

ESTTA Tracking number: **ESTTA395729**

Filing date: **03/01/2011**

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

Proceeding	91192153
Party	Plaintiff Torquay Enterprises Limited
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Submission	Other Motions/Papers
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Signature	/Andrea Anderson/
Date	03/01/2011
Attachments	Motion and Declaration.pdf (54 pages)(1846086 bytes)

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

Torquay Enterprises Limited, Opposer, v. Therese Zadra, Applicant.	Opposition No.: 91192153 Mark: PATCHEZ
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**OPPOSER'S MOTION FOR EXTENSION OF TIME
TO RESPOND TO DISCOVERY REQUESTS**

Pursuant to Board Rules 403.04 and 503.09, Opposer Torquay Enterprises Limited ("Opposer"), by and through its undersigned counsel, hereby requests a thirty (30)-day extension of time to respond to Applicant's discovery requests served February 4, 2011. The new deadline for Opposer's responses would therefore be April 5, 2011.

I. FACTUAL BACKGROUND

On October 5, 2009, Opposer, a company organized under New Zealand law, with headquarters in New Zealand, filed this opposition. Since then, the parties have suspended the opposition several times while attempting to reach a settlement. (Declaration of Andrea Anderson ("Anderson Decl.") ¶2.) The parties have exchanged several settlement proposals, and the parties appear to be making progress toward settlement. (Id. ¶3.) However, recently, progress in settlement has been slowed, due to the fact that the primary attorney for Opposer is currently on a six-month maternity leave. (Id. ¶4.)

On February 4, 2011, three days prior to the close of discovery, Applicant served its First Set of Interrogatories, First Set of Requests for Production, and First Set of Requests for Admission *by hand*. The deadline for response to these requests is therefore March 7, 2011

(technically Sunday, March 6, 2011). (Id. ¶5 and Ex. 1 thereto.) Opposer also served its own set of discovery on Applicant by regular mail with a courtesy copy by email so that Applicant could take advantage of the extra five days of response time afforded by mail service. (Id. ¶5.)

On February 14, 2011, Opposer's counsel telephoned Applicant's counsel to convey that Opposer still wished to settle the dispute and had served discovery requests for the primary purpose of preserving its rights in the event that settlement attempts were unsuccessful. Opposer's counsel suggested that the parties grant each other mutual thirty-day extensions of time to respond to the outstanding discovery requests, while they focused on settlement. Applicant's counsel indicated that it needed to check with its client. (Id. ¶6.) On at least two subsequent occasions, Opposer's counsel suggested a mutual extension to Applicant's counsel. Each time, Applicant's counsel demurred, indicating that she needed her client's consent. (Id. ¶7.)

On February 25, 2011, Applicant's counsel indicated that Applicant would consent to a two-week extension *conditioned upon* Opposer providing a settlement counterproposal to Applicant prior to March 4, 2011. (Id. ¶8.) In response, Opposer's counsel explained that it was unlikely that Opposer would be able to meet this deadline given the fact that Opposer's U.S. counsel must confer with Opposer's New Zealand counsel, which must confer with Opposer in New Zealand regarding terms for a potential counter-offer. Opposer's counsel then explained to Applicant's counsel that, in light of this reality, Opposer would have no choice but to request an extension from the Board *ex parte*. The purpose of the extension, explained Opposer's counsel, would be to allow Opposer's New Zealand counsel, U.S. counsel, and Opposer to have adequate time to confer on the discovery requests and formulate appropriate responses and objections and

identify documents for production. (Id. ¶9.) Applicant's counsel indicated that her client would still not consent to a mutual extension of the parties' respective discovery response deadlines. (Id. ¶10.)

II. LEGAL ARGUMENT

Pursuant to Board Rule 403.04, a party may request an extension of time to respond to an Opponent's discovery requests for good cause. *See also* Rule 509.01(a). In this case, good cause for an extension exists as Opposer is a foreign entity unfamiliar with U.S. discovery practice. Opposer has begun the process of formulating responses and objections to the requests and identifying responsive documents. However, given the inevitable delays in communicating information between Opposer, Opposer's New Zealand counsel, and Opposer's U.S. counsel, extra time is required to allow Opposer to prepare full and meaningful responses and to identify responsive documents. Opposer has therefore been diligent in fulfilling its discovery obligations, and the need for the requested extension is not due to Opposer's unreasonable delay.

Applicant will not be prejudiced by this extension as it served its discovery requests only three days before the close of discovery period. By serving its initial requests so late in the discovery period, it effectively deprived itself of the opportunity to take follow-up discovery. Any extension of Opposer's response deadline would not exacerbate this self-inflicted prejudice.

III. CONCLUSION

Therefore, for the reasons stated above, Opposer respectfully requests that its deadline for responding to Applicant's First Set of Interrogatories, First Set of Requests for Admission, and First Set of Requests for Production be extended thirty (30) days until **April 5, 2011**. In the event that the Board denies this Request, Opposer respectfully requests that the Board allow

Opposer one week from the date of the Board's Order denying the requested extension to submit Responses.

Dated: March 1, 2011

s/Andrea Anderson

Scott S. Havlick

Andrea Anderson

Annie C. Haselfeld

HOLLAND & HART LLP

1800 Broadway, Suite 300

Boulder, CO 80302

Telephone: (303) 473-2700

**ATTORNEYS FOR OPPOSER
TORQUAY ENTERPRISES LIMITED**

CERTIFICATE OF SERVICE

I certify that on March 1, 2011, I served a copy of the above **OPPOSER'S MOTION FOR EXTENSION OF TIME TO RESPOND TO DISCOVERY REQUESTS AND DECLARATION OF ANDREA ANDERSON** to the following by:

☒
☒
☐
☐

U.S. Mail, Postage Prepaid
Email
Hand Delivery
Fax

A. David Logan
Carey Anthony
Venable, Campillo, Logan & Meaney, P.C.
1938 East Osborn Rd.
Phoenix, AZ 85016

s/Andrea Anderson

5043576_1.DOC

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

Torquay Enterprises Limited, Opposer, v. Therese Zadra, Applicant.	Opposition No.: 91192153 Mark: PATCHEZ
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DECLARATION OF ANDREA ANDERSON

I, Andrea Anderson, hereby declare and state as follows:

1. I am an attorney with the law firm of Holland & Hart LLP, counsel for Opposer, and I make this declaration on personal knowledge.
2. On October 5, 2009, Opposer, a company organized under New Zealand law with headquarters in New Zealand, filed this opposition. Since then, the parties have suspended the opposition on several occasions while attempting to reach a settlement.
3. The parties have exchanged several settlement proposals, and the parties appear to be making progress toward settlement. However, recently, progress in settlement has been slowed, due to the fact that an attorney representing Opposer in this action is currently on a six-month maternity leave.
4. On February 4, 2011, three days prior to the close of discovery, Applicant served its First Set of Interrogatories, First Set of Requests for Production, and First Set of Requests for Admission on Opposer *by hand*. The deadline for response to these requests is therefore March 7, 2011 (technically Sunday, March 6, 2011). Copies of these discovery requests are attached as **Exhibit 1**.
5. Opposer also served its own set of discovery on Applicant by regular mail with a courtesy copy by email so that Applicant could take advantage of the extra five days of response time afforded by mail service.
6. On February 14, 2011, I telephoned Applicant's counsel, Carey Anthony, to convey that Opposer still wished to settle the dispute and had served discovery requests for the primary purpose of preserving its rights in the event that settlement attempts were unsuccessful. I suggested that the parties grant each other mutual thirty-day extensions of time to respond to

the outstanding discovery requests while they focused on attempting to settle the opposition. Applicant's counsel indicated that she needed to check with her client.

