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

Proceeding	91196025
Party	Plaintiff Pet Holdings Inc.
Correspondence Address	VENKAT BALASUBRAMANI FOCAL PLLC 8426 40TH AVENUE SW SEATTLE, WA 98136-3966 UNITED STATES sean@focallaw.com
Submission	Motion to Compel Discovery
Filer's Name	Sean M. McChesney
Filer's e-mail	sean@focallaw.com
Signature	/smm/
Date	08/01/2011
Attachments	Opposer's Motion to Compel Discovery.pdf (6 pages)(217256 bytes) McChesney Declaration re Motion to Compel Discovery.pdf (37 pages)(760743 bytes)

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

PET HOLDINGS INC., Opposer, v. COMBO VENTURES LLC, Applicant.	Opposition No. 91196025
COMBO VENTURES LLC, Counterclaim Petitioner, v. PET HOLDINGS INC., Counterclaim Respondent.	Registration No. 3748736

**OPPOSER AND COUNTERCLAIM RESPONDENT’S MOTION TO COMPEL
ANSWERS TO INTERROGATORIES AND PRODUCTION OF DOCUMENTS AND
THINGS**

Opposer and Counterclaim Respondent Cheezburger, Inc. (“Opposer”) moves, pursuant to Rule 37 of the Federal Rules of Civil Procedure and Trademark Rule 2.120(e), that the Board compel Applicant and Counterclaim Petitioner Combo Ventures LLC (“Applicant”) to answer interrogatories and produce documents and things in response to Opposer’s discovery requests served upon Applicant on May 10, 2011. Applicant has not provided a single response to Opposer’s discovery requests, which responses are now more than forty-five days overdue. Applicant has not even indicated a date certain by which it will answer Opposer’s discovery requests. In these circumstances, the Board should enter an order compelling Applicant to

respond. Pursuant to TBMP § 527.01(c), Opposer additionally requests that the Board find that Applicant has forfeited its right to object to Opposer's discovery requests on the merits.

In support of this motion, Opposer states as follows:

1. Opposer served its First Set of Interrogatories and Requests for Production of Documents and Things upon Applicant on May 10, 2011. (Declaration of Sean M. McChesney in Support of Opposer's Motion to Compel Responses to Discovery ("*McChesney Decl.*"), ¶ 2; Exhibit A.)

2. Pursuant to Trademark Rule 2.120(a), responses to interrogatories and requests for production of document and things must be served within thirty days from the date of service of such discovery requests.

3. Having not received responses to its discovery requests, on June 13, 2011, counsel for Opposer emailed counsel for Applicant to inquire about the status of Applicant's discovery responses. (McChesney Decl., ¶ 3; Exhibit B.)

4. On June 14, 2011, counsel for both parties spoke via telephone. (McChesney Decl., ¶ 4.) During the phone call, counsel for Applicant stated that certain personal issues (including Applicant's dog being sick and Applicant being out of town) had prevented Applicant from providing responses to Opposer's discovery. (*Id.*) Counsel for Applicant further stated that he expected to be able to serve responses later that week, or the beginning of the following week (i.e., the week beginning June 20, 2011). (*Id.*) Finally, Counsel for Applicant requested that Opposer stipulate to a thirty-day extension of case deadlines to allow additional time for discovery, which Opposer agreed to. (*Id.*) At no time did Opposer agree to extend the deadline for Applicant to respond to Opposer's outstanding discovery requests. (*Id.*)

5. Counsel for Applicant filed the Stipulated Motion for an Extension of Time on

June 17, 2011. (Dkt. No. 12.) The Board granted the extension, and the deadline for discovery was reset to August 24, 2011. (Dkt. No. 13.)

6. On June 20, 2011, counsel for Applicant sent an email to counsel for Opposer which stated: “I only spoke to my client moments ago for the first time in weeks. Consequently, I’ll need a few more days than I anticipated last week. With that said, I would expect to have your discovery responses by week’s end. Thx.” (McChesney Decl., ¶ 5; Exhibit C.) However, ten days passed and Applicant still had not served its discovery responses. (McChesney Decl., ¶ 5.)

7. On June 30, 2011, counsel for Applicant and counsel for Opposer spoke again via telephone regarding the status of Applicant’s responses to the outstanding discovery requests. (McChesney Decl., ¶ 6.) Counsel for Applicant stated that his client had been sick and out of town, and therefore counsel had not been able to obtain responsive documents or draft responses. (Id.) Counsel for Applicant further stated that he would be on vacation the week of July 4-8, and therefore would not be able to provide responses to discovery during that week. (Id.) When pressed to provide a time certain that the discovery responses would be served, counsel for Applicant indicated that he “hoped” to receive documents from his client by July 11, 2011 and to serve responses by July 15th. (Id.) Counsel for Applicant also requested an additional sixty day extension of case deadlines. (Id.)

