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

Proceeding	91198750
Party	Defendant Sempio Food Service, Inc.
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Date	10/22/2011
Attachments	Sempio Opposition to MTC _Oct 21 2011_.pdf (12 pages)(130626 bytes) 2011_10_21_Decl of F Douglas.pdf (2 pages)(71627 bytes) Exhibit A.pdf (94 pages)(244670 bytes) Exhibit B.pdf (45 pages)(156527 bytes)

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

In the Matter of Opposition No. 91198750

Cargill, Incorporated,

Opposer,

- against -

Sempio Food Services, Inc.,

Applicant.

Opposition No. 91198750

**PETITIONER'S RESPONSE IN
OPPOSITION TO OPPOSER'S
MOTION TO COMPEL**

Serial No. 85-022,361

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**PETITIONER'S RESPONSE IN OPPOSITION TO OPPOSER'S
MOTION TO COMPEL**

Applicant Sempio Food Services, Inc. ("Sempio" or "Applicant") hereby opposes the Motion by Opposer, Cargill, Incorporated ("Opposer") to compel adequate responses to interrogatories. Opposer's Motion is not well placed, for at least the following grounds:

1. Opposer did not sufficiently confer or correspond with Applicant before filing the Motion to Compel.
2. Opposer's First Set of Interrogatories contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).
3. Applicant served Opposer with "Applicant's First Supplemental Response to Opposer's First Set of Interrogatories" which addresses in detail how Opposer's Interrogatories grossly exceed the numerical limits for interrogatories. The Supplemental Response addresses details that should have been discussed if Opposer would have sufficiently conferred before filing the Motion.

4. Opposer has burdened the Board and Applicant by not availing itself of the Board's suggested procedures for ameliorating the harassment from exceeding the numerical limit on interrogatories.

1.0 Opposer did not sufficiently confer with Applicant before filing the Motion to Compel

Opposer could have provided Opposer's position on the total number of interrogatories that it propounded to Applicant. Such a detailed explanation could have avoided the Motion to Compel, or at least limited the number of issues in dispute before the Board. Instead, Opposer makes an all too brief mention of the issue in the only letter that it sent relevant to Applicant's response to the Opposer's First Set of Interrogatories.

2.0 Opposer's First Set of Interrogatories Exceeds the Limit of 75 interrogatories in TBMP § 405.03(a)

Applicant generally objected to every one of Opposer's interrogatories as separately and together with all of the other purported interrogatories, they contain multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a). Opposer designated 24 interrogatories but each interrogatory actually contains several questions such that the actual number of questions is far in excess

of 75.

For example, regarding Interrogatory No. 2, Applicant is asked to “Identify the *three* persons most knowledgeable about *each category below and* summarize the substance of *each* person's knowledge” (emphasis supplied). There are four categories designated in Interrogatory No. 2, (a)-(d). So identifying three persons for four categories already converts Interrogatory No. 2 to 12 questions. Category (a) appears to be three questions (“selection, adoption, and creation “). Category (c) appears to contain seven questions (“registrability and clearance”; “including formal or informal trademark searches or investigations”; and “Opposer or Opposer's Marks”). Category (d) has at least four questions (“studies, surveys, focus groups, or other studies”).

So, when Opposer asks in this Interrogatory No. 2 for the identity of three persons for four separately designated categories (a)-(d) that contain at least 3, 1, 7, 4 questions respectively, and further asks for a summary of each person's knowledge for each category, the total number of questions in Interrogatory No. 2 is at least 57 questions.

See TBMP § 405.03(d) (“For example, if two or more questions are combined in a single compound interrogatory, and are not set out as separate subparts, the Board will look to the substance of the interrogatory, and count each of the combined questions as a separate interrogatory.” *See Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636, 1637 (TTAB 1990); *Kellogg Co. v. Nugget Distributors' Cooperative of America, Inc.*, 16 USPQ2d 1468, 1469

(TTAB 1990).

See also, TBMP § 405.03(d) (“Similarly, if an interrogatory begins with a broad introductory clause (“Describe fully the facts and circumstances surrounding applicant's first use of the mark XYZ, including:”) followed by several subparts (“Applicant's date of first use of the mark on the goods listed in the application,” “Applicant's date of first use of the mark on such goods in commerce,” etc.), the Board will count the broad introductory clause and each subpart as a separate interrogatory, whether or not the subparts are separately designated.”). *See Jan Bell Marketing*, 19 USPQ2d at 1637.

In Interrogatory No. 6, separate identifiable parts include “markets,” “sells,” “distributes,” “intends to market,” “intends to sell,” and “intends to distribute.” Interrogatory No. 6 starts with an introductory clause followed by one designated subpart (a). This means that Interrogatory No. 6 is at least two questions. *See* TBMP § 405.03(d) (“Similarly, if an interrogatory begins with a broad introductory clause (“Describe fully the facts and circumstances surrounding applicant's first use of the mark XYZ, including:”) followed by several subparts (“Applicant's date of first use of the mark on the goods listed in the application,” “Applicant's date of first use of the mark on such goods in commerce,” etc.), the Board will count the broad introductory clause and each subpart as a separate interrogatory, whether or not the subparts are separately designated.”). *See Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636, 1637 (TTAB 1990).

The interrogatory is multiplied by questions regarding goods to customers *and* goods to potential customers. Interrogatory No. 6 adds a designated subpart (a) requesting the identity of each person with knowledge of the facts requested above. *See* TBMP § 405.03(d) (“If an interrogatory requests information concerning more than one issue, such as information concerning both ‘sales and advertising figures,’ or both ‘adoption and use,’ the Board will count each issue on which information is sought as a separate interrogatory.”). *See* Notice of Final Rulemaking, 54 Fed. Reg. 34886 (August 22, 1989).

Thus, Interrogatory No. 6 comprises at least nine separate questions. As explained above, Interrogatories Nos. 1-5 contain at least 71 questions, so Interrogatories Nos. 1-6 contain at least 80 questions.

There are seven categories designated in Interrogatory No. 10, (a)-(g). Applicant is asked to identify the *name and description of each type of goods* for categories (a)-(g). So identifying the name and description of each type of goods for seven categories already converts Interrogatory No. 10 to 14 questions. Category (a) appears to have one question; category (b) appears to have three questions; category (c) appears to contain two questions; category (d) appears to have one question; category (e) seems to contain two questions; category (f) appears to have two questions; and category (g) seems to have seven questions.

So, the total number of questions in Interrogatory No. 10 is at least 22 questions.

See TBMP § 405.03(d) (“For example, if two or more questions are

combined in a single compound interrogatory, and are not set out as separate subparts, the Board will look to the substance of the interrogatory, and count each of the combined questions as a separate interrogatory.” See *Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636, 1637 (TTAB 1990); *Kellogg Co. v. Nugget Distributors' Cooperative of America, Inc.*, 16 USPQ2d 1468, 1469 (TTAB 1990).

Each subdivision of separate questions, whether set forth as a numbered or lettered subpart, or as a compound question or a conjunctive question, is counted as a separate interrogatory.¹ Each numbered subpart must be counted separately regardless of the propounding party’s arguments that the division was made for clarification or convenience.²

See TBMP § 405.03(d) (“If an interrogatory includes questions set forth as numbered or lettered subparts, each separately designated subpart will be counted by the Board as a separate interrogatory. The propounding party will, to that extent, be bound by its own numbering system, and will not be heard to complain that an interrogatory, although propounded with separately designated subparts, should nevertheless be counted as a single interrogatory because the interrogatory concerns a single transaction, set of facts, etc., or because the division was made for clarification or convenience.”). See also, *Jan Bell Marketing, Inc. v. Centennial*

¹ *Kellogg Co. v. Nugget Distributors' Coop. of Am., Inc.*, 16 USPQ2d 1468, 1469 (TTAB 1990); *Brawn of California, Inc. v. Bonnie Sportswear Ltd.*, 15 USPQ 1572, 1574 (TTAB 1990).

² *Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636, 1637 (TTAB 1990); *Pyttronic Industries, Inc. v. Terk Technologies Corp.*, 16 USPQ2d 2055, 2056 (TTAB 1990).

Jewelers, Inc., 19 USPQ2d 1636, 1637 (TTAB 1990); *Pyttronic Industries, Inc. v. Terk Technologies Corp.*, 16 USPQ2d 2055, 2056 (TTAB 1990).

See also, TBMP § 405.03(d) (“Similarly, if an interrogatory begins with a broad introductory clause (“Describe fully the facts and circumstances surrounding applicant's first use of the mark XYZ, including:”) followed by several subparts (“Applicant's date of first use of the mark on the goods listed in the application,” “Applicant's date of first use of the mark on such goods in commerce,” etc.), the Board will count the broad introductory clause and each subpart as a separate interrogatory, whether or not the subparts are separately designated.”). *See Jan Bell Marketing*, 19 USPQ2d at 1637.

In Interrogatory No. 15, Opposer removes any doubt as to whether the number of interrogatories exceeds 75. Interrogatory No. 15 states:

“For each of Opposer's First Set of Requests for Admissions that Applicant does not unconditionally admit, state the factual basis for the denial or qualified admission.”

Opposer's First Set of Requests for Admissions contains 73 Requests for Admission. At least 67 of the 73 responses to Opposer's First Set of Requests for Admission are not unconditional.³ Thus Interrogatory No. 15 has at least 67 independent parts. *See Safeco of America v. Rawstron*, 181 F.R.D. 441, 446 (C.D. Cal. 1998) (“[A]n interrogatory that asks the responding party to *state facts* . . .

³ *See*, Declaration of Frederic M. Douglas, paragraph 4. *See also*, Exhibit B of F. Douglas Declaration, Applicant's Response to Opposer's First Set of Requests for Admission.

supporting the denial of each request for admission [in a set] . . . usually should be construed as containing a subpart for each request for admission contained in the set.” Where an interrogatory incorporates an investigation into each of a set of requests for admission, it effectively “transforms each request for admission into an interrogatory” would allow the proponent to “circumvent the numerical limit contained in Rule 33(a).” *Id.* at 445.

See, e.g., *Wolk v. Green*, 2007 WL 3203050, * 2 n. 4 (N.D. Cal., Oct. 29, 2007) (“[a]n interrogatory inquiring as to basis of responses to requests for admissions is treated as an interrogatory with subparts” and each request for admission should be counted as a separate interrogatory); *Stevens v. Federated Mutual Insurance Co.*, 2006 WL 2079053, *6 (N.D. W. Va., July 25, 2006) (finding that a single interrogatory counted as eleven interrogatories because it sought information regarding eleven different requests for admission); *American Chiropractic Association v. Trigon Healthcare, Inc.*, 2002 WL 534459, *3 (W.D. Va., March 18, 2002) (counting seven requests for admission referenced in a single interrogatory as seven separate interrogatories).