7. I suggested a mutual extension to Applicant's counsel on at least two occasions after that. Each time, Applicant's counsel demurred, indicating that she needed her client's consent.


8. On February 25, 2011, Applicant's counsel indicated that Applicant would consent to a two-week extension *conditioned upon* Opposer providing a settlement counterproposal to Applicant prior to March 4, 2011.

9. I explained that it was unlikely that Opposer would be able to meet this deadline given the fact that I must confer with Opposer's New Zealand counsel, who must confer with Opposer in New Zealand regarding terms for a potential counter-offer. I then explained to Applicant's counsel that, in light of this reality, Opposer would have no choice but to request an extension from the Board ex parte. The purpose of the extension, I explained, would be to allow Opposer's New Zealand counsel, U.S. counsel, and Opposer to have adequate time to confer on the discovery requests and formulate appropriate responses and objections and identify documents for production.

10. Applicant's counsel indicated that its client would still not consent to a mutual extension of the parties' respective discovery response deadlines.

I declare under penalty of perjury that the foregoing testimony is true and accurate to the best of my knowledge, information, and belief.

DATED this 1st day of March, 2011.

A handwritten signature in cursive script, reading "Andrea Anderson", followed by a horizontal line.

Andrea Anderson

EXHIBIT 1

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

RECEIVED

FEB -4 2011

In the matter of application Serial No. 78803947

Holland & Hart, LLP

Torquay Enterprises Limited,	Opposition No. 91192153
Opposer,	Applicant's First Set of Request
v.	for Admissions
Therese Zadra	
Applicant.	

Pursuant to Rule 36 of the Federal Rules of Civil Procedure, Therese Zadra ("Applicant") requests that Torquay Enterprises Limited ("Opposer") serve responses to this First Set of Requests for Admissions and requests Opposer respond. Applicant General instructions and definitions are included as an attached Appendix. Applicant incorporates by reference the definitions and instructions set forth in Applicant's First Set of Interrogatories to Opposers.

REQUESTS FOR ADMISSIONS

REQUEST NO. 1

Admit that Opposer does not currently use the PATCHEZ mark for any goods.

REQUEST NO. 2

Admit that Opposer has never used the PATCHEZ mark for any goods.

REQUEST NO. 3

Admit that prior to the filing date of App. No. 77/136,240 for the mark "THE PATCH," Opposer was aware of the mark CABBAGE PATCH KIDS (U.S. Registration No. 1,444,716).

REQUEST NO. 4

Admit that prior to the filing date of App. No. 77/136,240 for the mark "THE PATCH," Opposer was aware of the mark CABBAGE PATCH KIDS (U.S. Registration No. 1,436,312).

REQUEST NO. 5

Admit that prior to the filing date of App. No. 77/136,240 for the mark "THE PATCH," Opposer was aware of the mark CABBAGE PATCH KIDS (U.S. Registration No. 1,436,996).

REQUEST NO. 6

Admit that prior to the filing date of App. No. 77/136,240 for the mark "THE PATCH," Opposer was aware of the mark TAPESTRY PATCH (U.S. Application No. 78/901,275 later issued as U.S. Registration No. 3,543,691).

REQUEST NO. 7

Admit that prior to the filing date of App. No. 77/136,240 for the mark "THE PATCH," Opposer was aware of the mark SOUR PATCH (U.S. Application No. 78/918,563 later issued as U.S. Registration No. 3,694,279).

REQUEST NO. 8

Admit that prior to the filing date of App. No. 77/136,240 for the mark "THE PATCH," Opposer was aware of the mark PUSSY PATCH (U.S. Application No. 79/012,296 later issued as U.S. Registration No. 3,213,591).

REQUEST NO. 9

Admit that prior to the filing date of App. No. 77/136,248 for the design mark "PATCH," Opposer was aware of the mark CABBAGE PATCH KIDS (U.S. Registration No. 1,444,716).

REQUEST NO. 10

Admit that prior to the filing date of App. No. 77/136,248 for the design mark "PATCH," Opposer was aware of the mark CABBAGE PATCH KIDS (U.S. Registration No. 1,436,312).

REQUEST NO. 11

Admit that prior to the filing date of App. No. 77/136,248 for the design mark "PATCH," Opposer was aware of the mark CABBAGE PATCH KIDS (U.S. Registration No. 1,436,996).

REQUEST NO. 12

Admit that prior to the filing date of App. No. 77/136,248 for the design mark "PATCH," Opposer was aware of the mark TAPESTRY PATCH (U.S. Application No. 78/901,275 later issued as U.S. Registration No. 3,543,691).

REQUEST NO. 13

Admit that prior to the filing date of App. No. 77/136,248 for the design mark "PATCH," Opposer was aware of the mark SOUR PATCH (U.S. Application No. 78/918,563 later issued as U.S. Registration No. 3,694,279).

REQUEST NO. 14

Admit that prior to the filing date of App. No. 77/136,248 for the design mark "PATCH," Opposer was aware of the mark PUSSY PATCH (U.S. Application No. 79/012,296 later issued as U.S. Registration No. 3,213,591).

REQUEST NO. 15

Admit that each of the marks in Opposer's Compound PATCH Registered Marks contain more words than the word "patch."

REQUEST NO. 16

Admit that Opposer's mark "The Patch" in Application 77/136,240 is a compound of the words "the" and "patch."

REQUEST NO. 17

Admit that Opposer's mark "patch" in Application 77/136,248 is a design.

REQUEST NO. 18

Admit that prior to the filing date of App. No. 77/136,240 for the mark "THE PATCH," Opposer was aware of Applicant's mark PATCHEZ.

REQUEST NO. 19

Admit that prior to the filing date of App. No. 77/136,248 for the design mark "PATCH," Opposer was aware of Applicant's mark PATCHEZ.

REQUEST NO. 20

Admit that prior to the filing date of App. No. 77/136,248 for the design mark "PATCH," Opposer was aware of the mark PUMPKIN PATCH ELVES (U.S. Application No. 78/373,954).