8. On July 13th, counsel for Opposer contacted counsel for Applicant to confirm that Applicant’s responses would be served by week’s end, as counsel for Applicant had previously indicated. (McChesney Decl., ¶ 7; Exhibit D.) In response, counsel for Applicant stated responses would be served “shortly.” (Id.) When asked to clarify what “shortly” meant, whether it meant days or weeks, counsel for Applicant indicated that it would only be a matter of days.

(Id.)

9. One week later, on July 20, 2011, despite still not having received responses to its discovery requests, Opposer again granted an accommodation to Applicant by stipulating to an additional sixty day extension of case deadlines to allow Applicant more time to conduct discovery. (McChesney Decl., ¶ 8.) Applicant filed the stipulated motion, and the Board issued an order granting it, on July 22, 2011. (Dkt. No.'s 15 and 16.) Again, at no time did Opposer agree to extend the deadline for Applicant to respond to Opposer's outstanding discovery requests. (McChesney Decl., ¶ 8.)

10. On July 28th, Counsel for Opposer contacted counsel for Applicant again to inquire about the status of the outstanding discovery. (McChesney Decl., ¶ 9; Exhibit E.) As of the filing of the instant motion, no response has been received to this latest inquiry. (McChesney Decl., ¶ 9.)

11. It has now been over eighty days since Opposer issued its discovery requests to Applicant. During that time, Applicant has not provided even a single answer to an interrogatory, nor has it produced one requested document. In contrast, Opposer has twice accommodated Applicant's requests for extensions of case deadlines.

12. In light of the foregoing, Opposer respectfully requests that the Board issue an order compelling Applicant to produce responses to Opposer's discovery requests.

13. In addition to an order compelling responses to its discovery, Opposer requests that the Board find that Applicant has forfeited its right to object to Applicant's discovery requests on the merits. *See* TBMP § 527.01 (c) ("A party which fails to respond to a request for discovery (except for a request for admission) during the time allowed therefor, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to

compel filed by the propounding party, to have forfeited its right to object to the discovery request on its merits.”) The Board “is invested with great discretion in determining whether such a forfeiture should be found.” *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000). Given the present circumstances, in which Applicant has failed to produce any responses to discovery and has only offered a string of explanations for its failure to do so, an exercise of the Board’s discretion would be appropriate.

14. Pursuant to Trademark Rule 2.120(e), Opposer submits that it has made a good faith effort to resolve with Applicant the issues presented in the instant motion, but Applicant has failed to produce responses to Opposer’s discovery requests. Specifically, counsel for both parties have spoken on several occasions and have exchanged multiple emails regarding Applicant’s discovery responses, as detailed herein.

DATED: August 1, 2011

FOCAL PLLC

By: s/ Sean M. McChesney
Sean M. McChesney

800 Fifth Avenue, Suite 4100
Seattle, WA 98104
Phone: (206) 617-3040
Fax: (206) 260-3966
Email: sean@focallaw.com

*Attorneys for Opposer and
Counterclaim Respondent*

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2011, a copy of the foregoing was served by email upon counsel for Combo Ventures LLC at the following address, per agreement of the parties regarding electronic service:

Joel G. MacMull
jmacmull@GoetzFitz.com

Dated: August 1, 2011

s/ Sean M. McChesney
Sean M. McChesney

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

PET HOLDINGS INC., Opposer, v. COMBO VENTURES LLC, Applicant.	Opposition No. 91196025
COMBO VENTURES LLC, Counterclaim Petitioner, v. PET HOLDINGS INC., Counterclaim Respondent.	Registration No. 3748736

**DECLARATION OF SEAN M. MCCHESENEY IN SUPPORT OF OPPOSER’S MOTION
TO COMPEL RESPONSES TO DISCOVERY**

I, Sean M. McChesney, make this declaration under penalty of perjury under the laws of the United States, and based on my personal knowledge of the matters set forth herein.

1. I am co-counsel for Opposer and Counterclaim Respondent in this matter.
2. Opposer served its First Set of Interrogatories and Requests for Production of Documents and Things upon Applicant on May 10, 2011. A true and correct copy of Opposer’s discovery requests is submitted herewith as Exhibit A.
3. Having not received responses to Opposer’s discovery requests, on June 13, 2011, I emailed counsel for Applicant, Joel G. MacMull, to inquire about the status of Applicant’s

discovery responses. A true and correct copy of my email to Applicant's counsel is submitted herewith as Exhibit B.