Sempio objected to Interrogatory No. 15 as it demanded a factual basis for any denial of a request for admission. Applicant is not required to provide a factual basis for a denial of a request for admission. See, *Lakehead Pipe Line Co. v. American Home Assurance Co.*, 177 F.R.D. 454, 458 (D. Minn. 1997).

Counting Interrogatory No. 15 as 67 interrogatories and counting the other 23 interrogatories as designated by Opposer, the total number of interrogatories

becomes 90 interrogatories. As explained above, most of the other interrogatories actually contain more than one question.

Thus, Opposer has grossly exceeded the limit of 75 questions without justification for additional interrogatories, without a request for a stipulation for additional interrogatories, without a motion to the Board for additional interrogatories, and without even an explanation disputing the total number of interrogatories counted.

3.0 Applicant Served Opposer with “Applicant’s First Supplemental Response to Opposer’s First Set of Interrogatories” further explaining Applicant’s Objections

Exhibit A to the Declaration is a copy of Applicant’s First Supplemental Response to Opposer’s First Set of Interrogatories. Applicant’s supplemental response detailed how each of Opposer’s interrogatories, separately and together with all of the other purported interrogatories, contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a). Opposer has made no discernible effort to counter or respond to the issues that Applicant detailed regarding the objections made in Applicant’s supplemental response.

Applicant proposes that the parties confer after Opposer’s review of the supplemental responses to resolve the issues in the Motion to Compel, or at least to

minimize the outstanding issues in dispute to avoid burdening the Board with all of the issues presently before the Board regarding all interrogatories.

4.0 Opposer has burdened the Board and Applicant by not availing itself of the Board's suggested procedures for ameliorating the harassment from exceeding the numerical limit on interrogatories.

The purpose of the numerical limit is to discourage parties from using interrogatories for purposes of harassment.⁴ The Board has made a recommendation that propounding parties filing a motion to compel responses to interrogatories objected to as excessive in number. "It is further recommended that the moving party set out its counting method showing that the number of interrogatories does not exceed 75."⁵ The Board makes an even further recommendation for situations like this when Opposer should note that the interrogatories propounded are, in fact, excessive. "In those cases where a party which has propounded interrogatories realizes, on receipt of a general objection thereto on the ground of excessive number, that the interrogatories are, in fact, excessive in number, it is strongly recommended that the parties voluntarily agree to the service of a revised set of interrogatories, in the manner normally allowed by


⁴ Notice of Final Rulemaking, 1106 TMOG 23, 28 (Sep. 12, 1989).

⁵ TBMP § 405.03(e).

the Board, instead of bringing their dispute to the Board by motion to compel.”⁶

If Opposer had provided, as recommended, its counting method showing that the Interrogatories are not in excess of 75, then this Motion to compel may have been avoided. This is especially the case wherein Applicant has now provided Opposer with supplemental responses further detailing Applicant’s counting method. Because Opposer has not availed itself of the Board’s recommendations nor taken seriously Applicant’s counting method provided in the supplemental response, the Board should rule on Opposer’s Motion on the merits, finding as shown in the supplemental response that the Opposer’s First Set of Interrogatories are excessive in number.

Dated: October 21, 2011

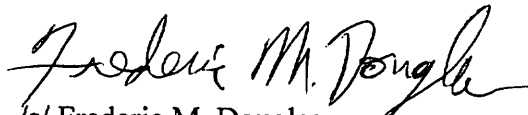
Respectfully Submitted,

/s/ Frederic M. Douglas
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⁶ *Id.*

CERTIFICATE OF SERVICE

I hereby certify that a copy of this Opposition to Opposer's Motion to Compel and Declaration of Frederic M. Douglas, with Exhibits A & B, was served on October 21, 2011 by email to wschultz@merchantgould.com; hkliebenstein@merchantgould.com; aries@merchantgould.com, and via Express Mail, Post Office to Addressee EG821453604US, upon counsel for Opposer:

William D. Schultz
Merchant & Gould, Inc.
P.O. Box 2910
Minneapolis, Minnesota 55402-0910

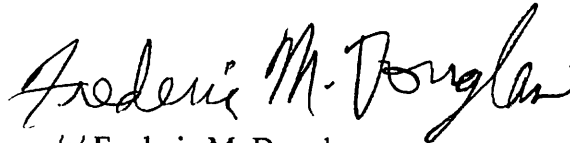


/s/ Frederic M. Douglas

Frederic M. Douglas

CERTIFICATE OF FILING

I hereby certify that this Opposition to Opposer's Motion to Compel and Declaration of Frederic M. Douglas, with Exhibits A & B, is being filed electronically with the United States and Trademark Office's Electronic System for Trademark Trials and Appeals (ESTTA) on this 21st day of October, 2011.



/s/ Frederic M. Douglas

Frederic M. Douglas

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

In the Matter of Opposition No. 91198750

Cargill, Incorporated,

Opposer,

- against -

Sempio Food Services, Inc.,

Applicant.

Opposition No. 91198750

**DECLARATION OF
FREDERIC M. DOUGLAS IN
SUPPORT OF APPLICANT'S
RESPONSE IN OPPOSITION
TO OPPOSER'S
MOTION TO COMPEL**

Serial No. 85-022,361

Assistant Commissioner for Trademarks
2900 Crystal Drive
Arlington, VA 22202-3513
Box: TTAB FEE

**DECLARATION OF FREDERIC M. DOUGLAS
IN SUPPORT OF APPLICANT'S RESPONSE IN OPPOSITION TO
OPPOSER'S MOTION TO COMPEL**

I, Frederic M. Douglas, do hereby state as follows:

1. I am an attorney and counsel for Applicant, Sempio Food Services, Inc. ("Applicant"), in the above-captioned matter, and I submit this Declaration in support of Applicant's Response in Opposition to Opposer's Motion to Compel.

2. Attached hereto as Exhibit A is a true and correct copy of Applicant's First Supplemental Response to Opposer's First Set of Interrogatories, served on October 10, 2011.

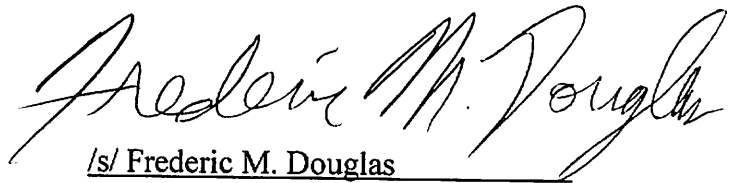
3. Attached hereto as Exhibit B is a true and correct copy of Applicant's

Response to Opposer's First Set of Requests for Admission, served on July 8, 2011.

4. Opposer's First Set of Requests for Admissions contains 73 Requests for Admission. At least 67 of Applicant's 73 responses to Opposer's First Set of Requests for Admission are not unconditional.

Pursuant to 28 U.S.C. § 1746, I, Frederic M. Douglas, declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Dated: October 21, 2011



/s/ Frederic M. Douglas

Frederic M. Douglas

California Bar. No. 212778

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EXHIBIT A

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

Cargill, Incorporated,

Opposer,

- against -

Sempio Food Service, Inc.,

Applicant.

In the Matter of Opposition No. 91198750
For the mark: Fontana & Design

Serial No. 85-022,361

**APPLICANT'S FIRST SUPPLEMENTAL RESPONSE TO OPPOSER'S
FIRST SET OF INTERROGATORIES**

PROPOUNDING PARTY: OPPOSER
CARGILL, INCORPORATED

RESPONDING PARTY: APPLICANT
SEMPIO FOOD SERVICE, INC.

SET NO.: ONE

Pursuant to Rules 26, 33, and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.119(c), Applicant Sempio Food Services, Inc. (hereinafter referred to as "Sempio") hereby provides a supplementary response to Opposer Cargill, Incorporated's First Set of Interrogatories (Set No. 1), as set forth below. Sempio's responses and answers are made without waiving or intending to waive any objections as to relevancy, privilege, admissibility of any information provided in response or answers to the Interrogatories, in any subsequent proceeding or at trial of this or any

other action, on any ground. A partial response or answer to any Interrogatory which has been objected to, in whole or in part, is not intended to be a waiver of the objection.

GENERAL OBJECTIONS

1. Sempio objects to each of Opposer's definitions and instructions and each of the Opposer's interrogatories to the extent they attempt to impose an obligation on Sempio different from or greater than that required by the Federal Rules of Civil Procedure.
2. Sempio objects to each discovery request to the extent that they seek information subject to and protected by privilege or immunity from discovery, including, but not limited to, the attorney-client privilege and the attorney work product doctrine. To the extent Opposer's discovery requests can be construed to seek such protected information, Sempio objects and will provide only non-privileged and non-immune information.
3. Sempio objects to Opposer's Instructions and Definitions to the extent that they make the interrogatories compound resulting in the number of interrogatories exceeding the number allowed under Rules 26 and 33 of the Federal Rules of Civil Procedure and applicable law.
4. Sempio objects to each discovery request to the extent that it seeks information already known to Opposer or its counsel, already in the possession of

Opposer or its counsel, or available to Opposer from documents in its own files, testing, or from public sources, on the ground that the discovery request is unnecessary, unduly burdensome and expensive, and constitutes annoyance, harassment, and oppression by Opposer to Sempio.

5. Sempio objects to each of Opposer's instructions regarding privileged documents to the extent they attempt to impose an obligation on Sempio different from or greater than that required by the Federal Rules of Civil Procedure.

6. Sempio objects to these discovery requests as irrelevant to the extent the requested information is not relevant to a particular claim or defense at issue in this litigation.

7. Sempio objects to all instructions, definitions, and requests to the extent that they require Applicant to identify documents not currently in its possession, custody, or control, or to identify or describe persons, entities or events not known to it on the ground that such instructions, definitions, or requests seek to require more of Sempio than any obligation imposed by law, would subject Sempio to unreasonable and undue burden and expense, and seek to impose on Applicant an obligation to investigate or discover information or materials from third parties that are equally accessible to Opposer.

8. Sempio objects to the interrogatories to the extent that they are not limited in scope as to time. Sempio's responses to the interrogatories assume that each

interrogatory is limited to a time that is relevant in light of the issues in the litigation.