REQUEST NO. 21

Admit that prior to the filing date of App. No. 77/136,240 for the mark "THE PATCH," Opposer was aware of the mark PUMPKIN PATCH ELVES (U.S. Application No. 78/373,954).

REQUEST NO. 22

Admit that prior to the filing date of App. No. 77/136,240 for the mark "THE PATCH," Opposer was aware of the mark SOMETHING DIFFERENT BY PATCHES (U.S. Registration No. 852,356).

REQUEST NO. 23

Admit that prior to the filing date of App. No. 77/136,240 for the mark "THE PATCH," Opposer was aware of the mark SOMETHING DIFFERENT BY PATCHES (U.S. Registration No. 852,356).

REQUEST NO. 24

Admit that on April 19, 2006 Torquay Enterprises Limited filed a Notice of Opposition (Opposition No. 91170459) asserting, at least, its registration No. 2,375,503 (Pumpkin Patch) against U.S. Application Serial No. 78/338,600 (Pumpkin Hip Clothes For Cool Babes) filed for Pumpkin Babes Inc.

REQUEST NO. 25

Admit that on October 8, 2005, Torquay Enterprises Limited filed a Notice of Opposition (Opposition No. 91166902) asserting its registration No. 2,375,503 (Pumpkin Patch) against U.S. Application Serial No. 78/338,597 (Pumpkin) filed for Pumpkin Babes Inc.

REQUEST NO. 26

Admit that Torquay Enterprises Limited entered into a settlement agreement with Pumpkin Babes Inc.

REQUEST NO. 27

Admit that on September 21, 2006, Torquay Enterprises Limited consented to Pumpkin Babes Inc.'s withdrawal of the U.S. Application Serial No. 78/338,597.

REQUEST NO. 28

Admit that Torquay Enterprises Limited filed a Trademark application in New Zealand, application no. 754,842, for the mark "PUMPKIN".

REQUEST NO. 29

Admit that on September 21, 2006, Torquay Enterprises Limited filed a Withdrawal of Notice of Opposition in Opposition No. 91170459.

REQUEST NO. 30

Admit that on September 22, 2006, Torquay Enterprises Limited filed a Trademark application in New Zealand, application no. 755,692, for the mark "THE PATCH".

REQUEST NO. 31

Admit that on October 2, 2006, Torquay Enterprises Limited filed a Trademark application in New Zealand, application no. 756,208, for the design mark "PATCH".

REQUEST NO. 32

Admit that on October 17, 2006, Torquay Enterprises Limited filed a Trademark application with the United States Patent and Trademark office for the mark "PUMPKIN," Serial no. 77/023,155, claiming priority to New Zealand, application no. 754,842, for the mark "PUMPKIN."

REQUEST NO. 33

Admit that on March 21, 2007, Torquay Enterprises Limited filed a Trademark application with the United States Patent and Trademark office for the mark "THE PATCH," Serial no. 77/136,240, claiming priority to New Zealand, application no. 755,692, for the mark "THE PATCH."

REQUEST NO. 34

Admit that on March 21, 2007, Torquay Enterprises Limited filed a Trademark application with the United States Patent and Trademark office for the design mark "PATCH," Serial no. 77/136,248, claiming priority to New Zealand, application no. 756,208, for the design mark "PATCH."

REQUEST NO. 35

Admit that there is no likelihood of confusion between Applicant's mark, PATCHEZ, when used in connection with the goods set forth in App. No. 78/803,947 and the mark for "THE PATCH" when used in connection with the goods set forth in App. No. 77/136,240.

REQUEST NO. 36

Admit that there is no likelihood of confusion between Applicant's mark, PATCHEZ, when used in connection with the goods set forth in App. No. 78/803,947 and the design mark for "PATCH" when used in connection with the goods set forth in App. No. 77/136,248.

REQUEST NO. 37

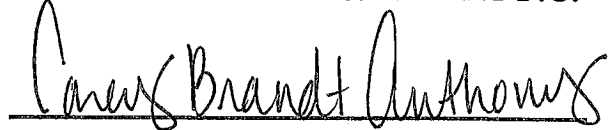
Admit that the parties believe there is no likelihood of confusion between Pumpkin Patch Pals marks (Serial Nos. 77/840,384, 78/623,859, 78/737,962, 78/977,362, 76/371,787, and 78/742,788) and Opposer's Pumpkin and Pumpkin Patch marks (Serial Nos. 77/023,155 and 78/554,714; and Registration Nos. 2,375,503; 3,019,983; and 3,039,859).

REQUEST NO. 38

Admit that all documents produced by Opposer's in this Opposition are authentic.

Date: February 3, 2011

VENABLE CAMPILLO LOGAN & MEANEY P.C.

A handwritten signature in cursive script, reading "Carey Brandt Anthony", written over a horizontal line.

Anthony D. Logan
Carey Brandt Anthony
1938 E. Osborn Road
Phoenix AZ 85016
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that Applicant's First Set of Request for Admissions has been served via hand delivery upon:

Scott S. Havlick
Andrea Anderson
Tyler J. Davis
Holland & Hart LLP
1800 Broadway, Suite 300
Boulder, CO 80302
Tel: 303-473-2700
Fax: 303-473-2720
shavlick@hollandhart.com
aanderson@hollandhart.com
tjdavis@hollandhart.com

on February 4, 2011.

A handwritten signature in black ink, appearing to read 'Anthony D. Logan', is written over a horizontal line.

Anthony D. Logan

APPENDIX

INSTRUCTIONS

A. With respect to each of the following interrogatories, unless otherwise stated in a particular interrogatory, the information sought is that which is current to the date of your answer thereto. Furthermore, these interrogatories are of a continuing nature. You are required to serve supplemental responses in accordance with Rule 26(e)(2) of the Federal Rules of Civil Procedure.

B. If, because of a claim of privilege, you do not answer any request for admission or subpart thereof, or you withhold any document or thing, set forth the privilege claimed, the facts upon which you rely to support the claim of privilege, and furnish a list identifying each document or thing for which the privilege is claimed, together with the following information:

- (1) A brief description of the nature and subject matter of the document or thing, including the title and type of document (i.e., whether it is a letter, memorandum, drawing, etc.) or thing;
- (2) The document's or the thing's date of creation;
- (3) The name and title of the author(s) or creator(s);
- (4) The name and title of the person(s) to whom the document is addressed or to whom the thing has been provided, including all person(s) who received copies, photographs, or other representations of the document or thing;
- (5) The name and title of the person(s) to whom the document or thing was sent;
- (6) The number of pages; and
- (7) The interrogatory to which the document, withheld information, or thing is otherwise responsive.

C. Where a discovery request seeks information that is not within Opposer's actual or constructive possession, custody, control, or knowledge, Opposer shall so state and shall answer the discovery request to the extent of its knowledge or belief based on the best information presently available. Where Opposer has knowledge or a belief as to other persons having such possession, custody, control, or knowledge, Opposer shall identify, to the extent known and based on the best information presently available, all such persons, together with a brief summary of the nature of the document, things, or other information believed to be known to such persons.