4. On June 14, 2011, counsel for both parties spoke via telephone. During the phone call, Mr. MacMull stated that certain personal issues (including Applicant's dog being sick and Applicant being out of town) had prevented Applicant from providing responses to Opposer's discovery. Mr. MacMull further stated that he expected to be able to serve responses later that week, or the beginning of the following week (i.e., the week beginning June 20, 2011). Finally, Mr. MacMull requested that Opposer stipulate to a thirty-day extension of case deadlines to allow additional time for discovery, which Opposer agreed to. At no time did Opposer agree to extend the deadline for Applicant to respond to Opposer's outstanding discovery requests.

5. On June 20, 2011, Mr. MacMull sent an email to me that stated: "I only spoke to my client moments ago for the first time in weeks. Consequently, I'll need a few more days than I anticipated last week. With that said, I would expect to have your discovery responses by week's end. Thx." A true and correct copy of the email sent by Mr. MacMull is submitted herewith as Exhibit C. However, ten days passed and Applicant still had not served its discovery responses.

6. On June 30, 2011, Mr. MacMull and I spoke again via telephone regarding the status of Applicant's responses to the outstanding discovery requests. Mr. MacMull stated that his client had been sick and out of town, and therefore he had not been able to obtain responsive documents or draft responses. Mr. MacMull further stated that he would be on vacation the week of July 4-8, and therefore would not be able to provide responses to discovery during that week. When pressed to provide a time certain that the discovery responses would be served, Mr. MacMull indicated that he "hoped" to receive documents from his client by July 11, 2011 and to

serve responses by July 15th. During the call, Mr. MacMull also requested an additional sixty day extension of case deadlines.

7. On July 13th, I contacted Mr. MacMull to confirm that Applicant's responses would be served by week's end, as he had previously indicated. In response, Mr. MacMull stated that Applicant's responses would be served "shortly." When asked to clarify what "shortly" meant, whether it meant days or weeks, Mr. MacMull indicated that it would be a matter of days. A copy of the email exchange between counsel is submitted herewith as Exhibit D.

8. One week later, on July 20, 2011, despite still not having received responses to its discovery requests, Opposer again granted an accommodation to Applicant by stipulating to an additional sixty day extension of case deadlines to allow Applicant more time to conduct discovery. Mr. MacMull filed the stipulated motion, and the Board issued an order granting it, on July 22, 2011. Again, at no time did Opposer agree to extend the deadline for Applicant to respond to Opposer's outstanding discovery requests.

9. On July 28th, I contacted Mr. MacMull again to inquire about the status of the outstanding discovery. A true and correct copy of the email to Mr. MacMull is submitted herewith as Exhibit E. As of the filing of the instant motion, no response has been received to this latest inquiry.

Dated this 1st day of August, 2011 at Seattle, Washington.

s/ Sean M. McChesney
Sean M. McChesney

CERTIFICATE OF SERVICE

I hereby certify that on August 1, 2011, a copy of the foregoing was served by email upon counsel for Combo Ventures LLC at the following address, per agreement of the parties regarding electronic service:

Joel G. MacMull
jmacmull@GoetzFitz.com

Dated: August 1, 2011

s/ Sean M. McChesney
Sean M. McChesney

EXHIBIT A

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

PET HOLDINGS INC., Opposer, v. COMBO VENTURES LLC, Applicant.	Opposition No. 91196025
COMBO VENTURES LLC, Counterclaim Petitioner, v. PET HOLDINGS INC., Counterclaim Respondent.	Registration No. 3748736

**OPPOSER AND COUNTERCLAIM RESPONDENT'S
FIRST SET OF INTERROGATORIES AND REQUESTS FOR PRODUCTION OF
DOCUMENTS AND THINGS**

Pursuant to Fed. R. Civ. P. 34 and 37 C.F.R. § 2.120, Opposer and Counterclaim Respondent Cheezburger, Inc. requests that Applicant and Counterclaim Petitioner Combo Ventures LLC produce answers to the following interrogatories and copies of all of the documents and things described below at the offices of Focal PLLC, 800 Fifth Avenue, Suite 4100, Seattle, Washington 98104 within thirty days of service hereof.

DEFINITIONS AND INSTRUCTIONS

1. The term “Applicant” shall mean Combo Ventures LLC, the Applicant and Counterclaim Petitioner in this proceeding, and any predecessor(s) or successor(s) in interest, licensees, agents and employees thereof.