9. The fact that Sempio produces documents does not in any way represent or imply that they are responsive to any of Opposer's interrogatories.

10. Sempio objects to providing any information that cannot reasonably be expected to lead to the discovery of admissible evidence. Sempio's production of documents and/or information does not constitute any admission or waiver as to the documents' admissibility or relevance.

11. The fact that Sempio agrees to produce documents or things responsive to an Interrogatory means that Sempio will make reasonable efforts to locate these materials — it is not an admission that such documents or things exist or are in the possession, custody or control of Sempio.

12. Sempio objects to the use of the word "all" in these requests, such as "all advertisements" insofar as they seek every fact, every instance, every event, or every person relating to the subject matter of the request. Literal compliance is impossible in most instances and, in others, imposes a burden and expense that outweighs any likely benefit. Sempio seeks to provide fair and accurate responses to the discovery requests, subject to any objections, in accordance with the Rules.

13. Some of the documents Sempio is producing may contain non-responsive and confidential information and trade secrets. By producing these documents to

Opposer, Sempio is not waiving its right to redact non-responsive portions and account for them in a log.

14. Sempio objects to Opposer's definitions of "Opposer" and "Applicant," These definitions are overly broad and unduly burdensome in that they call for information, documents or things outside Sempio's custody or control.

15. Sempio objects to Opposer's definitions of "documents" to the extent that these definitions conflict with or exceed the scope of the definition of these terms as set forth in Rule 34(a) of the Federal Rules of Civil Procedure.

16. Sempio objects to Opposer's definitions of "Opposer's Marks" and "Opposer's common law marks." These definitions are vague, overly broad, and thus unduly burdensome in that they call for information, documents, or things outside Sempio's custody or control and are not sufficiently defined such that Sempio may ascertain with specificity the subject matter of Opposer's requests.

16. Sempio objects to interrogatories that request information and/or documents already produced by Applicant to Opposer.

17. Sempio objects to interrogatories to the extent that a narrative is requested in addition to documents.

18. Sempio objects to this entire set of interrogatories as Opposer has exceeded the limit for interrogatories pursuant to Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a), because Opposer has evaded the TBMP's

presumptive limitation through the device of joining as subparts questions that seek information about discrete separate subjects. Multiple discrete parts generally include several instances, such as specifically referring to “The affiliates, agents, licensees, distributors, dealers, manufacturers' representatives, wholesalers, and retailers through whom Applicant markets and sells or that are otherwise authorized to sell, resell, or distribute the identified goods in the United States under Applicant's Mark; and for each, state its address and the geographic trade area for which it is responsible,” “Identify all advertisements, brochures, catalogs, and promotional materials,” “Identify those persons with knowledge of the facts described” and “Identify those persons with knowledge of the facts described in Interrogatory No. 10(a-g).”

19. Sempio objects to each and every Interrogatory to the extent that they require Sempio to obtain and compile information from third parties.
20. Sempio notes that discovery in this case is currently ongoing and specifically reserves all rights to supplement and/or amend its answers and responses.
21. All of the above objections are incorporated into each response below, whether or not stated below.

RESPONSES TO INTERROGATORIES

Subject to Sempio's General Objections, to the Objections to Instructions and Definitions, and to the specific objections set forth below, Sempio responds to the interrogatories as follows:

INTERROGATORY NO. 1:

Specify each type of good on which Applicant has used Applicant's Mark in commerce in the United States, and for each good, identify the first date on which such use began.

RESPONSE TO INTERROGATORY NO. 1:

In addition to its General Objections, Sempio objects to this Interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity. Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Specifically regarding this Interrogatory No. 1, Applicant is asked to provide

“*each* type of good on which Applicant has used Applicant's Mark in commerce in the United States, *and for each good*, identify the first date on which such use began” (emphasis supplied). Asking for “each type of good” is by definition more than one question. Also, the conjunctive nature of Interrogatory No. 1 (“and for each good”) doubles the total actual number of questions in Interrogatory No. 1. *See* TBMP § 405.03(d) (“For example, if two or more questions are combined in a single compound interrogatory, and are not set out as separate subparts, the Board will look to the substance of the interrogatory, and count each of the combined questions as a separate interrogatory.” *See Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636, 1637 (TTAB 1990); *Kellogg Co. v. Nugget Distributors' Cooperative of America, Inc.*, 16 USPQ2d 1468, 1469 (TTAB 1990).

This interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. Sempio objects to this Interrogatory for relevance as priority of use is not litigated in this matter, but likelihood of confusion is the basis for this Opposition, to which this Interrogatory does not relate.

Subject to, as limited by, and without waiving the foregoing General and Specific Objections, and reserving the right to supplement this response following further investigation, Sempio will exercise the provisions of Rule 33(d) to make available for inspection and copying relevant and non-privileged documents (within his possession, custody, or control) within the scope of permissible discovery under the Federal Rules of Civil Procedure, in a form or forms in which it is ordinarily maintained or in a reasonably usable form or form at a mutually

convenient time and place as soon as practicable after Sempio has a reasonable time to employ reasonable efforts to search and retrieve documents in a reasonable manner applying the principal of proportionality set forth in Federal Rule of Civil Procedure 26(b)(2)(C) and subject to the limitation in Federal Rule of Civil Procedure 26(b)(2)(B) which provides that a party need not produce discovery of documents from sources that the party identifies as not reasonably accessible because of undue burden or cost.

INTERROGATORY NO. 2:

Identify the three persons most knowledgeable about each category below and summarize the substance of each person's knowledge:

- (a) Applicant's selection, adoption, and creation of Applicant's Mark.
- (b) Applicant's enforcement of Applicant's Mark.
- (c) Applicant's research regarding registrability and clearance of Applicant's Mark, including formal or informal trademark searches or investigations conducted that relate to the Opposer or Opposer's Marks.
- (d) Any market studies, surveys, focus groups, or other studies that relate to the use of Applicant's Goods under Applicant's Mark.

RESPONSE TO INTERROGATORY NO. 2:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity. Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Specifically regarding this Interrogatory No. 2, Applicant is asked to “Identify the *three* persons most knowledgeable about *each category below and* summarize the substance of *each* person's knowledge” (emphasis supplied). There are four categories designated in Interrogatory No. 2, (a)-(d). So identifying three persons for four categories already converts Interrogatory No. 2 to 12 questions. Category (a) appears to be three questions (“selection, adoption, and creation “). Category (c) appears to contain seven questions (“registrability and clearance”; “including formal or informal trademark searches or investigations”; and “Opposer or Opposer's Marks”). Category (d) has at least four questions (“studies, surveys, focus groups, or other studies”).

So, when Opposer asks in this Interrogatory No. 2 for the identity of three persons for four separately designated categories (a)-(d) that contain at least 3, 1, 7,

4 questions respectively, and further asks for a summary of each person's knowledge for each category, the total number of questions in Interrogatory No. 2 is at least 57 questions.

See TBMP § 405.03(d) (“For example, if two or more questions are combined in a single compound interrogatory, and are not set out as separate subparts, the Board will look to the substance of the interrogatory, and count each of the combined questions as a separate interrogatory.” *See Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636, 1637 (TTAB 1990); *Kellogg Co. v. Nugget Distributors' Cooperative of America, Inc.*, 16 USPQ2d 1468, 1469 (TTAB 1990).

See also, TBMP § 405.03(d) (“Similarly, if an interrogatory begins with a broad introductory clause (“Describe fully the facts and circumstances surrounding applicant's first use of the mark XYZ, including:”) followed by several subparts (“Applicant's date of first use of the mark on the goods listed in the application,” “Applicant's date of first use of the mark on such goods in commerce,” etc.), the Board will count the broad introductory clause and each subpart as a separate interrogatory, whether or not the subparts are separately designated.”). *See Jan Bell Marketing*, 19 USPQ2d at 1637.

This interrogatory is unreasonably vague in that the term “clearance” which is not defined in Opposer's Definitions. This interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its

face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting language, the use of terms like “relating to” is impermissibly overbroad); *T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is “hopelessly broad” and must be revised); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents “relating to” some issue “provides no basis for determining which documents may or may not be responsive”). *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind. 2007) (holding that a request for “all documents...pertaining to” state action over the course of five years is “vague and overbroad”). The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees,

agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer’s claims. See *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may “require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit”); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 (“the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce”); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 (“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is “hopelessly broad” and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of “all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying “any persons with knowledge about such offers” to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to “identify all

witnesses with potential knowledge of the basis of your response” as well as the identity of “all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]” are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had “*no relevant knowledge concerning*” the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of “persons having knowledge of *relevant facts*”) (emphasis added). While “[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .,” the concept of relevancy “should not be misapplied so as to allow fishing expeditions in discovery.” *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

Subject to, as limited by, and without waiving the foregoing General and Specific Objections, and reserving the right to supplement this response following further investigation, Sempio will exercise the provisions of Rule 33(d) to make

available for inspection and copying relevant and non-privileged documents and ESI (within his possession, custody, or control) within the scope of permissible discovery under the Federal Rules of Civil Procedure, local rules, and this Court's Orders and Procedures in a form or forms in which it is ordinarily maintained or in a reasonably usable form or form at a mutually convenient time and place as soon as practicable after Sempio has a reasonable time to employ reasonable efforts to search and retrieve documents in a reasonable manner applying the principal of proportionality set forth in Federal Rule of Civil Procedure 26(b)(2)(C) and subject to the limitation in Federal Rule of Civil Procedure 26(b)(2)(B) which provides that a party need not produce discovery of documents from sources that the party identifies as not reasonably accessible because of undue burden or cost.

INTERROGATORY NO. 3:

Identify each person or agency that has participated in the creation, distribution, advertising and promotion of Applicant's Mark for Applicant's Goods, including the duties and period of time during which each such person or agency has participated.

RESPONSE TO INTERROGATORY NO. 3:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or

the work product doctrine, or any other recognized privilege or immunity. Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Specifically regarding this Interrogatory No. 3, “each person” is asked to be identified for “creation,” “distribution,” “advertising,” and “promotion” for Applicant’s Goods. Furthermore, Interrogatory No. 3 includes a separate request for answers as to the duties and “period of time” for each identified person. Thus, Interrogatory No. 3 contains at least six separate questions for each relevant “person or agency.” So at a minimum, Interrogatories Nos. 1-3 contain at least 67 questions. Even if the remaining Interrogatories designated Nos. 4-24 are counted as designated, Opposer has grossly exceeded the limit of 75 questions without justification for additional interrogatories, without a request for a stipulation for additional interrogatories, without a motion to the Board for additional interrogatories, or even an explanation disputing the total number of interrogatories counted.