D. If Opposer is unable to answer a particular discovery request, Opposer shall state or identify:

- (1) The circumstances surrounding the inability to answer the request;
- (2) All documents which might contain information or material relevant to the answer sought; and
- (3) Each person whom Opposer believes might have knowledge of information or material relevant to the answer sought.

E. If the request for admission is not timely responded to, it is deemed admitted.

DEFINITIONS

As used herein, the term "document" is used in its customary broad sense to include, without limitation, the following items, whether printed, recorded, filed, stored or reproduced by any process, including but not limited to computer technology, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether an original, master or copy, namely: agreements; communications, including intra-company communications and correspondence; faxes; cablegrams and telegrams; notes and memoranda, summaries, minutes and records of: telephone conversations, meetings, and conferences, including lists of persons attending the meetings or conferences; summaries and records of personal conversations or interviews; legal pleadings; books, magazines, newspapers, manuals, and publications; reports and/or summaries of investigations and/or surveys; artistic or graphic renderings; sketches; notebooks; opinions and reports of consultants; opinions of counsel; reports and summaries of negotiations; brochures; pamphlets, catalogs and catalog sheets; advertisements, including print ads, billboards, videotapes, audiotapes, storyboards, and/or scripts for television or radio commercials; circulars; trade letters; press publicity and trade and product releases; drafts of original or preliminary notes on, or marginal comments appearing on, any document; other reports and records; and any other information-containing papers, writings or physical things.

As used herein, the term "communication" means an exchange or transmittal of information by any means, including but not limited to exchanges or transmittal by document, in-person meeting, conversation, correspondence, wire, telephone, telecopy, telegram, telex or other electronic transfer mechanism, including email transmissions and the like.

As used herein, "referring or relating to" shall mean pertaining to, mentioning, commenting on, connected with, discussing, describing, analyzing, explaining, showing, reflecting, dealing with, comprising, consisting of, containing, constituting, resulting from, or recording a particular subject in whole or in part and either directly or indirectly, relating to, referring to, or in any way relevant.

As used herein, "and" or "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request any document, thing, or other information that might otherwise be construed to be outside the scope of such request.

As used herein, the term "person" includes not only natural persons, but also, without limitation, firms, partnerships, associations, corporations and other legal entities, and divisions, departments or other units thereof.

As used herein, the terms "describe", "identify" or "state the identity of mean:

1. In the case of a person, to state:
 - i. the full name;
 - ii. the present or last known residence and telephone number;
 - iii. the current employer or business affiliation; and
 - iv. the occupation and business position held which is relevant to this action, and dates of tenure in such position.
2. In the case of a company, to state:
 - i. the full name;
 - ii. if incorporated, the place of incorporation;
 - iii. the present or last known address and telephone number of its principal place of business; and
 - iv. the identity of the person(s) having knowledge of the matter with respect to which the company is named.
3. In the case of a document, to state:
 - i. the identity of the person(s) who prepared it, the sender(s), and recipients, if any;
 - ii. the title or a description of the general nature of its subject matter;
 - iii. the date of preparation;

- iv. the date and manner of distribution and publication, if any;
 - v. the location of each copy and the identity of the present custodian;
 - vi. the identity of the person(s) who can identify it;
 - vii. the number of pages it contains;
 - viii. the contents of the document verbatim (in lieu of which a copy may be supplied); and
 - ix. if privilege is claimed, the specific basis therefor.
4. In the case of a communication, to state:
- i. the identities of the sender(s) and recipient(s);
 - ii. the date, time, and place;
 - iii. the manner of transmittal;
 - iv. a complete description of the content and substance;
 - v. the identities of each person who witnessed, overheard, or otherwise has personal knowledge of the communication;
 - vi. and all documents referring or relating to the communication.
5. In the case of an act, to state:
- i. a description of the act;
 - ii. when it occurred;
 - iii. where it occurred;
 - iv. the identity of the person(s) performing said act (or, in the case of an omission, the identity of the person(s) failing to act);
 - v. the identity of all persons who have knowledge, information or belief about the act;
 - vi. when the act first became known; and
 - vii. the circumstances and manner in which such knowledge was first obtained.
6. In the case of a product, to state:
- i. all trade or model names and any corresponding names used by Opposer to refer to the product;
 - ii. all product codes or other identification numbers associated with the manufacture or sale of the product; and

- iii. a brief description of the general nature and composition of the product.
7. In the case of an event, to state:
- i. the substance of the event;
 - ii. when and where the event occurred; and
 - iii. each person participating in the event and the extent of that person's participation.

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

RECEIVED

FEB - 4 2011

In the matter of application Serial No. 78/803947

Holland & Hart, LLP

Torquay Enterprises Limited	Opposition No. 91192153
Opposers,	Applicant's First set of Requests
v.	for Production of Documents to
Therese Zadra	Opposer
Applicant.	

Pursuant to Rule 34 of the Federal Rules of Civil Procedure, Applicant requests that Opposer serve responses to this First Set of Requests for Production of Documents and requests that Opposer respond by producing the requested documents at the office of Venable, Campillo, Logan & Meaney PC, 1938 E. Osborn Rd., Phoenix, AZ 85016. General instructions and definitions are included as an attached Appendix. Applicant incorporates by reference the definitions and instructions set forth in Applicant's First Set of Interrogatories to Opposer.

REQUESTS FOR PRODUCTION

REQUEST NO. 1

All documents referring to or relating to Opposer's selection, adoption, and clearance of the Opposer's Marks, including but not limited to, searches, investigations, reports, and opinions.

REQUEST NO. 2

Documents sufficient to show or identify each product and/or service with which the Opposer's Marks has been used and/or is now used, from Opposer's first use of Opposer's Marks to the present.

REQUEST NO. 3

All documents referring or relating to Opposer's plans for marketing and promoting Opposer's Products under Opposer's Marks, including, but not limited to marketing plans, advertising plans, strategic business plans, and market research from Opposer's first use of Opposer's Marks to the present.

REQUEST NO. 4

All documents evidencing Opposer's first use of Opposer's Marks on or in connection with each of Opposer's Products.

REQUEST NO. 5

Samples of packaging, hang tags, and labels for products sold under or in connection with Opposer's Marks from Opposer's first use of Opposer's Marks to the present.

REQUEST NO. 6

Documents sufficient to identify each channel of trade through which Opposer has marketed, offered, and sold, and currently markets, offers, and sells Opposer's Products.

REQUEST NO. 7

All price lists and documents identifying, referring, or relating to the price(s) for Opposer's Products from the time of the first offering of Opposer's Products to the present.

REQUEST NO. 8

Documents sufficient to identify the nature, identity, and characteristics of each class of type of purchaser to whom Opposer has marketed, offered, and sold, and currently markets, offers, and sells Opposer's Products.

