behalf of any merged, consolidated or acquired predecessor, and the requested Interrogatories shall be answered in conformance with such construction.



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT was served by first class mail upon counsel for Applicant, by depositing same with the United States Postal Service, first class mail, postage prepaid, on January 5, 2010 in an envelope addressed to:

Thomas D. Suh
Law Offices of Thomas D. Suh
1055 West 7th Street
Suite 2820
Los Angeles, CA 90017



By One Of Opposer's Attorneys

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LUSTER PRODUCTS, INC.,	)Opposition No.:91190005
Opposer,	)
v.	)
PEACHYPINK, INC.	)
Applicant.	)

OPPOSER'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS

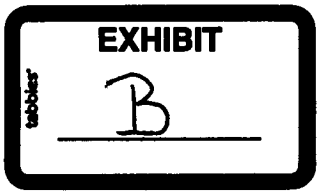
Opposer pursuant to Rule 34 of the Federal Rules of Civil Procedure, requests Applicant to produce within thirty (30) days from the date of service hereof at the offices of Ladas & Parry LLP, 224 South Michigan Avenue, Suite 1600, Chicago, IL 60604, or at another mutually agreeable location, and permit Opposer, or someone acting on its behalf, to inspect and copy such of the following designated documents as are in Applicant's possession, custody or control.

DEFINITIONS

Opposer adopts the Definitions provided in OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT by reference, as if fully set forth herein.

Applicant has been requested to produce the following documents and things:

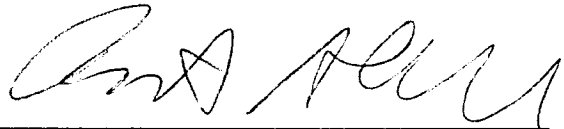
1. Representative documents showing all goods or services on which the Applicant's mark PEACHYPINK is used or has been used.



CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS was served by first class mail upon counsel for Applicant, by depositing same with the United States Postal Service, first class mail, postage prepaid, on January 5, 2010 in an envelope addressed to:

Thomas D. Suh
Law Offices of Thomas D. Suh
1055 West 7th Street
Suite 2820
Los Angeles, CA 90017



By One Of Opposer's Attorneys

[redacted]

224 South Michigan Avenue, Suite 1600
Chicago, Illinois 60604

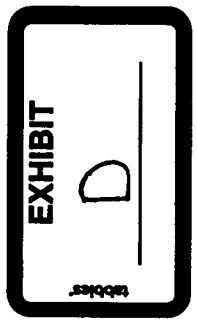
UNDELIVERABLE AS ADDRESSED NO

UNCL

Thomas D. Suh
Law Offices of Thomas D. Suh
1055 West 7th Street
Suite 2820
Los Angeles, CA 90017

tabbies EXHIBIT

HOPE LAW GROUP
1055 WEST 7TH STREET, SUITE 2820
LOS ANGELES, CALIFORNIA 90017

Mr. Burton S. Ehrlich
Ladas & Parry
224 S. Michigan Avenue
Suite 1600
Chicago, IL 60604

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