2. The term “Opposer” shall mean Cheezburger, Inc., the Opposer and Counterclaim Respondent in this proceeding, and any predecessor(s) or successor(s) in interest, licensees, agents and employees thereof.

3. The term “Applicant’s Mark” shall mean EPIC FAIL, the mark applied for in Application Serial No. 77/781021.

4. The term “Opposer’s Mark” shall mean FAIL BLOG, the mark depicted in U.S. Registration No. 3748736.

5. The term “Applicant’s Site” shall mean the website accessible at <http://www.epicfail.com>.

6. As used herein, the term “person(s)” includes both juristic persons as well as natural persons, including, but not limited to, officers, managing agents, supervisory personnel, and employees, firms, partnerships, associations, corporations and other legal entities, divisions, departments or other units thereof.

7. As used herein, the term “document” is used in its broadest sense, to include, without limitation, the following items, whether printed, recorded, filmed, or reproduced by any process, 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: communications, including intra-company communications and correspondence; notes and memoranda; summaries, minutes and records of telephone conversations, meetings and conferences, including lists of persons

attending meetings or conferences; summaries and records of personal conversations or interviews; reports; customer lists; internet sites, electronic mail, books, manuals, and publications; notebooks, charts; plans; sketches and drawings; photographs; reports and/or summaries of investigations and/or surveys; customer surveys; opinions and reports of consultants; reports and summaries of negotiations; brochures, pamphlets and catalogs; computer software; databases; advertisements; applications for approval by a governmental agency; other reports and records; and any other information-containing paper, writing or physical thing; data stored in a computer; data stored on removable magnetic or optical media (e.g., magnetic tape, floppy disks, and recordable optical disks); email; digitalized pictures or video (e.g., data stored in MPEG, JPEG and GIF formats), and digitized audio and voicemail.

8. As used herein, “thing” refers to any tangible object other than a document.

9. As used herein, “and” or “or” shall be construed conjunctively or disjunctively as necessary to make the request inclusive rather than exclusive.

10. As used herein, “communication” is used in its broadest sense, to include, without limitation, the following:

- a. any document, as defined in paragraph 7, above; and
- b. any conversation, correspondence, discussion, conference, report, message, account, interview, exchange and consultation, whether oral or written.

11. As used herein, “all” or “each” shall be construed to bring within the scope of discovery all documents and things that otherwise might be construed outside its scope.

12. As used herein, “date” shall mean the exact date if known and, if not known, the approximate date.

13. Any word written in the singular shall be construed as plural or vice versa when necessary to facilitate the answer or a discovery request.

14. As used herein, “relating to” means concerning, evidencing, comprising, referring to, and describing anything relevant within the meaning of Rule 26(b) of the Federal Rules of Civil Procedure.

15. Each copy of any document that contains any marking not appearing on the original or that is an alteration or the original in any way or that is discovered at a different location or in the possession or custody of a different person than the original is a separate document for purposes of these discovery requests.

16. With respect to each document withheld on the ground of a claim of attorney-client privilege or work product doctrine, Applicant is required to provide a privilege log that includes at least the following information: the nature of the information contained in the withheld document, the date of the document, its source, and subject matter, and to whom that information was disclosed, such as would enable a privilege claim to be adjudicated, and any authority which Applicant asserts supports any claim of privilege.

17. These document requests shall be deemed to be continuing, requiring Applicant to serve upon Opposer amended or supplemental responses and documents promptly after Applicant has acquired additional knowledge or information relating in any way to such document requests.

INTERROGATORIES

INTERROGATORY NO. 1: Identify all goods and services that Applicant has sold, offered for sale or distributed, on or in connection with which Applicant has used Applicant's Mark.

RESPONSE:

INTERROGATORY NO. 2: Identify all goods and services that Applicant intends to sell, offer for sale or distribute, on or in connection with which Applicant intends to use Applicant's Mark.

RESPONSE:

INTERROGATORY NO. 3: Describe the facts and circumstances surrounding Applicant's selection, adoption, and use of Applicant's Mark, including but not limited to a description of the reasoning or rationale behind Applicant's adoption of Applicant's Mark and identification of each person involved in the conception, creation, evaluation, adoption, selection, or design of Applicant's Mark.

RESPONSE:

INTERROGATORY NO. 4: Describe fully the ways in which Applicant advertises, promotes or markets or intends to advertise, promote or market Applicant's goods and services, including without limitation by identifying all forms of media and the specific media outlets that Applicant has used for such activities; identifying the types of advertising, promotional and marketing activities engaged in by Applicant; and stating the total dollar amounts spent by Applicant on a

monthly and annual basis in connection with such activities, from the first date of such expenditures to the present.