This interrogatory is unreasonably vague in that the term “participated” which is not defined in Opposer’s Definitions. This interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on

its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting language, the use of terms like “relating to” is impermissibly overbroad); *T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is “hopelessly broad” and must be revised); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents “relating to” some issue “provides no basis for determining which documents may or may not be responsive”). *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind. 2007) (holding that a request for “all documents . . . pertaining to” state action over the course of five years is “vague and overbroad”). The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees,

agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer’s claims. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may “require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit”); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 (“the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce”); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 (“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is “hopelessly broad” and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of “all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying “any persons with knowledge about such offers” to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to “identify all

witnesses with potential knowledge of the basis of your response” as well as the identity of “all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]” are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had “*no relevant knowledge concerning*” the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of “persons having knowledge of *relevant facts*”) (emphasis added). While “[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .,” the concept of relevancy “should not be misapplied so as to allow fishing expeditions in discovery.” *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

Subject to, as limited by, and without waiving the foregoing General and Specific Objections, and reserving the right to supplement this response following further investigation, Sempio will exercise the provisions of Rule 33(d) to make

available for inspection and copying relevant and non-privileged documents and ESI (within his possession, custody, or control) within the scope of permissible discovery under the Federal Rules of Civil Procedure, local rules, and this Court's Orders and Procedures in a form or forms in which it is ordinarily maintained or in a reasonably usable form or form at a mutually convenient time and place as soon as practicable after Sempio has a reasonable time to employ reasonable efforts to search and retrieve documents in a reasonable manner applying the principal of proportionality set forth in Federal Rule of Civil Procedure 26(b)(2)(C) and subject to the limitation in Federal Rule of Civil Procedure 26(b)(2)(B) which provides that a party need not produce discovery of documents from sources that the party identifies as not reasonably accessible because of undue burden or cost.

INTERROGATORY NO. 4:

Identify all advertisements, brochures, catalogs, and promotional materials using Applicant's Mark in the last five years, including the respective dates and publications or media in which this material appeared.

RESPONSE TO INTERROGATORY NO. 4:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity. Sempio

objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Specifically regarding this Interrogatory No. 4, separate identifiable parts include “advertisements,” “brochures,” “catalogs,” and “promotional materials.” Thus, Interrogatory No. 4 comprises at least four separate questions. As explained above, Interrogatories Nos. 1-3 contain at least 67 questions, so Interrogatories Nos. 1-4 contain at least 71 questions.

Subject to, as limited by, and without waiving the foregoing General and Specific Objections, and reserving the right to supplement this response following further investigation, Sempio will exercise the provisions of Rule 33(d) to make available for inspection and copying relevant and non-privileged documents and ESI (within his possession, custody, or control) within the scope of permissible discovery under the Federal Rules of Civil Procedure, local rules, and this Court’s Orders and Procedures in a form or forms in which it is ordinarily maintained or in a reasonably usable form or form at a mutually convenient time and place as soon as practicable after Sempio has a reasonable time to employ reasonable efforts to search and retrieve documents in a reasonable manner applying the principal of proportionality set forth in Federal Rule of Civil Procedure 26(b)(2)(C) and subject to the limitation in Federal Rule of Civil Procedure 26(b)(2)(B) which provides

that a party need not produce discovery of documents from sources that the party identifies as not reasonably accessible because of undue burden or cost.

INTERROGATORY NO. 5:

Describe how Applicant presents Applicant's Mark in connection with Applicant's Goods to Applicant's customers and potential customers.

RESPONSE TO INTERROGATORY NO. 5:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity. Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Specifically regarding this Interrogatory No. 5, separate identifiable parts include “customers” and “potential customers.” Thus, Interrogatory No. 5 comprises at least two separate questions. As explained above, Interrogatories Nos. 1-4 contain at least 71 questions, so Interrogatories Nos. 1-5 contain at least 73 questions.

This interrogatory is unreasonably vague in that the term “in connection with” which is not defined in Opposer’s Definitions. This interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting language, the use of terms like “relating to” is impermissibly overbroad); *T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons “who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant” is “hopelessly broad” and must be revised); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents “relating to” some issue “provides no basis for determining which documents may or may not be responsive”). *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind.

2007) (holding that a request for “all documents...pertaining to” state action over the course of five years is “vague and overbroad”). The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer’s claims. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may “require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit”); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 (“the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce”); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 (“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is “hopelessly broad” and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of “all persons who have knowledge of any facts pertaining to this lawsuit” are overbroad or unduly

burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying “any persons with knowledge about such offers” to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to “identify all witnesses with potential knowledge of the basis of your response” as well as the identity of “all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]” are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had “*no relevant knowledge concerning*” the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of “persons having knowledge of *relevant facts*”) (emphasis added). While “[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .,” the concept of relevancy “should not be misapplied so as to allow fishing expeditions in discovery.” *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173

F.R.D. 221, 224 (N.D. Ill. 1997).

Subject to, as limited by, and without waiving the foregoing General and Specific Objections, and reserving the right to supplement this response following further investigation, Sempio will exercise the provisions of Rule 33(d) to make available for inspection and copying relevant and non-privileged documents and ESI (within his possession, custody, or control) within the scope of permissible discovery under the Federal Rules of Civil Procedure, local rules, and this Court's Orders and Procedures in a form or forms in which it is ordinarily maintained or in a reasonably usable form or form at a mutually convenient time and place as soon as practicable after Sempio has a reasonable time to employ reasonable efforts to search and retrieve documents in a reasonable manner applying the principal of proportionality set forth in Federal Rule of Civil Procedure 26(b)(2)(C) and subject to the limitation in Federal Rule of Civil Procedure 26(b)(2)(B) which provides that a party need not produce discovery of documents from sources that the party identifies as not reasonably accessible because of undue burden or cost.

INTERROGATORY NO. 6:

Describe how Applicant markets, sells and distributes, or intends to market, sell and distribute, goods to customers and potential customers under Applicant's Mark.

- (a) Identify those persons with knowledge of the facts described.

RESPONSE TO INTERROGATORY NO. 6:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity. Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Specifically regarding this Interrogatory No. 6, separate identifiable parts include “markets,” “sells,” “distributes,” “intends to market,” “intends to sell,” and “intends to distribute.” This Interrogatory No. 6 starts with an introductory clause followed by one designated subpart (a). This means that Interrogatory No. 6 is at least two questions. *See* TBMP § 405.03(d) (“Similarly, if an interrogatory begins with a broad introductory clause (‘Describe fully the facts and circumstances surrounding applicant's first use of the mark XYZ, including:’) followed by several subparts (‘Applicant's date of first use of the mark on the goods listed in the application,’ ‘Applicant's date of first use of the mark on such goods in commerce,’ etc.), the Board will count the broad introductory clause and each subpart as a separate interrogatory, whether or not the subparts are separately designated.”). *See Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636, 1637

(TTAB 1990).

The interrogatory is multiplied by questions regarding goods to customers *and* goods to potential customers. Interrogatory No. 6 adds a designated subpart (a) requesting the identity of each person with knowledge of the facts requested above. *See* TBMP § 405.03(d) (“If an interrogatory requests information concerning more than one issue, such as information concerning both ‘sales and advertising figures,’ or both ‘adoption and use,’ the Board will count each issue on which information is sought as a separate interrogatory.”). *See* Notice of Final Rulemaking, 54 Fed. Reg. 34886 (August 22, 1989).

Thus, Interrogatory No. 4 comprises at least nine separate questions. As explained above, Interrogatories Nos. 1-5 contain at least 71 questions, so Interrogatories Nos. 1-6 contain at least 80 questions.

Thus, Opposer has grossly exceeded the limit of 75 questions without justification for additional interrogatories, without a request for a stipulation for additional interrogatories, without a motion to the Board for additional interrogatories, and without even an explanation disputing the total number of interrogatories counted.

Subject to, as limited by, and without waiving the foregoing General and Specific Objections, and reserving the right to supplement this response following further investigation, Sempio will exercise the provisions of Rule 33(d) to make available for inspection and copying relevant and non-privileged documents and ESI (within his possession, custody, or control) within the scope of permissible

discovery under the Federal Rules of Civil Procedure, local rules, and this Court's Orders and Procedures in a form or forms in which it is ordinarily maintained or in a reasonably usable form or form at a mutually convenient time and place as soon as practicable after Sempio has a reasonable time to employ reasonable efforts to search and retrieve documents in a reasonable manner applying the principal of proportionality set forth in Federal Rule of Civil Procedure 26(b)(2)(C) and subject to the limitation in Federal Rule of Civil Procedure 26(b)(2)(B) which provides that a party need not produce discovery of documents from sources that the party identifies as not reasonably accessible because of undue burden or cost.

INTERROGATORY NO. 7

Describe the current demographic characteristics of the market segment, or if more than one, market segments to whom Applicant markets or intends to market Applicant's Goods under Applicant's Mark.

- (a) Identify those persons with knowledge of the facts described.

RESPONSE TO INTERROGATORY NO. 7:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity. Sempio objects to this Interrogatory as, separately and together with all of the other

purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Specifically regarding this Interrogatory No. 7, separate identifiable parts amounts to at least five questions. This Interrogatory No. 7 starts with an introductory clause followed by one designated subpart (a). This means that Interrogatory No. 7 is at least two questions. *See* TBMP § 405.03(d). Interrogatory No. 7 adds a designated subpart (a) requesting the identity of each person with knowledge of the facts requested above. *See* TBMP § 405.03(d). *See* Notice of Final Rulemaking, 54 Fed. Reg. 34886 (August 22, 1989).

This interrogatory is unreasonably vague in that the term “demographic characteristics” which is not defined in Opposer’s Definitions. This interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its

face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting language, the use of terms like “relating to” is impermissibly overbroad); *T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons “who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant” is “hopelessly broad” and must be revised); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents “relating to” some issue “provides no basis for determining which documents may or may not be responsive”). *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind. 2007) (holding that a request for “all documents...pertaining to” state action over the course of five years is “vague and overbroad”). The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer’s claims. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may “require the defendants to produce voluminous amounts of information not

relevant to the remaining claims in this lawsuit”); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 (“the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce”); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 (“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons “who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant” is “hopelessly broad” and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of “all persons who have knowledge of any facts pertaining to this lawsuit” are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying “any persons with knowledge about such offers” to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to “identify all witnesses with potential knowledge of the basis of your response” as well as the identity of “all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]” are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had “no relevant knowledge concerning” the case) (emphasis

added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of “persons having knowledge of *relevant facts*”) (emphasis added). While “[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .,” the concept of relevancy “should not be misapplied so as to allow fishing expeditions in discovery.” *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

INTERROGATORY NO. 8

Describe the normal channels of trade for distribution or partial distribution of Applicant's Goods under Applicant's Mark.