REQUEST NO. 9

A representative sampling of advertising and promotion materials in each media utilized (e.g., print, television, radio, Internet, billboards) featuring, displaying, or containing Opposer's Marks, from the first use of Opposer's Marks to the present.

REQUEST NO. 10

Documents sufficient to show all forms and all manners of appearance in which Opposer has depicted, displayed, or used Opposer's Marks, including but not limited to, all designs and stylizations, from the first use of Opposer's Marks to the present.

REQUEST NO. 11

Documents sufficient to show all media (e.g., newspapers, magazines, radio, television, Internet) in which Opposer has advertised or promoted Opposer's Products in connection with Opposer's Marks including, but not limited to media schedules, advertising plans, etc.

REQUEST NO. 12

Documents sufficient to identify all trade shows and expositions where Opposer has promoted Opposer's Products under Opposer's Marks from Opposer's first use of Opposer's Marks to the present.

REQUEST NO. 13

Documents sufficient to evidence or determine the sales, in terms of units and dollar volume, of Opposer's Products, for each year in which Opposer's Products have been sold, from the first use of Opposer's Marks to the present.

REQUEST NO. 14

Documents sufficient to identify Opposer's annual advertising and promotion expenditures for Opposer's Products for each year in which Opposer's goods or services have been sold, from the first use of Opposer's Marks to the present.

REQUEST NO. 15

All documents referring or relating to any instance of alleged confusion, mistake, or deception involving, on the one hand, Opposer, Opposer's Marks, or Opposer's goods or service, and on the other hand, Applicant, Applicant's goods or services, or Applicant's Mark, or vice versa.

REQUEST NO. 16

All documents referring or relating to any inquiries about whether Opposer, Opposer's goods or services, or Opposer's Marks are or were affiliated or associated with, connected to, sponsored by, or otherwise related to Applicant, Applicant's goods or services, or Opposer's Marks are or were affiliated or associated with, connected to, sponsored by, or otherwise related to Applicant, Applicant's goods or services, or Applicant's Mark, or vice versa.

REQUEST NO. 17

All documents referring or relating to any instance where Opposer has received any mail, email, deliveries, correspondence or other communications, documents, and things intended for receipt by Applicant.

REQUEST NO. 18

All documents referring or relating to objections Opposer has made, based in whole or in part on Opposer's Marks, to any third party's use and/or registration of any marks or names.

REQUEST NO. 19

All documents referring or relating to objections Opposer has received regarding the use and/or registration of Opposer's Marks.

REQUEST NO. 20

All documents referring or relating to agreements between Opposer and third parties concerning the use and/or registration of Opposer's Marks, including but not limited to license agreements, settlement agreements, and coexistence agreements.

REQUEST NO. 21

All documents referring or relating to TTAB Proceeding No. 92047955 between Opposer and AMF Farms, Inc., including but not limited to settlement agreements, responses to interrogatories, admissions, document production requests, and deposition transcripts.

REQUEST NO. 22

All documents referring or relating to TTAB Proceeding No. 91167206 between Opposer and Dell'Osso Farms LLC, including but not limited to settlement agreements, responses to interrogatories, admissions, document production requests, and deposition transcripts.

REQUEST NO. 23

Documents sufficient to identify all trademark, service mark, trade name, Internet domain name, or other applications/registrations owned by or on behalf of Opposer, through assignment or otherwise, for any name or mark comprised of or containing the term PATCH.

REQUEST NO. 24

All documents relating to trademark searches, reports, investigations and/or opinions concerning any name, mark, or designation comprised of or containing the term PATCH, including but not limited to Opposer's Marks.

REQUEST NO. 25

All documents referring or relating to research, reports, studies, opinions, and/or investigations concerning Opposer and/or its use or registration of Opposer's Marks.

REQUEST NO. 26

All documents referring or relating to Applicant or the Applicant's Mark.

REQUEST NO. 27

All documents referring or relating to any research, reports, surveys, investigations, and/or studies relating to consumer or customer perception, understanding, and/or recognition of any name, mark, or designation comprised of or containing the term PATCH, including but not limited to Opposer's Marks.

REQUEST NO. 28

All documents relating to any research, reports, surveys, investigations, and/or studies concerning the presence or absence of consumer confusion or the likelihood of confusion between, on the one hand, Applicant, Applicant's Mark, or Applicant's goods or services and, on the other hand, any name, mark, or designation comprised of or containing the term PATCH, including but not limited to Opposer's Marks.

REQUEST NO. 29

All documents referring or relating to any third-party use of marks incorporating the term PATCH.

REQUEST NO. 30

All documents referring or relating to the circumstances under which Opposer first learned of Applicant's Mark.

REQUEST NO. 31

All documents referring or relating to any U.S. judicial, administrative, or other proceedings in any forum (not including this action), the subject of which concerned a name, mark, or designation comprised of or containing the term PATCH, including but not limited to Opposer's Marks.

REQUEST NO. 32

Documents sufficient to identify Opposer's corporate structure, including documents referring or relating to divisions, departments, and employees that have had any involvement with Opposer's Marks and/or Opposer's Products.

REQUEST NO. 33

All documents referring or relating to TTAB Proceedings No. 91166902 and 91170459 between Opposer and Pumpkin Babes, Inc., including but not limited to settlement agreements, responses to interrogatories, admissions, document production requests, and deposition transcripts.

REQUEST NO. 34

All documents referring or relating to TTAB Proceedings No. 9185524 between Opposer and Pumpkin Seed, Inc., including but not limited to settlement agreements, responses to interrogatories, admissions, document production requests, and deposition transcripts.

REQUEST NO. 35

To the extent not covered by the foregoing requests, all documents identified in Opposer's responses to Applicant's First Set of Interrogatories, and all documents referred to in preparing response to Applicant's First Set of Interrogatories.

REQUEST NO. 36

All documents related to trademark search results for Opposer's Marks including the trademarks search reports.

REQUEST NO. 37

All documents not already produced in response to the Requests that Opposer may use to support its claims.

Date: February 3, 2011

VENABLE CAMPILLO LOGAN & MEANEY P.C.

A handwritten signature in black ink, reading "Carey Brandt Anthony", written over a horizontal line.

Anthony D. Logan
Carey Brandt Anthony
1938 E. Osborn Road
Phoenix AZ 85016
Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that Applicant's First Requests for Production of Documents has been served via hand delivery upon:

Scott S. Havlick
Andrea Anderson
Tyler J. Davis
Holland & Hart LLP
1800 Broadway, Suite 300
Boulder, CO 80302
Tel: 303-473-2700
Fax: 303-473-2720
shavlick@hollandhart.com
aanderson@hollandhart.com
tjdavis@hollandhart.com

on February 4, 2011.

A handwritten signature in black ink, appearing to read "Anthony D. Logan", is written over a horizontal line.