RESPONSE:

INTERROGATORY NO. 5: Describe fully the target customers and/or target markets for Applicant's goods and services, including without limitation by specifying the characteristics of such customers by age, gender, geographic location or area of residence, income or other demographic criteria or characteristics.

RESPONSE:

INTERROGATORY NO. 6: For any survey, investigation, study, or market research or test (collectively, "Survey") Applicant has commissioned or caused to be conducted relating to Applicant's Mark or (including but not limited to surveys relating to public recognition, consumer acceptance, secondary meaning, or confusion), identify each individual or entity who was or is in charge of conducting each such Survey and state the results thereof.

RESPONSE:

INTERROGATORY NO. 7: If Applicant, or any of Applicant's agents, representatives, or customers, has received a written or verbal order, inquiry, complaint, or other communication that was intended for Opposer, or that inquired whether Applicant or any goods or services sold or distributed by Applicant are connected with, affiliated with, associated with, or sponsored by Opposer, identify:

- a) by whom it was communicated;
- b) the date and place thereof;
- c) the nature and substance thereof; and
- d) the manner in which the incident came to Applicant's attention, including,

without limitation, the method of communication.

RESPONSE:

INTERROGATORY NO. 8: Identify any and all grants, licenses, assignments, transfers or other conveyances of rights relating to Applicant's Mark.

RESPONSE:

INTERROGATORY NO. 9: Identify all disputes, disagreements or controversies between Applicant and any party, and all legal or administrative actions or proceedings of any type, other than this proceeding, in the United States in which Applicant has been involved, as a party or otherwise, involving the adoption or use of, or application to register, any trademark, service mark, trade dress, trade name, copyright, or intellectual property right of any kind.

RESPONSE:

INTERROGATORY NO. 10: Identify each person employed by or otherwise associated or affiliated with Applicant who is knowledgeable regarding and, if applicable, has day-to-day operational responsibility for, each of the following:

- a) the history and business operations of Applicant;

- b) Applicant's selection, adoption and use of Applicant's Mark;
- c) the marketing, advertising and promotional activities of Applicant, including but not limited to marketing, advertising and promotional activities relating to use of Applicant's Mark;
- d) the channels of trade and distribution methods used by Applicant for its goods and services; and
- e) the unit and dollar volume of sales of any products or services by Applicant since the time Applicant began use of Applicant's Mark.

RESPONSE:

INTERROGATORY NO. 11: Describe the facts and circumstances surrounding the alleged efforts by Opposer to purchase Applicant's Mark as described in paragraph 10 of Applicant's counterclaim.

RESPONSE:

INTERROGATORY NO. 12: Identify the person or entity referred to as "Applicant's predecessor in interest" in paragraph 9 of Applicant's counterclaim.

RESPONSE:

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

REQUEST FOR PRODUCTION NO. 1: All documents sufficient to provide complete information concerning the nature of the business conducted by Applicant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: All documents sufficient to provide complete information concerning the locations where Applicant's business is conducted, including all locations where Applicant maintains an office or records.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: All documents sufficient to provide complete information concerning the corporate organization of Applicant, including a list of parents, subsidiaries, affiliates and related divisions.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4: All documents sufficient to provide complete information concerning the officers, directors, members and managers of Applicant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5: All documents referring to Opposer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6: All documents referring to Opposer's Mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7: All communications sent by Applicant to Opposer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8: All documents relating to Applicant's knowledge of Opposer's filing of U.S. Application Serial No. 77/781021.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9: All documents relating to Applicant's knowledge of Opposer's ownership of U.S. Trademark Registration No. 3748736.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10: All documents relating to Applicant's allegation in paragraph 10 of Applicant's Counterclaim that Opposer attempted to purchase Applicant's Mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11: All documents relating to Applicant's creation, selection, adoption, or acquisition of Applicant's Mark including, without limitation, documentation of meetings or discussions held concerning the adoption of Applicant's Mark, documentation concerning the reasons for selecting Applicant's Mark, and documentation concerning the consideration of any alternative to Applicant's Mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: All documents concerning any searches, studies, investigations, or any other inquiries, whether formal or informal, conducted by or on behalf of Applicant relating to the availability of Applicant's Mark for adoption and use by Applicant on or in connection with goods and services offered or to be offered for sale by Applicant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13: Documents sufficient to establish the date of Applicant's first use of Applicant's Mark anywhere in the United States.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14: Documents sufficient to establish the date of Applicant's first use of Applicant's Mark in commerce in the United States.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15: Documents sufficient to establish that Applicant has continuously used Applicant's Mark in the United States since Applicant's first use of Applicant's mark anywhere in the United States.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16: Documents sufficient to identify when Applicant first learned that Opposer was using Opposer's Mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17: All documents relating to any application to register Applicant's Mark in the United States, including, but not limited to, all communications between Applicant and the United States Patent and Trademark Office, but excluding those documents and communications currently obtainable through the USPTO's website.