- (a) Identify those persons with knowledge of the facts described.

RESPONSE TO INTERROGATORY NO. 8:

In addition to its General Objections, Sempio objects to this interrogatory to

the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Specifically in this Interrogatory No. 8 separate identifiable parts amount to at least three questions. This Interrogatory No. 8 starts with an introductory clause followed by one designated subpart (a). This means that Interrogatory No. 8 is at least two questions. *See* TBMP § 405.03(d). Interrogatory No. 8 adds a designated subpart (a) requesting the identity of each person with knowledge of the facts requested above. *See* TBMP § 405.03(d). *See* Notice of Final Rulemaking, 54 Fed. Reg. 34886 (August 22, 1989). Interrogatory No. 8 propounds questions regarding “distribution” and “partial distribution”, resulting in at least two questions plus a designated subpart (a) totaling at least three questions.

This interrogatory is unreasonably vague in that the term “partial distribution” which is not defined in Opposer’s Definitions. This interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its

scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting language, the use of terms like “relating to” is impermissibly overbroad); *T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons “who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant” is “hopelessly broad” and must be revised); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents “relating to” some issue “provides no basis for determining which documents may or may not be responsive”). *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind. 2007) (holding that a request for “all documents . . . pertaining to” state action over the course of five years is “vague and overbroad”). The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these

persons who are not parties to this action actually have any sort of information regarding the Opposer's claims. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may "require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit"); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 ("the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce"); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 ("to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand"); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of "all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying "any persons with knowledge about such offers" to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to "identify all witnesses with potential knowledge of the basis of your response" as well as the identity of "all witnesses past and present employees of CDC/CDCR

who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]" are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had "*no relevant knowledge concerning*" the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of "persons having knowledge of *relevant facts*") (emphasis added). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

INTERROGATORY NO. 9

Describe any plans to expand the use of Applicant's Mark to other products or services, to other geographic areas, or to sell through other channels of trade.

RESPONSE TO INTERROGATORY NO. 9:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Specifically in this Interrogatory No. 9 separate identifiable parts amount to at least four questions. Interrogatory No. 8 propounds questions regarding “products,” “services,” “geographic areas,” and “channels of trade”, resulting in at least four questions.

INTERROGATORY NO. 10:

Specify the name and description of each type of good on which Applicant has used Applicant's Mark in the United States; and for each of those goods so identified, specify:

- (a) The class of consumers who were exposed to such first use, including but not limited to retailers, agents, and wholesalers;

(b) The affiliates, agents, licensees, distributors, dealers, manufacturers' representatives, wholesalers, and retailers through whom Applicant markets and sells or that are otherwise authorized to sell, resell, or distribute the identified goods in the United States under Applicant's Mark; and for each, state its address and the geographic trade area for which it is responsible;

(c) The gross wholesale and retail sales, by month and year, of each good identified by Applicant under Applicant's Mark in the United States for each year since such sales began;

(d) The pricing of each good or service identified above under Applicant's Mark in the United States for each year since Applicant began selling that good under Applicant's Mark;

(e) The approximate annual dollar amount expended each year to date by Applicant in advertising and promoting each identified good under Applicant's Mark;

(f) The approximate annual dollar amount Applicant expects to be spent in advertising and promoting Applicant's Goods under Applicant's Mark to the present;

(g) Identify those persons with knowledge of the facts described in Interrogatory No. 10(a-g).

RESPONSE TO INTERROGATORY NO. 10:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity. S

Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Specifically regarding this Interrogatory No. 10, There are seven categories designated in Interrogatory No. 10, (a)-(g). Applicant is asked to identify the *name and description of each type of goods* for categories (a)-(g). So identifying the name and description of each type of goods for seven categories already converts Interrogatory No. 10 to 14 questions. Category (a) appears to have one question; category (b) appears to have three questions; category (c) appears to contain two questions; category (d) appears to have one question; category (e) seems to contain two questions; category (f) appears to have two questions; and category (g) seems to have seven questions.

So, the total number of questions in Interrogatory No. 10 is at least 22 questions.

See TBMP § 405.03(d) (“For example, if two or more questions are combined in a single compound interrogatory, and are not set out as separate

subparts, the Board will look to the substance of the interrogatory, and count each of the combined questions as a separate interrogatory.” *See Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636, 1637 (TTAB 1990); *Kellogg Co. v. Nugget Distributors' Cooperative of America, Inc.*, 16 USPQ2d 1468, 1469 (TTAB 1990).

See TBMP § 405.03(d) (“If an interrogatory includes questions set forth as numbered or lettered subparts, each separately designated subpart will be counted by the Board as a separate interrogatory. The propounding party will, to that extent, be bound by its own numbering system, and will not be heard to complain that an interrogatory, although propounded with separately designated subparts, should nevertheless be counted as a single interrogatory because the interrogatory concerns a single transaction, set of facts, etc., or because the division was made for clarification or convenience.”). See also, *Jan Bell Marketing, Inc. v. Centennial Jewelers, Inc.*, 19 USPQ2d 1636, 1637 (TTAB 1990); *Pyttronic Industries, Inc. v. Terk Technologies Corp.*, 16 USPQ2d 2055, 2056 (TTAB 1990).

See also, TBMP § 405.03(d) (“Similarly, if an interrogatory begins with a broad introductory clause (“Describe fully the facts and circumstances surrounding applicant's first use of the mark XYZ, including:”) followed by several subparts (“Applicant's date of first use of the mark on the goods listed in the application,” “Applicant's date of first use of the mark on such goods in commerce,” etc.), the Board will count the broad introductory clause and each subpart as a separate interrogatory, whether or not the subparts are separately designated.”). *See Jan Bell*

Marketing, 19 USPQ2d at 1637.

This interrogatory is unreasonably vague in that the term “pricing” which is not defined in Opposer’s Definitions. Opposer objects to this Interrogatory as it is redundant of Interrogatory No. 1, at least as to the first independent subpart of this Interrogatory. Sempio objects to this Interrogatory for relevance as priority of use is not litigated in this matter, but likelihood of confusion is the basis for this Opposition, to which this Interrogatory does not relate.

This interrogatory is further unreasonably vague and therefore unduly burdensome in that subpart (g) requests the identification of “persons with knowledge of the facts described in Interrogatory No. 10(a-g)” while it is illogical to identify persons identified in subpart (g) when assumedly Opposer already asked for identification of persons in the previous six subparts such that identifying persons from subpart (g) would be redundant and a waste of time.

This interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent

either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting language, the use of terms like “relating to” is impermissibly overbroad); *T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is “hopelessly broad” and must be revised); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents “relating to” some issue “provides no basis for determining which documents may or may not be responsive”). *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind. 2007) (holding that a request for “all documents...pertaining to” state action over the course of five years is “vague and overbroad”). The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to

act on its behalf” to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer’s claims. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may “require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit”); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 (“the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce”); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 (“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is “hopelessly broad” and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of “all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying “any persons with knowledge about such offers” to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2

(holding that interrogatories requesting defendant to “identify all witnesses with potential knowledge of the basis of your response” as well as the identity of “all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]” are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had “*no relevant knowledge concerning*” the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of “persons having knowledge of *relevant facts*”) (emphasis added). While “[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .,” the concept of relevancy “should not be misapplied so as to allow fishing expeditions in discovery.” *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

INTERROGATORY NO. 11:

For each license that Applicant has used to license Applicant's Mark, identify the licensee and the efforts by Applicant to exercise control over the nature and quality of the goods manufactured and/or sold under the Mark.

RESPONSE TO INTERROGATORY NO. 11:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Specifically in this Interrogatory No. 11 separate identifiable parts amount to at least four questions. Interrogatory No. 11 propounds questions regarding “licensees,” “efforts,” “nature” of goods, and “quality” of goods, resulting in at least four questions.

This Interrogatory asks for information regarding “each licensee.” Sempio objects as this requirement extends to every individual customer, who is licensed

by virtue of purchase not to be liable for infringement. This interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting language, the use of terms like “relating to” is impermissibly overbroad); *T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons “who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant” is “hopelessly broad” and must be revised); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents “relating to” some issue “provides no basis for determining which documents may or may not be responsive”). *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind. 2007) (holding that a request for “all documents...pertaining to” state action over

the course of five years is “vague and overbroad”). The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer’s claims. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may “require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit”); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 (“the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce”); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 (“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons “who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant” is “hopelessly broad” and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of “all persons who have knowledge of any facts pertaining to this lawsuit” are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding

that a request for documents identifying “any persons with knowledge about such offers” to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to “identify all witnesses with potential knowledge of the basis of your response” as well as the identity of “all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]” are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had “*no relevant knowledge concerning*” the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of “persons having knowledge of *relevant facts*”) (emphasis added). While “[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .,” the concept of relevancy “should not be misapplied so as to allow fishing expeditions in discovery.” *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

INTERROGATORY NO. 12:

Identify each third party who has used or sought to register a trademark, trade name, domain name, or other designation of origin that Applicant considers identical or similar to Applicant's Mark, and for each:

- (a) Specify when Applicant first learned of such third party.
- (b) Specify what, if any, communications Applicant has had with such third party or its representatives.

RESPONSE TO INTERROGATORY NO. 12:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Specifically in this Interrogatory No. 12 separate identifiable parts amount to at least six questions. This Interrogatory No. 12 starts with an introductory clause followed by two designated subparts (a) and (b). This means that Interrogatory No.

12 contains is at least two questions. *See* TBMP § 405.03(d). The introductory clause seeks the identity of users of (1) trademarks (2) trade names (3) domain names and (4) designations of origin. Interrogatory No. 12 adds a designated subpart (a) requesting “when Applicant first learned of” each third party. Subpart (b) requests “communications Applicant has had with such third party or its representatives.” *See* TBMP § 405.03(d). *See* Notice of Final Rulemaking, 54 Fed. Reg. 34886 (August 22, 1989). With four questions in the introductory clause and two subparts, this interrogatory contains at least six questions.