Anthony D. Logan

APPENDIX

INSTRUCTIONS

A. With respect to each of the following interrogatories, unless otherwise stated in a particular interrogatory, the information sought is that which is current to the date of your answer thereto. Furthermore, these interrogatories are of a continuing nature. You are required to serve supplemental responses in accordance with Rule 26(e)(2) of the Federal Rules of Civil Procedure.

B. If, because of a claim of privilege, you do not timely or properly answer any request for production or subpart thereof, or you withhold any document or thing, set forth the privilege claimed, the facts upon which you rely to support the claim of privilege, and furnish a list identifying each document or thing for which the privilege is claimed, together with the following information:

- (1) A brief description of the nature and subject matter of the document or thing, including the title and type of document (i.e., whether it is a letter, memorandum, drawing, etc.) or thing;
- (2) The document's or the thing's date of creation;
- (3) The name and title of the author(s) or creator(s);
- (4) The name and title of the person(s) to whom the document is addressed or to whom the thing has been provided, including all person(s) who received copies, photographs, or other representations of the document or thing;
- (5) The name and title of the person(s) to whom the document or thing was sent;
- (6) The number of pages; and
- (7) The interrogatory to which the document, withheld information, or thing is otherwise responsive.

C. Where a discovery request seeks information that is not within Registrant's actual or constructive possession, custody, control, or knowledge, Opposer shall so state and shall answer the discovery request to the extent of its knowledge or belief based on the best information presently available. Where Opposer has knowledge or a belief as to other persons having such possession, custody, control, or knowledge, Opposer shall identify, to the extent known and based on the best information presently available, all such persons, together with a brief summary of the nature of the document, things, or other information believed to be known to such persons.

D. If Opposer is unable to answer a particular discovery request, Opposer shall state or identify:

- (1) The circumstances surrounding the inability to answer the request;
- (2) All documents which might contain information or material relevant to the answer sought; and
- (3) Each person whom Opposer believes might have knowledge of information or material relevant to the answer sought.

DEFINITIONS

As used herein, the term "document" is used in its customary broad sense to include, without limitation, the following items, whether printed, recorded, filed, stored or reproduced by any process, including but not limited to computer technology, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether an original, master or copy, namely: agreements; communications, including intra-company communications and correspondence; faxes; cablegrams and telegrams; notes and memoranda, summaries, minutes and records of: telephone conversations, meetings, and conferences, including lists of persons attending the meetings or conferences; summaries and records of personal conversations or interviews; legal pleadings; books, magazines, newspapers, manuals, and publications; reports and/or summaries of investigations and/or surveys; artistic or graphic renderings; sketches; notebooks; opinions and reports of consultants; opinions of counsel; reports and summaries of negotiations; brochures; pamphlets, catalogs and catalog sheets; advertisements, including print ads, billboards, videotapes, audiotapes, storyboards, and/or scripts for television or radio commercials; circulars; trade letters; press publicity and trade and product releases; drafts of original or preliminary notes on, or marginal comments appearing on, any document; other reports and records; and any other information-containing papers, writings or physical things.

As used herein, the term "communication" means an exchange or transmittal of information by any means, including but not limited to exchanges or transmittal by document, in-person meeting, conversation, correspondence, wire, telephone, telecopy, telegram, telex or other electronic transfer mechanism, including email transmissions and the like.

As used herein, "referring or relating to" shall mean pertaining to, mentioning, commenting on, connected with, discussing, describing, analyzing, explaining, showing, reflecting, dealing with, comprising, consisting of,

containing, constituting, resulting from, or recording a particular subject in whole or in part and either directly or indirectly, relating to, referring to, or in any way relevant.

As used herein, "and" or "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request any document, thing, or other information that might otherwise be construed to be outside the scope of such request.

As used herein, the term "person" includes not only natural persons, but also, without limitation, firms, partnerships, associations, corporations and other legal entities, and divisions, departments or other units thereof.

As used herein, the terms "describe", "identify" or "state the identity of mean:

1. In the case of a person, to state:
 - i. the full name;
 - ii. the present or last known residence and telephone number;
 - iii. the current employer or business affiliation; and
 - iv. the occupation and business position held which is relevant to this action, and dates of tenure in such position.
2. In the case of a company, to state:
 - i. the full name;
 - ii. if incorporated, the place of incorporation;
 - iii. the present or last known address and telephone number of its principal place of business; and
 - iv. the identity of the person(s) having knowledge of the matter with respect to which the company is named.
3. In the case of a document, to state:
 - i. the identity of the person(s) who prepared it, the sender(s), and recipients, if any;
 - ii. the title or a description of the general nature of its subject matter;
 - iii. the date of preparation;
 - iv. the date and manner of distribution and publication, if any;
 - v. the location of each copy and the identity of the present custodian;

- vi. the identity of the person(s) who can identify it;
 - vii. the number of pages it contains;
 - viii. the contents of the document verbatim (in lieu of which a copy may be supplied); and
 - ix. if privilege is claimed, the specific basis therefor.
4. In the case of a communication, to state:
- i. the identities of the sender(s) and recipient(s);
 - ii. the date, time, and place;
 - iii. the manner of transmittal;
 - iv. a complete description of the content and substance;
 - v. the identities of each person who witnessed, overheard, or otherwise has personal knowledge of the communication;
 - vi. and all documents referring or relating to the communication.
5. In the case of an act, to state:
- i. a description of the act;
 - ii. when it occurred;
 - iii. where it occurred;
 - iv. the identity of the person(s) performing said act (or, in the case of an omission, the identity of the person(s) failing to act);
 - v. the identity of all persons who have knowledge, information or belief about the act;
 - vi. when the act first became known; and
 - vii. the circumstances and manner in which such knowledge was first obtained.
6. In the case of a product, to state:
- i. all trade or model names and any corresponding names used by Opposer to refer to the product;
 - ii. all product codes or other identification numbers associated with the manufacture or sale of the product; and
 - iii. a brief description of the general nature and composition of the product.
 - iv.

7. In the case of an event, to state:
 - i. the substance of the event;
 - ii. when and where the event occurred; and
 - iii. each person participating in the event and the extent of that person's participation.

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

RECEIVED

FEB - 4 2011

In the matter of application Serial No. 78/803947

Holland & Hart, LLP

Torquay Enterprises Limited	Opposition No. 91192153
Opposers,	Applicant's First set of
v.	Interrogatories to Opposer
Therese Zadra	
Applicant.	

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, Applicant requests that Opposer serve responses to this First Set of Interrogatories. General instructions and definitions are included as an attached Appendix. Specific definitions as used herein shall apply:

1. The term "Applicant" shall mean Therese Zadra.
2. The term "Opposer" shall mean Torquay Enterprises Limited and any present or former parent, holding company, predecessor, subsidiary, affiliate, division, subdivision, branch, partner, joint venturer, or agent of Torquay Enterprises Limited including any past or present director, officer, employee, sole shareholder; representative, agent, attorney, accountant, or consultant thereof.
3. "Applicant's Mark," unless otherwise modified, shall mean the mark in Applicant's trademark application Serial No. 78803947, namely the mark "PATCHEZ".