RESPONSE:

REQUEST FOR PRODUCTION NO. 18: Documents sufficient to identify each product or service Applicant has promoted or offered for sale in connection with Applicant's Mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 19: All documents relating to Applicant's plans for future use of Applicant's Mark, including marketing channels, current or future products or

service lines, and/or the intended target market for products or services promoted, provided, or sold in connection with Applicant's Mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20: All documents relating to Applicant's trademark policing and enforcement efforts against third parties with respect to Applicant's Mark, including without limitation lawsuits, oppositions, cancellations, cease and desist letters, and the like, as well as any documents concerning the results thereof, including without limitation orders, judgments, consents, settlement agreements or other understandings.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21: All documents relating to any license or assignment of Applicant's Mark granted to any third party.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22: Documents sufficient to show Applicant's total dollar volume of sales in the United States of goods and services on or in connection with which Applicant's Mark has been used, on a monthly and annual basis, from the first date of such sales to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23: All documents relating to use of Applicant's Mark by Applicant's predecessor in interest as alleged in paragraph 9 of Applicant's Counterclaim.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24: All documents pursuant to which Applicant's predecessor in interest conveyed Applicant's Mark and goodwill to Applicant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 25: All documents which support Applicant's allegation in its second affirmative defense that Applicant's Mark "has developed significant goodwill among the consuming public and consumer acceptance of the services offered by Applicant in conjunction with" Applicant's Mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 26: All documents which support Applicant's allegation in its sixth affirmative defense that use of Applicant's Mark has been "open, notorious and known to Opposer" since at least April 10, 2009.

RESPONSE:

REQUEST FOR PRODUCTION NO. 27: All documents which support Applicant's allegation in its seventh affirmative defense that Opposer took measures "to intentionally and

wrongfully divert Applicant's internet-based consumers to Opposer's website through a campaign meant to cause consumer confusion.”

RESPONSE:

REQUEST FOR PRODUCTION NO. 28: Documents sufficient to show Applicant's total dollar volume of advertising and promotional expenditures in the United States in connection with Applicant's promotion of Applicant's Mark and/or the goods or services on or in connection with which Applicant has used or intends to use Applicant's Mark, on a monthly and annual basis, from the first date of such expenditures to the present.

RESPONSE:

REQUEST FOR PRODUCTION NO. 29: All documents reflecting media coverage of Applicant or Applicant's goods and services on or in connection with which Applicant uses Applicant's Mark, including but not limited to articles and features in newspapers, newsletters, magazines, television programs, radio programs, and/or Internet web sites.

RESPONSE:

REQUEST FOR PRODUCTION NO. 30: All consumer studies, surveys, and market research reports concerning the marketing, strategic planning, advertising, promotion or sales of any goods or services on or in connection with which Applicant's Mark has been used, including but not limited to studies concerning: (a) consumer reaction to Applicant's Mark; (b) public

awareness or recognition of Applicant's Mark; and/or (c) secondary meaning in Applicant's Mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 31: All documents which any expert retained by Applicant in connection with the instant proceeding has seen, has considered, may use, and/or may rely upon in the course of arriving at any opinions or conclusions in this case, including without limitation all materials relating to any consumer studies and surveys.

RESPONSE:

REQUEST FOR PRODUCTION NO. 32: Documents which reflect the internet traffic to Applicant's Site for the previous three years, including unique daily and monthly visitors, countries of visitors, top ten referring websites, and top ten keywords or search inquiries.

RESPONSE:

REQUEST FOR PRODUCTION NO. 33: All documents relating to or that in any way evidence any alleged or actual mistake or confusion between Opposer and Applicant and/or their respective goods or services, including but not limited to any documents that evidence mistake or confusion between any goods or services offered or provided by Opposer and any goods or services offered or provided by Applicant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 34: All documents relating to any instances of actual, apparent, or possible confusion, mistake, or deception by consumers regarding the source of Opposer's or Applicant's goods or services.

RESPONSE:

REQUEST FOR PRODUCTION NO. 35: All documents relating to any investigation conducted by, or on behalf of, Applicant relating to any potential likelihood of confusion between Opposer's Mark and Applicant's Mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 36: All documents relating to any opinion, conclusion, statement, or assertion that there is, or is not, actual or potential confusion between Applicant's Mark and Opposer's Mark.