This interrogatory is overly burdensome as it requests information on all third parties that have used Applicant’s Mark. This Interrogatory thus extends to all end users of Applicant’s products. This interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting

language, the use of terms like “relating to” is impermissibly overbroad); *T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is “hopelessly broad” and must be revised); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents “relating to” some issue “provides no basis for determining which documents may or may not be responsive”). *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind. 2007) (holding that a request for “all documents...pertaining to” state action over the course of five years is “vague and overbroad”). The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer’s claims. See *Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may “require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit”); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 (“the Court may restrain any discovery requests that are overbroad or would be

unduly burdensome to produce”); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 (“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons “who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant” is “hopelessly broad” and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of “all persons who have knowledge of any facts pertaining to this lawsuit” are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying “any persons with knowledge about such offers” to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to “identify all witnesses with potential knowledge of the basis of your response” as well as the identity of “all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]” are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had “*no relevant knowledge concerning*” the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the

identity and location of “persons having knowledge of *relevant facts*”) (emphasis added). While “[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .,” the concept of relevancy “should not be misapplied so as to allow fishing expeditions in discovery.” *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

INTERROGATORY NO. 13:

Describe each instance in which any person has claimed to be deceived, mistaken or confused regarding the source of Applicant's Goods under Applicant's Mark.

- (a) Identify those persons with knowledge of the facts described.

RESPONSE TO INTERROGATORY NO. 13:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Specifically in this Interrogatory No. 13 separate identifiable parts amount to at least two questions. This Interrogatory No. 12 starts with an introductory clause followed by one designated subpart (a). This means that Interrogatory No. 12 contains is at least two questions. *See* TBMP § 405.03(d). *See* TBMP § 405.03(d). *See* Notice of Final Rulemaking, 54 Fed. Reg. 34886 (August 22, 1989).

INTERROGATORY NO. 14:

Describe any communication, whether written or oral, that suggests, implies, or infers that Applicant's Mark or Applicant's Goods may be connected or associated with Opposer, Opposer's Marks or Opposer's Goods.

- (a) Identify those persons with knowledge of the facts described.

RESPONSE TO INTERROGATORY NO. 14:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of

the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Specifically in this Interrogatory No. 14 separate identifiable parts amount to at least six questions. This Interrogatory No. 14 starts with an introductory clause followed by one designated subpart (a). This means that Interrogatory No. 12 contains is at least two questions. *See* TBMP § 405.03(d). *See* TBMP § 405.03(d). *See* Notice of Final Rulemaking, 54 Fed. Reg. 34886 (August 22, 1989). The introductory clause asks three questions (“Opposer, Opposer's Marks or Opposer's Goods”). Subpart (a) asks for identification of persons with knowledge of the answers to these three questions. If only one such person exists, then there still could be three responses needed for subpart (a). With three questions in the introductory clause and three questions in subpart (a), Interrogatory No. 14 comprises at least six questions.

INTERROGATORY NO. 15:

For each of Opposer's First Set of Requests for Admissions that Applicant does not unconditionally admit, state the factual basis for the denial or qualified admission.

RESPONSE TO INTERROGATORY NO. 15:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

In fact, at least 67 of the 73 responses to Opposer's First Set of Requests for Admission are not unconditional. Thus this Interrogatory No. 15 has at least 67 independent parts. See *Safeco of America v. Rawstron*, 181 F.R.D. 441, 446 (C.D. Cal. 1998) (“[A]n interrogatory that asks the responding party to *state facts . . . supporting the denial of each request for admission [in a set] . . . usually should be construed as containing a subpart for each request for admission contained in the set.*” Where an interrogatory incorporates an investigation into each of a set of requests for admission, it effectively “transforms each request for admission into an interrogatory” would allow the proponent to “circumvent the numerical limit contained in Rule 33(a).” *Id.* at 445.

See, e.g., *Wolk v. Green*, 2007 WL 3203050, * 2 n. 4 (N.D. Cal., Oct. 29, 2007) (“[a]n interrogatory inquiring as to basis of responses to requests for admissions is treated as an interrogatory with subparts” and each request for

admission should be counted as a separate interrogatory); *Stevens v. Federated Mutual Insurance Co.*, 2006 WL 2079053, *6 (N.D. W. Va., July 25, 2006) (finding that a single interrogatory counted as eleven interrogatories because it sought information regarding eleven different requests for admission); *American Chiropractic Association v. Trigon Healthcare, Inc.*, 2002 WL 534459, *3 (W.D. Va., March 18, 2002) (counting seven requests for admission referenced in a single interrogatory as seven separate interrogatories).

Sempio objects to this Interrogatory as it demands a factual basis for any denial of a request for admission. Applicant is not required to provide a factual basis for a denial of a request for admission. *See Lakehead Pipe Line Co. v. American Home Assurance Co.*, 177 F.R.D. 454, 458 (D. Minn. 1997).

This Interrogatory is overly burdensome as it requests responses for numerous requests for admission but Opposer does not specify or identify which requests for admission Opposer seeks responses. This interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”).

This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting language, the use of terms like “relating to” is impermissibly overbroad); *T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons “who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant” is “hopelessly broad” and must be revised); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents “relating to” some issue “provides no basis for determining which documents may or may not be responsive”). *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind. 2007) (holding that a request for “all documents...pertaining to” state action over the course of five years is “vague and overbroad”). The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer’s claims. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and

may “require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit”); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 (“the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce”); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 (“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons “who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant” is “hopelessly broad” and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of “all persons who have knowledge of any facts pertaining to this lawsuit” are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying “any persons with knowledge about such offers” to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to “identify all witnesses with potential knowledge of the basis of your response” as well as the identity of “all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]” are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify

many people who had “*no relevant knowledge concerning*” the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of “persons having knowledge of *relevant facts*”) (emphasis added). While “[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .,” the concept of relevancy “should not be misapplied so as to allow fishing expeditions in discovery.” *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

INTERROGATORY NO. 16:

If Applicant perceives any difference between Applicant's Mark and Opposer's Marks, identify those differences.

RESPONSE TO INTERROGATORY NO. 16:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

This interrogatory is overly vague and thus burdensome as it requests information on “differences” when Opposer has not limited or defined that term. Thus, the number of differences are potentially infinite, surpassing Rule 33’2 limit of 25 interrogatories without an order to the contrary.

This interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting language, the use of terms like “relating to” is impermissibly overbroad); *T&H Landscaping, LLC v.*

Colo. Structures Inc., 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised); *Dairyland Power Coop. v. United States*, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents "relating to" some issue "provides no basis for determining which documents may or may not be responsive"). *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind. 2007) (holding that a request for "all documents...pertaining to" state action over the course of five years is "vague and overbroad"). The request is facially overbroad based upon the defined term "Applicant" because Sempio would have to inquire as to all of its "predecessors in interest, its successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf" to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer's claims. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may "require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit"); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 ("the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce"); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498

(“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is “hopelessly broad” and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of “all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying “any persons with knowledge about such offers” to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to “identify all witnesses with potential knowledge of the basis of your response” as well as the identity of “all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]” are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had “*no relevant knowledge concerning*” the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of “persons having knowledge of *relevant facts*”) (emphasis

added). While “[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .,” the concept of relevancy “should not be misapplied so as to allow fishing expeditions in discovery.” *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

INTERROGATORY NO. 17:

If Applicant perceives any difference between Applicant's Goods and Opposer's Goods, identify those differences.

RESPONSE TO INTERROGATORY NO. 17:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board

Manual of Procedure (TBMP) § 405.03(a).

This interrogatory is overly vague and thus burdensome as it requests information on “differences” when Opposer has not limited or defined that term. Thus, the number of differences are potentially infinite, surpassing TBMP § 405.03(a)’s limit of 75 interrogatories without an order to the contrary.

This interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting language, the use of terms like “relating to” is impermissibly overbroad); *T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is “hopelessly broad” and must be revised); *Dairyland Power Coop. v.*

United States, 79 Fed. Cl. 722, 729 (Fed. Cl. 2007) (holding that a request for documents “relating to” some issue “provides no basis for determining which documents may or may not be responsive”). *Loubser v. Pala*, 2007 U.S. Dist. LEXIS 91314, *12-13 (N.D. Ind. 2007) (holding that a request for “all documents...pertaining to” state action over the course of five years is “vague and overbroad”). The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer’s claims. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may “require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit”); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 (“the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce”); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 (“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons “who have any knowledge of any fact relating to the claims

Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of "all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying "any persons with knowledge about such offers" to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to "identify all witnesses with potential knowledge of the basis of your response" as well as the identity of "all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]" are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had "*no relevant knowledge concerning*" the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of "persons having knowledge of *relevant facts*") (emphasis added). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv.*

Venture II, LLC v. Marathon Ashland Petroleum LLC, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

INTERROGATORY NO. 18:

If Applicant perceives any difference between the customers of Applicant's Goods under Applicant's Mark and Opposer's Goods under Opposer's Marks, identify those differences.

RESPONSE TO INTERROGATORY NO. 18:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

This interrogatory is overly vague and thus burdensome as it requests information on “differences” when Opposer has not limited or defined that term.

Thus, the number of differences are potentially infinite, surpassing TBMP § 405.03(a)'s limit of 75 interrogatories without an order to the contrary.

This interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting language, the use of terms like “relating to” is impermissibly overbroad).

The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these persons who are not parties to this action

actually have any sort of information regarding the Opposer's claims. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may "require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit"); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 ("the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce"); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 ("to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand"); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of "all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying "any persons with knowledge about such offers" to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to "identify all witnesses with potential

knowledge of the basis of your response” as well as the identity of “all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]” are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had “*no relevant knowledge concerning*” the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of “persons having knowledge of *relevant facts*”) (emphasis added). While “[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .,” the concept of relevancy “should not be misapplied so as to allow fishing expeditions in discovery.” *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

INTERROGATORY NO. 19:

If Applicant perceives any difference between the channels of trade of Applicant's Goods under Applicant's Mark and Opposer's Goods under Opposer's Marks, identify those differences.

RESPONSE TO INTERROGATORY NO. 19:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

This interrogatory is overly vague and thus burdensome as it requests information on “differences” when Opposer has not limited or defined that term. Thus, the number of differences are potentially infinite, surpassing TBMP § 405.03(a)’s limit of 75 interrogatories without an order to the contrary.

This interrogatory is overly vague and thus burdensome as it requests information on “differences” when Opposer has not limited or defined that term. Thus, the number of differences are potentially infinite, surpassing Rule 33’2 limit

of 25 interrogatories without an order to the contrary.

This interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008) (recognizing that in the absence of limiting language, the use of terms like “relating to” is impermissibly overbroad).

The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer’s claims. *See Kraft*

Foods N. Am., 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may “require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit”); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 (“the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce”); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 (“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”).

INTERROGATORY NO. 20:

Fully state the factual basis for Applicant's denial that Applicant's Mark is nearly identical in appearance, sound, connotation and commercial impression to Opposer's Marks as stated in Paragraph 20 of the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 20:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of

the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Sempio objects further because this interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008); *T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is “hopelessly broad” and must be revised).

The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its

successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer’s claims. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may “require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit”); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 (“the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce”); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 (“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons “who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant” is “hopelessly broad” and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of “all persons who have knowledge of any facts pertaining to this lawsuit” are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying “any persons with knowledge about such offers” to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that

interrogatories requesting defendant to “identify all witnesses with potential knowledge of the basis of your response” as well as the identity of “all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]” are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had “*no relevant knowledge concerning*” the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of “persons having knowledge of *relevant facts*”) (emphasis added). While “[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .,” the concept of relevancy “should not be misapplied so as to allow fishing expeditions in discovery.” *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997).

INTERROGATORY NO. 21:

Fully state the factual basis for Applicant's denial that Applicant's Mark is confusingly similar to Opposer's Marks as stated in Paragraph 22 of Applicant's Answer to the Notice of Opposition.

RESPONSE TO INTERROGATORY NO. 21:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Sempio objects further because this interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items

‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008).

The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer’s claims. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may “require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit”); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 (“the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce”); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 (“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify

all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of "all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying "any persons with knowledge about such offers" to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to "identify all witnesses with potential knowledge of the basis of your response" as well as the identity of "all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]" are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had "*no relevant knowledge concerning*" the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of "persons having knowledge of *relevant facts*") (emphasis added). While "[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .," the concept of relevancy "should not be misapplied so as to allow fishing expeditions in discovery." *Martinez v. Cornell Corrs. of Tex.*, 229

F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997). *See, T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised).

INTERROGATORY NO. 22:

Fully state the factual basis for Applicant's affirmative defense of failure to state a claim.

RESPONSE TO INTERROGATORY NO. 22:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the

limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Sempio objects further because this interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008).

The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer’s claims. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to

the relevant claims are overbroad and may “require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit”); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 (“the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce”); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 (“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons “who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant” is “hopelessly broad” and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of “all persons who have knowledge of any facts pertaining to this lawsuit” are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying “any persons with knowledge about such offers” to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to “identify all witnesses with potential knowledge of the basis of your response” as well as the identity of “all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]” are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad

because party would have been required to identify many people who had “*no relevant knowledge concerning*” the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of “persons having knowledge of *relevant facts*”) (emphasis added). While “[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .,” the concept of relevancy “should not be misapplied so as to allow fishing expeditions in discovery.” *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997). *See, T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is “hopelessly broad” and must be revised).

INTERROGATORY NO. 23:

Describe Applicant's Goods, including but not limited to how Applicant defines the terms "vegetable oils and fats" and "salad dressings."

- (a) Identify those persons with knowledge of the facts described.

RESPONSE TO INTERROGATORY NO. 23:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Sempio objects further because this interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist.

LEXIS 41902, *29-30 (S.D. Fla. 2008).

The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer’s claims. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may “require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit”); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 (“the Court may restrain any discovery requests that are overbroad or would be unduly burdensome to produce”); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 (“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is “hopelessly broad” and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of “all persons who have knowledge of any facts pertaining to this lawsuit" are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S.

Dist. LEXIS 38005, at *2 (holding that a request for documents identifying “any persons with knowledge about such offers” to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to “identify all witnesses with potential knowledge of the basis of your response” as well as the identity of “all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]” are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had “*no relevant knowledge concerning*” the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the identity and location of “persons having knowledge of *relevant facts*”) (emphasis added). While “[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .,” the concept of relevancy “should not be misapplied so as to allow fishing expeditions in discovery.” *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill.

1997). *See, T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is "hopelessly broad" and must be revised).

INTERROGATORY NO. 24:

State the connotation Applicant intends to convey by use of Applicant's Mark on Applicant's Goods.

RESPONSE TO INTERROGATORY NO. 24:

In addition to its General Objections, Sempio objects to this interrogatory to the extent that it seeks information protected by the attorney-client privilege and/or the work product doctrine, or any other recognized privilege or immunity.

Sempio objects to this Interrogatory as, separately and together with all of the other purported interrogatories, it contains multiple discrete parts that render the total number of interrogatories propounded and served to be in excess of the limitation of 75 interrogatories allowed in Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 405.03(a).

Sempio objects further because this interrogatory is overbroad and unduly burdensome for Sempio to formulate a response. *Johnson v. Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59 (D. Kan. 2006) (“[a] request may be overly broad on its

face ‘if it is couched in such broad language as to make arduous the task of deciding which of numerous documents may conceivably fall within its scope.’ A request seeking documents ‘pertaining to’ or ‘concerning’ a broad range of items ‘requires the respondent either to guess or move through mental gymnastics . . . to determine which of many pieces of paper may conceivably contain some detail, either obvious or hidden, within the scope of the request.’”). This is precisely the sort of request that Courts have found to be overbroad on its face. *See Kraft Foods N. Am.*, 238 F.R.D. at 658-59; *Cooper v. Meridian Yachts, Ltd.*, 2008 U.S. Dist. LEXIS 41902, *29-30 (S.D. Fla. 2008).

The request is facially overbroad based upon the defined term “Applicant” because Sempio would have to inquire as to all of its “predecessors in interest, its successors in interest, and its directors, employees, agents, representatives, franchisees, licensees, and all other Persons acting or purporting to act on its behalf” to determine whether any of these persons who are not parties to this action actually have any sort of information regarding the Opposer’s claims. Additionally, this interrogatory is unreasonably vague in that the term “connotation” is not defined in Opposer’s Definitions. *See Kraft Foods N. Am.*, 238 F.R.D. 648, 658-59. *Nalco Chem. Co. v. Hydro Technologies*, 149 F.R.D. 686, 698 (E.D. Wis. 1993) (holding that interrogatories not tailored to the relevant claims are overbroad and may “require the defendants to produce voluminous amounts of information not relevant to the remaining claims in this lawsuit”); *Socas*, 2008 U.S. Dist. LEXIS 16683, at *3 (“the Court may restrain any discovery requests that are overbroad or

would be unduly burdensome to produce”); *In re U. S. Financial Sec. Litigation*, 74 F.R.D. at 498 (“to avoid oppressiveness, interrogatories must be tailored to discover only what is reasonable and necessary to the litigation at hand”); *Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, at *5 (holding that an interrogatory requesting plaintiff to identify all persons “who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant” is “hopelessly broad” and must be revised); *Clow Corp.*, 108 F.R.D. at 313 (D.P.R. 1985) (holding that interrogatories seeking the identification of “all persons who have knowledge of any facts pertaining to this lawsuit” are overbroad or unduly burdensome); *Pioneer Res. Corp.*, 2006 U.S. Dist. LEXIS 38005, at *2 (holding that a request for documents identifying “any persons with knowledge about such offers” to buy or sell the defendant company is irrelevant); *Woodford*, 2008 U.S. Dist. LEXIS 22438, at *2 (holding that interrogatories requesting defendant to “identify all witnesses with potential knowledge of the basis of your response” as well as the identity of “all witnesses past and present employees of CDC/CDCR who have personal knowledge of CDCR's compliance with the [Religious Land Use and Institutionalized Persons Act]” are overbroad, unduly burdensome, and vague); *Aero Holdings, Inc.*, 2000 U.S. Dist. LEXIS 19817, at *16-17 (holding that an interrogatory was overbroad because party would have been required to identify many people who had “*no relevant knowledge concerning*” the case) (emphasis added); *Brooks*, 1990 U.S. Dist. LEXIS 19395, at *7 (stating that the prevailing law of the Seventh Circuit is that parties are limited in their interrogatories to the

identity and location of “persons having knowledge of *relevant facts*”) (emphasis added). While “[t]he legal tenet that relevancy in the discovery context is broader than in the context of admissibility . . .,” the concept of relevancy “should not be misapplied so as to allow fishing expeditions in discovery.” *Martinez v. Cornell Corrs. of Tex.*, 229 F.R.D. 215, 218 (D.N.M. 2005)(Browning, J.); *Bitler Inv. Venture II, LLC v. Marathon Ashland Petroleum LLC*, 2007 U.S. Dist. LEXIS 29159, 19-20 (N.D. Ind. 2007); *Hartco Eng'g, Inc. v. Wang's Int'l, Inc.*, 2006 U.S. Dist. LEXIS 38701, *4-5 (E.D. La. 2006); *Claude P. Bamberger Int'l v. Rohm & Haas Co.*, 1998 U.S. Dist. LEXIS 11141 (D.N.J. 1998); *Piacenti v. GMC*, 173 F.R.D. 221, 224 (N.D. Ill. 1997). *See, T&H Landscaping, LLC v. Colo. Structures Inc.*, 2007 U.S. Dist. LEXIS 63532, *5 (D. Colo. 2007) (holding that an interrogatory requesting plaintiff to identify all persons "who have any knowledge of any fact relating to the claims Plaintiffs are alleging against any Defendant" is “hopelessly broad” and must be revised).

Dated: October 9, 2011

Respectfully Submitted,

/s/ Frederic M. Douglas
Frederic M. Douglas
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California Bar. No. 212778
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CERTIFICATE OF SERVICE

This certifies that a copy of the **APPLICANT'S SUPPLEMENTAL
RESPONSE TO OPPOSER'S FIRST SET OF INTERROGATORIES** was
served this 10th day of October 2011 by First Class Mail, postage pre-paid, upon counsel for
Opposer:

William D. Schultz
Merchant & Gould, Inc.
P.O. Box 2910
Minneapolis, Minnesota 55402-0910

/s/ Frederic M. Douglas
Frederic M. Douglas

///
///

EXHIBIT B

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

Cargill, Incorporated,

Opposer,

- against -

Sempio Food Service, Inc.,

Applicant.

In the Matter of Opposition No. 91198750
For the mark: Fontana & Design

Serial No. 85-022,361

**APPLICANT’S RESPONSE TO OPPOSER’S FIRST SET OF REQUESTS
FOR ADMISSION**

PROPOUNDING PARTY: OPPOSER
CARGILL, INCORPORATED

RESPONDING PARTY: APPLICANT
SEMPIO FOOD SERVICE, INC.