4. "Opposer's First Mark," unless otherwise modified, shall mean the mark depicted in Opposer's registration no. 2375503, namely the "PUMPKIN PATCH" mark registered in International Class 025.
5. "Opposer's Second Mark," unless otherwise modified, shall mean the mark depicted in Opposer's trademark registration no. 3019983, namely the "PUMPKIN PATCH" mark registered in International Class 035.
6. "Opposer's Third Mark," unless otherwise modified, shall mean the mark depicted in Opposer's trademark registration no. 3039859, namely the mark shown below.



7. "Opposer's Fourth Mark," unless otherwise modified, shall mean the mark depicted in Opposer's trademark registration no. 2994776, namely the "BABY PATCH" mark registered in International Class 025.
8. "Opposer's Fifth Mark," unless otherwise modified, shall mean the mark depicted in Opposer's trademark registration no. 3034647, namely the "PATCH MATERNITY" mark registered in International Class 025.
9. "Opposer's Sixth Mark," unless otherwise modified, shall mean the mark depicted in Opposer's trademark registration no. 3018192,

namely the "PATCH PRINCESS" mark registered in International Class 025.

10. "Opposer's First Application," unless otherwise modified, shall mean the mark depicted in Opposer's trademark application Serial No. 77/136240 (filed March 21, 2007), namely the "THE PATCH" mark in International Classes 025 and 035.
11. "Opposer's Second Application," unless otherwise modified, shall mean the mark depicted in Opposer's trademark application Serial No. 77/136248 (filed March 21, 2007), namely the "PATCH" mark in International Classes 025 and 035.



12. "Opposer's Compound Word PATCH Marks," unless otherwise modified, shall mean Opposer's First Mark, Opposer's Second Mark, Opposer's Third Mark, Opposer's Fourth Mark, Opposer's Fifth Mark, and Opposer's Sixth Mark, and any other trademark, service mark, trade name, word, design, term or phrase used by Opposer in commerce that includes the term PATCH or any words similar thereto.
13. "Opposer's PATCH Trademark Applications," unless otherwise modified, shall mean Opposer's First Application and Opposer's Second Application, and any other trademark, service mark, trade name, word, design, term or phrase used by Opposer in commerce that includes the term PATCH or any words similar thereto.

14. "Opposer's Marks," unless otherwise modified, shall mean Opposer's Compound Word PATCH Marks and Opposer's PATCH Trademark Applications.
15. "Opposer's Products" refers to all products and services with which Opposer uses and has used Opposer's Marks.

INTERROGATORIES

INTERROGATORY NO. 1

For each of Opposer's Marks as identified above, identify each legal entity that has or had trademark rights in each of Opposer's Marks, the date(s) that each entity acquired trademark rights, whether the rights were by way of license or assignment, and the legal entity from or to whom said right(s) was(were) conveyed.

INTERROGATORY NO. 2

State Opposer's full legal name, all names under which Opposer's business has been conducted, principal place of business, the location of all branch offices and offices of agents, affiliates, or associated persons.

INTERROGATORY NO. 3

Identify all goods manufactured, sold or distributed by Opposer by type bearing the Opposer's Marks and describe the geographic markets in which the goods are or have been sold or distributed and the dates such distribution began in each market.

INTERROGATORY NO. 4

Describe how Opposer or its predecessors coined or developed each of Opposer's Marks.

INTERROGATORY NO. 5

Identify any third party who you allege has been confused as to the source or origin of goods sold using Applicant's Mark.

INTERROGATORY NO. 6

Identify any and all information leading to the information and belief alleged in paragraphs 7, 9, 11, 12, and 13 in the Notice of Opposition.

INTERROGATORY NO. 7

Identify each product and service with which Opposer has used Opposer's Marks from the first use of Opposer's Marks to the present, by stating for each such product and service:

1. The name of and the description of the product or service;
2. The date of first use of Opposer's Marks with each product or service;
3. The time period(s) during which each such product or service was/is promoted, sold, or offered;
4. The channels of trade through which the products or services have been marketed; and
5. The classes or types of users or purchasers to whom Opposer has marketed each product or service.

INTERROGATORY NO. 8

Identify each outside contractor, including advertising agencies, market research firms, public relations firms, website development firms, that has rendered services to Opposer in connection with the advertising, promotion, or publicizing of Opposer's Marks, or any products or services promoted, sold, and/or offered by Opposer under Opposer's Marks and for each such entity:

- (a) Describe the services performed by it;
- (b) State the period(s) of time during which it provides such services; and
- (c) Identify the person(s) primarily responsible for Opposer's account and the period(s) of time which they were responsible.

INTERROGATORY NO. 9

Identify the person(s) most knowledgeable of Opposer's Products from the first use of Opposer's Marks to the present.

INTERROGATORY NO. 10

Identify the person(s) most knowledgeable about the advertising and promotion of Opposer's Products from the first use of Opposer's Marks to the present.

INTERROGATORY NO. 11

Set forth Opposer's total expenditures on an annual basis for marketing and/or advertising of Opposer's Products from the first use of Opposer's Marks to the present.

INTERROGATORY NO. 123

Identify and describe all instances in which a person has inquired as to whether Opposer, Opposer's goods and service, or Opposer's Marks are or were affiliated with, connected to, sponsored by, or otherwise related to Applicant, Applicant's goods or services, or the Applicant's Mark and vice versa. For each such instance state:

- (a) The identity of the person who made the inquiry;
- (b) The date and place that the inquiry occurred;
- (c) The manner in which the Opposer received notice of the inquiry; and
- (d) The identity of each person who has knowledge of the inquiry.

INTERROGATORY NO. 13

Describe in detail the circumstances in which Opposer first learned of the Applicant's Mark including but not limited to the identity of all persons involved.

INTERROGATORY NO. 14

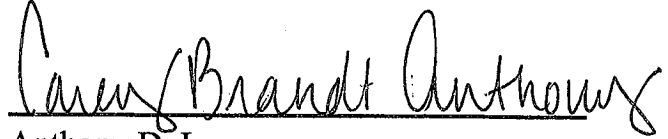
Set forth in detail the factual and legal basis for any response to Applicant's First Requests for Admissions that is other than an unqualified admission.

INTERROGATORY NO. 15

Identify each person who provided information in connection with Opposer's Responses to Applicant's First Set of Interrogatories, and specify the Interrogatories for which each identified person provided information.

Date: February 3, 2011

VENABLE CAMPILLO LOGAN & MEANEY P.C.

A handwritten signature in cursive script, reading "Carey Brandt Anthony", written over a horizontal line.