RESPONSE:

DATED: May __, 2011

FOCAL PLLC

By: s/ Sean M. McChesney
Sean M. McChesney

800 Fifth Avenue, Suite 4100
Seattle, WA 98104
Phone: (206) 617-3040
Fax: (206) 260-3966

Email: sean@focallaw.com

Attorneys for Cheezburger, Inc.

CERTIFICATION AND VERIFICATION

I, _____, hereby attest that I am duly authorized by Combo Ventures LLC to respond to Opposer and Counterclaim Respondent's First Set of Interrogatories and Requests for Production of Documents and Things, have reviewed the documents and materials submitted in response, and that they are in compliance with the Federal Rules.

Dated this ___ day of _____, 2011.

CERTIFICATE OF SERVICE

I hereby certify that on May 10, 2011, a copy of the foregoing was served by email upon
counsel for Combo Ventures LLC at the following address:

Joel G. MacMull
jmacmull@GoetzFitz.com

Dated: May 10, 2011

/s/ Sean M. McChesney
Sean M. McChesney

EXHIBIT B



EPIC Fail - Opp. No. 91196025

Sean McChesney <sean@focallaw.com>
To: Joel MacMull <jmacmull@goetzfitz.com>
Cc: Venkat Balasubramani <venkat@focallaw.com>

Mon, Jun 13, 2011 at 5:06 PM

Hi Joel,

Can you please provide a status update regarding our discovery requests? We had expected to receive a response last week.

Thank you.

Regards,

Sean M. McChesney

focal PLLC

800 Fifth Avenue, Suite 4100
Seattle, WA 98104
Email: sean@focallaw.com
Phone: [206.617.3040](tel:206.617.3040)
Fax: [206.299.0477](tel:206.299.0477)

On Tue, May 10, 2011 at 1:00 PM, Sean M. McChesney <sean@focallaw.com> wrote:

Joel,

Attached please find Opposer's first set of discovery requests.

Regards,

Sean M. McChesney

focal PLLC

800 Fifth Avenue, Suite 4100
Seattle, WA 98104
Email: sean@focallaw.com
Phone: [206.617.3040](tel:206.617.3040)
Fax: [206.299.0477](tel:206.299.0477)

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EXHIBIT C



Sean McChesney <sean@focallaw.com>

EPIC Fail - Opp. No. 91196025

Joel MacMull <jmacmull@goetzfitz.com>

Mon, Jun 20, 2011 at 1:04 PM

To: Sean McChesney <sean@focallaw.com>

Cc: Venkat Balasubramani <venkat@focallaw.com>, Ronald Coleman <rcoleman@goetzfitz.com>

Sean,

I only spoke to my client moments ago for the first time in weeks. Consequently, I'll need a few more days than I anticipated last week. With that said,

I would expect to have your discovery responses by week's end. Thx.

--

JGM

From: Sean McChesney [<mailto:sean@focallaw.com>]

Sent: Monday, June 13, 2011 8:07 PM

To: Joel MacMull

Cc: Venkat Balasubramani

Subject: Re: EPIC Fail - Opp. No. 91196025

Hi Joel,

Can you please provide a status update regarding our discovery requests? We had expected to receive a response last week.

Thank you.

Regards,

Sean M. McChesney

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Seattle, WA 98104

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Phone: [206.617.3040](tel:206.617.3040)

Fax: [206.299.0477](tel:206.299.0477)

On Tue, May 10, 2011 at 1:00 PM, Sean M. McChesney <sean@focallaw.com> wrote:

Joel,

Attached please find Opposer's first set of discovery requests.

Regards,

Sean M. McChesney

[focal](#) PLLC

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Seattle, WA 98104

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EXHIBIT D



EPIC Fail - Opp. No. 91196025

Joel MacMull <jmacmull@goetzfitz.com>

Fri, Jul 15, 2011 at 2:10 PM

To: Sean McChesney <sean@focallaw.com>

Cc: Venkat Balasubramani <venkat@focallaw.com>, Ronald Coleman <rcoleman@goetzfitz.com>

Days Sean, days.

With that, are you going to consent to my extension request? If we have to move the Board we will, so please let me know by the end of the day today.