Anthony D. Logan
Carey Brandt Anthony
1938 E. Osborn Road
Phoenix AZ 85016
Attorneys for Applicant

CERTIFICATE OF SERVICE

I hereby certify that Applicant's First Set of Interrogatories to Opposer has been served via hand delivery upon:

Scott S. Havlick
Andrea Anderson
Tyler J. Davis
Holland & Hart LLP
1800 Broadway, Suite 300
Boulder, CO 80302
Tel: 303-473-2700
Fax: 303-473-2720
shavlick@hollandhart.com
aanderson@hollandhart.com
tjdavis@hollandhart.com

on February 4, 2011.

A handwritten signature in black ink, appearing to read 'Anthony D. Logan', is written over a horizontal line.

Anthony D. Logan

APPENDIX

INSTRUCTIONS

A. With respect to each of the following interrogatories, unless otherwise stated in a particular interrogatory, the information sought is that which is current to the date of your answer thereto. Furthermore, these interrogatories are of a continuing nature. You are required to serve supplemental responses in accordance with Rule 26(e)(2) of the Federal Rules of Civil Procedure.

B. If, because of a claim of privilege, you do not answer any interrogatory or subpart thereof, or you withhold any document or thing, set forth the privilege claimed, the facts upon which you rely to support the claim of privilege, and furnish a list identifying each document or thing for which the privilege is claimed, together with the following information:

- (1) A brief description of the nature and subject matter of the document or thing, including the title and type of document (i.e., whether it is a letter, memorandum, drawing, etc.) or thing;
- (2) The document's or the thing's date of creation;
- (3) The name and title of the author(s) or creator(s);
- (4) The name and title of the person(s) to whom the document is addressed or to whom the thing has been provided, including all person(s) who received copies, photographs, or other representations of the document or thing;
- (5) The name and title of the person(s) to whom the document or thing was sent;
- (6) The number of pages; and
- (7) The interrogatory to which the document, withheld information, or thing is otherwise responsive.

C. Where a discovery request seeks information that is not within Opposer's actual or constructive possession, custody, control, or knowledge, Opposer shall so state and shall answer the discovery request to the extent of its knowledge or belief based on the best information presently available. Where Opposer has knowledge or a belief as to other persons having such possession, custody, control, or knowledge, Opposer shall identify, to the extent known and based on the best information presently available, all such persons, together with a brief summary of the nature of the document, things, or other information believed to be known to such persons.

D. If Opposer is unable to answer a particular discovery request, Opposer shall state or identify:

- (1) The circumstances surrounding the inability to answer the request;
- (2) All documents which might contain information or material relevant to the answer sought; and
- (3) Each person whom Opposer believes might have knowledge of information or material relevant to the answer sought.

DEFINITIONS

As used herein, the term "document" is used in its customary broad sense to include, without limitation, the following items, whether printed, recorded, filed, stored or reproduced by any process, including but not limited to computer technology, or written or produced by hand, and whether or not claimed to be privileged against discovery on any ground, and whether an original, master or copy, namely: agreements; communications, including intra-company communications and correspondence; faxes; cablegrams and telegrams; notes and memoranda, summaries, minutes and records of: telephone conversations, meetings, and conferences, including lists of persons attending the meetings or conferences; summaries and records of personal conversations or interviews; legal pleadings; books, magazines, newspapers, manuals, and publications; reports and/or summaries of investigations and/or surveys; artistic or graphic renderings; sketches; notebooks; opinions and reports of consultants; opinions of counsel; reports and summaries of negotiations; brochures; pamphlets, catalogs and catalog sheets; advertisements, including print ads, billboards, videotapes, audiotapes, storyboards, and/or scripts for television or radio commercials; circulars; trade letters; press publicity and trade and product releases; drafts of original or preliminary notes on, or marginal comments appearing on, any document; other reports and records; and any other information-containing papers, writings or physical things.

As used herein, the term "communication" means an exchange or transmittal of information by any means, including but not limited to exchanges or transmittal by document, in-person meeting, conversation, correspondence, wire, telephone, telecopy, telegram, telex or other electronic transfer mechanism, including email transmissions and the like.

As used herein, "referring or relating to" shall mean pertaining to, mentioning, commenting on, connected with, discussing, describing, analyzing, explaining, showing, reflecting, dealing with, comprising, consisting of,

containing, constituting, resulting from, or recording a particular subject in whole or in part and either directly or indirectly, relating to, referring to, or in any way relevant.

As used herein, “and” or “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request any document, thing, or other information that might otherwise be construed to be outside the scope of such request.

As used herein, the term “person” includes not only natural persons, but also, without limitation, firms, partnerships, associations, corporations and other legal entities, and divisions, departments or other units thereof.

As used herein, the terms “describe”, “identify” or “state the identity of” mean:

(1) In the case of a person, to state:

- i. the full name;
- ii. the present or last known residence and telephone number;
- iii. the current employer or business affiliation; and
- iv. the occupation and business position held which is relevant to this action, and dates of tenure in such position.

(2) In the case of a company, to state:

- i. the full name;
- ii. if incorporated, the place of incorporation;
- iii. the present or last known address and telephone number of its principal place of business; and
- iv. the identity of the person(s) having knowledge of the matter with respect to which the company is named.

(3) In the case of a document, to state:

- i. the identity of the person(s) who prepared it, the sender(s), and recipients, if any;
- ii. the title or a description of the general nature of its subject matter;
- iii. the date of preparation;
- iv. the date and manner of distribution and publication, if any;
- v. the location of each copy and the identity of the present custodian;

- vi. the identity of the person(s) who can identify it;
- vii. the number of pages it contains;
- viii. the contents of the document verbatim (in lieu of which a copy may be supplied); and
- ix. if privilege is claimed, the specific basis therefor.

(4) In the case of a communication, to state:

- i. the identities of the sender(s) and recipient(s);
- ii. the date, time, and place;
- iii. the manner of transmittal;
- iv. a complete description of the content and substance;
- v. the identities of each person who witnessed, overheard, or otherwise has personal knowledge of the communication;
- vi. and all documents referring or relating to the communication.

(5) In the case of an act, to state:

- i. a description of the act;
- ii. when it occurred;
- iii. where it occurred;
- iv. the identity of the person(s) performing said act (or, in the case of an omission, the identity of the person(s) failing to act);
- v. the identity of all persons who have knowledge, information or belief about the act;
- vi. when the act first became known; and
- vii. the circumstances and manner in which such knowledge was first obtained.

(6) In the case of a product, to state:

- i. all trade or model names and any corresponding names used by Opposer to refer to the product;
- ii. all product codes or other identification numbers associated with the manufacture or sale of the product; and
- iii. a brief description of the general nature and composition of the product.

(7) In the case of an event, to state:

- i. the substance of the event;
- ii. when and where the event occurred; and
- iii. each person participating in the event and the extent of that person's participation.