--

JGM

From: Sean McChesney [mailto:sean@focallaw.com]

Sent: Friday, July 15, 2011 12:03 PM

To: Joel MacMull

Cc: Venkat Balasubramani; Ronald Coleman

Subject: Re: EPIC Fail - Opp. No. 91196025

Joel,

Hi Joel,

I'm happy to hear that you've had substantive contact with your client on this issue. However, I'm a bit taken aback by your response. First, no threats were made. I merely informed you that, if we did not receive your client's responses within the time that you yourself had previously indicated, our client intended to file a motion to compel. I don't think there's anything particularly hostile, surprising or unreasonable about that, given the status of the discovery responses, and our client would certainly be within its right to do so.

While it is true that you've provided us with a list of reasons for the delinquency, you've also indicated each time that you expected to be able to provide responses by x, y and z dates, and those dates have come and gone. And our client has been nothing but generous towards your client on this issue thus far. But, at a certain point, our client can't simply continue to "take your word for it," and will have to seek the assistance of the Board to obtain a date certain for receiving responses to its discovery.

You write that we will have your client's responses "very shortly." I'm honestly not sure what that phrase means, whether it be days or weeks. Please clarify.

With respect to the issue of a further extension, our client has taken it under consideration but is unlikely to make a final decision prior to receipt of your client's responses to discovery.

Feel free to call if you'd like to discuss further. Again, we're not trying to ruffle feathers, just trying to close this out.

Sean M. McChesney

800 Fifth Avenue, Suite 4100
Seattle, WA 98104
Email: sean@focallaw.com
Phone: [206.617.3040](tel:206.617.3040)
Fax: [206.299.0477](tel:206.299.0477)

On Thu, Jul 14, 2011 at 3:00 PM, Joel MacMull <jmacmull@goetzfitz.com> wrote:

Sean,

I was actually in conversation with my client yesterday for nearly two hours concerning your discovery requests. In any event, please don't threaten us.

To begin with, you only served your discovery requests on May 10th. Consequently, applicant's responses were not due before June 11th. Thus, your reference to applicant's two months of delinquency is not even remotely accurate considering that today is only July 14th. While we acknowledge that we are now a month late in providing you with responses, I have also advised you on no less than two occasions of the circumstances which have resulted in this delay, which has included our client's absence, his subsequent illness, the illness of his pet, as well as my own recent vacation. These events, couple with the time of year, hardly necessitates the tone of your missive.

In any event, with that said, you'll have defendants responses very shortly. Equally important, and I understand that you'd want responses in hand before doing so, where do you stand on stipulating to an additional 60 day extension of our discovery schedule which I requested of you two weeks ago?

--

JGM

From: Sean McChesney [mailto:sean@focallaw.com]
Sent: Wednesday, July 13, 2011 6:23 PM

To: Joel MacMull
Cc: Venkat Balasubramani
Subject: Re: EPIC Fail - Opp. No. 91196025

Joel,

I write again to inquire about the status of your client's responses to our discovery requests. When we spoke on June 30th, you stated that, although you would be on vacation during the week of July 4th-8th, your client would be compiling responsive documents during that period. You further stated that you expected them to be available for you to review when you returned from your vacation, and that your client's responses would be provided to us this week. I am writing to see whether that is the case. In the event that is not the case, our client intends to file a Motion to Compel. I'm sure that you can appreciate our client's reasons for doing so, given that your client's responses have been outstanding for more than two months now.

Please let me know whether you will be providing responses by this Friday, July 15th.

Sincerely,

Sean M. McChesney

focal PLLC

800 Fifth Avenue, Suite 4100
Seattle, WA 98104
Email: sean@focallaw.com
Phone: [206.617.3040](tel:206.617.3040)
Fax: [206.299.0477](tel:206.299.0477)

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I would expect to have your discovery responses by week's end. Thx.

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JGM

From: Sean McChesney [mailto:sean@focallaw.com]
Sent: Monday, June 13, 2011 8:07 PM
To: Joel MacMull
Cc: Venkat Balasubramani
Subject: Re: EPIC Fail - Opp. No. 91196025

Hi Joel,

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Regards,

Sean M. McChesney

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Regards,

Sean M. McChesney

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EXHIBIT E



Sean McChesney <sean@focallaw.com>

EPIC Fail - Opp. No. 91196025

Sean McChesney <sean@focallaw.com>
To: jmacmull@goetzfitz.com
Cc: Venkat Balasubramani <venkat@focallaw.com>

Thu, Jul 28, 2011 at 9:32 AM

Joel,

When might we expect responses to the discovery?

Regards,

Sean M. McChesney

focal PLLC

800 Fifth Avenue, Suite 4100
Seattle, WA 98104

Email: sean@focallaw.com

Phone: [206.617.3040](tel:206.617.3040)

Fax: [206.299.0477](tel:206.299.0477)

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