SET NO.: ONE

Pursuant to Rules 26 and 36 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.119(c), Applicant Sempio Food Services, Inc. (hereinafter referred to as “Sempio” or “Applicant”) hereby responds and objects to Opposer Cargill, Incorporated’s First Set of Requests for Admission (Set No. 1), as follows.

GENERAL OBJECTIONS

1. Sempio objects to each of Opposer’s definitions and instructions and each of the Opposer’s interrogatories to the extent they attempt to impose an obligation

on Sempio different from or greater than that required by the Federal Rules of Civil Procedure.

2. Sempio objects to each discovery request to the extent that they seek information subject to and protected by privilege or immunity from discovery, including, but not limited to, the attorney-client privilege and the attorney work product doctrine. To the extent Opposer's discovery requests can be construed to seek such protected information, Sempio objects and will provide only non-privileged and non-immune information.

3. Sempio objects to Opposer's Instructions and Definitions to the extent that they make the interrogatories compound resulting in the number of interrogatories exceeding the number allowed under Rules 26 and 33 of the Federal Rules of Civil Procedure and applicable law.

4. Sempio objects to each discovery request to the extent that it seeks information already known to Opposer or its counsel, already in the possession of Opposer or its counsel, or available to Opposer from documents in its own files, testing, or from public sources, on the ground that the discovery request is unnecessary, unduly burdensome and expensive, and constitutes annoyance, harassment, and oppression by Opposer to Sempio.

5. Sempio objects to each of Opposer's instructions regarding privileged documents to the extent they attempt to impose an obligation on Sempio different from or greater than that required by the Federal Rules of Civil Procedure.

6. Sempio objects to these discovery requests as irrelevant to the extent the requested information is not relevant to a particular claim or defense at issue in this litigation.

7. Sempio objects to all instructions, definitions, and requests to the extent that they require Applicant to identify documents not currently in its possession, custody, or control, or to identify or describe persons, entities or events not known to it on the ground that such instructions, definitions, or requests seek to require more of Sempio than any obligation imposed by law, would subject Sempio to unreasonable and undue burden and expense, and seek to impose on Applicant an obligation to investigate or discover information or materials from third parties that are equally accessible to Opposer.

8. Sempio objects to the interrogatories to the extent that they are not limited in scope as to time. Sempio's responses to the interrogatories assume that each interrogatory is limited to a time that is relevant in light of the issues in the litigation.

9. The fact that Sempio produces documents does not in any way represent or imply that they are responsive to any of Opposer's interrogatories.

10. Sempio objects to providing any information that cannot reasonably be expected to lead to the discovery of admissible evidence. Sempio's production of documents and/or information does not constitute any admission or waiver as to the documents' admissibility or relevance.

11. The fact that Sempio agrees to produce documents or things responsive to an Interrogatory means that Sempio will make reasonable efforts to locate these materials — it is not an admission that such documents or things exist or are in the possession, custody or control of Sempio.

12. Sempio objects to the use of the word "all" in these requests, such as "all advertisements" insofar as they seek every fact, every instance, every event, or every person relating to the subject matter of the request. Literal compliance is impossible in most instances and, in others, imposes a burden and expense that outweighs any likely benefit. Sempio seeks to provide fair and accurate responses to the discovery requests, subject to any objections, in accordance with the Rules.

13. Some of the documents Sempio is producing may contain non-responsive and confidential information and trade secrets. By producing these documents to Opposer, Sempio is not waiving its right to redact non-responsive portions and account for them in a log.

14. Sempio objects to Opposer's definitions of "Opposer" and "Applicant," These definitions are overly broad and unduly burdensome in that they call for information, documents or things outside Sempio's custody or control.

15. Sempio objects to Opposer's definitions of "documents" to the extent that these definitions conflict with or exceed the scope of the definition of these terms as set forth in Rule 34(a) of the Federal Rules of Civil Procedure.

16. Sempio objects to Opposer's definitions of "Opposer's Marks" and "Opposer's common law marks." These definitions are vague, overly broad, and thus unduly burdensome in that they call for information, documents, or things outside Sempio's custody or control and are not sufficiently defined such that Sempio may ascertain with specificity the subject matter of Opposer's requests.

16. Sempio objects to interrogatories that request information and/or documents already produced by Applicant to Opposer.

17. Sempio objects to interrogatories to the extent that a narrative is requested in addition to documents.

18. Sempio objects to this entire set of interrogatories as Opposer has exceeded the limit for interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure, because Opposer has evaded Rule 33's presumptive limitation through the device of joining as subparts questions that seek information about discrete separate subjects.

19. Sempio objects to each and every Interrogatory to the extent that they require Sempio to obtain and compile information from third parties.

20. Sempio notes that discovery in this case is currently ongoing and specifically reserves all rights to supplement and/or amend its answers and responses.

21. All of the above objections are incorporated into each response below, whether or not stated below.

RESPONSES TO REQUESTS FOR ADMISSION

REQUEST FOR ADMISSION NO. 1:

1. Applicant has never used Applicant's Mark in United States commerce on vegetable oil.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Sempio objects to this admission as vague in that the term “Applicant’s Mark” is undefined. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 2:

2. Applicant has used Applicant's Mark in United States commerce on

vegetable oil.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Sempio objects to this admission as vague in that the term “Applicant’s Mark” is undefined. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio admits the subject matter of this Request.

REQUEST FOR ADMISSION NO. 3:

3. Applicant has never used Applicant's Mark in United States commerce on fats.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Sempio objects to this admission as vague in that the term “Applicant’s Mark” is undefined. Sempio further objects as the term “fats” is not defined and capable of numerous definitions and connotations. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 4:

4. Applicant has used Applicant's Mark in United States commerce on fats.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Sempio objects to this admission as vague in that the term “Applicant’s Mark” is undefined. Sempio further objects as the term “fats” is not defined and capable of numerous definitions and connotations. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 5:

5. Applicant has never used Applicant's Mark in United States commerce on salad dressing.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Sempio objects to this admission as vague in that the term “Applicant’s Mark” is undefined. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 6:

6. Applicant has used Applicant's Mark in United States commerce on fats.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Sempio objects to this admission as vague in that the term “Applicant’s Mark” is undefined. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio admits the subject matter of this Request.

REQUEST FOR ADMISSION NO. 7:

7. Applicant filed Application Serial No. 85-022,361 with the United States Patent and Trademark Office on April 24, 2010.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Admitted.

REQUEST FOR ADMISSION NO. 8:

8. Applicant did not use Applicant's Mark in United States commerce prior to April 24, 2010.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Sempio objects to this admission as vague in that the term “Applicant’s Mark” is undefined. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 9:

9. Applicant has not filed any other trademark application in the United States for the mark FONTANA other than Application Serial No. 85-022,361.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 10:

10. On December 9, 2005, Opposer filed the application that became Registration No. 3,648,878.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Sempio objects to this Request as it elicits an admission on which Opposer is the one with definite knowledge of the referenced application and Opposer possesses the ability to certify and ratify the facts elicited while Sempio has no direct knowledge of the referenced application other than through representations of Opposer. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 11:

11. Applicant filed Application Serial No. 85-022,361 with the United States Patent and Trademark Office after December 9, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Admitted.

REQUEST FOR ADMISSION NO. 12:

12. The United States Patent and Trademark Office granted Registration No. 3,648,878 on June 30, 2009.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Sempio objects to this Request as it elicits an admission on which Opposer is the one with definite knowledge of the referenced application and Opposer possesses the ability to certify and ratify the facts elicited while Sempio has no direct knowledge of the referenced application other than through representations of Opposer. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 13:

13. Registration No. 3,648,878 claims a date of first use in United States commerce of May 6, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Sempio objects to this Request as it elicits an admission on which Opposer is the one with definite knowledge of the referenced application and Opposer possesses the ability to certify and ratify the facts elicited while Sempio has no direct knowledge of the referenced application other than through representations of Opposer. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a

reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 14:

14. Applicant does not contest that the first date of use in United States commerce for Registration No. 3,648,878 was May 6, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Sempio objects to this admission as vague in that the term “first date of use in United States commerce for Registration No. 3,648,878” is undefined. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 15:

15. On January 16, 2007, Opposer filed the application that became Registration No. 3,587,701 with the United States Patent and Trademark Office.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Sempio objects to this Request as it elicits an admission on which Opposer is the one with definite knowledge of the referenced application and Opposer possesses the ability to certify and ratify the facts elicited while Sempio

has not direct knowledge of the referenced application other than through representations of Opposer. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 16:

16. Applicant filed Application Serial No. 85-022,361 with the United States Patent and Trademark Office after January 16, 2007.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Admitted.

REQUEST FOR ADMISSION NO. 17:

17. The United States Patent and Trademark Office granted Registration No. 3,587,701 on March 10, 2009.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Sempio objects to this Request as it elicits an admission on which Opposer is the one with definite knowledge of the referenced application and Opposer possesses the ability to certify and ratify the facts elicited while Sempio

has no direct knowledge of the referenced application other than through representations of Opposer. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 18:

18. Registration No. 3,587,701 claims a date of first use in United States commerce of May 6, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Sempio objects to this Request as it elicits an admission on which Opposer is the one with definite knowledge of the referenced application and Opposer possesses the ability to certify and ratify the facts elicited while Sempio has no direct knowledge of the referenced application other than through representations of Opposer. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 19:

19. Applicant does not contest that the first date of use in United States commerce for Registration No. 3,587,701 was May 6, 2005.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Sempio objects to this admission as vague in that the term “first date of use in United States commerce for Registration No. 3,587,701” is undefined. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 20:

20. On January 19, 2009 Opposer filed the application that became Registration No. 3,944,887 with the United States Patent and Trademark Office.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Sempio objects to this Request as vague, at least because the term “January 19, 2009 Opposer” is not defined. Sempio objects to this Request as it elicits an admission on which Opposer is the one with definite knowledge of the referenced application and Opposer possesses the ability to certify and ratify the facts elicited while Sempio has no direct knowledge of the referenced application other than through representations of Opposer. Subject to and without waiving the foregoing

general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 21:

21. Applicant filed Application Serial No. 85-022,361 with the United States Patent and Trademark Office after January 19, 2009.

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Admitted.

REQUEST FOR ADMISSION NO. 22:

22. The United States Patent and Trademark Office granted Registration No. 3,944,887 on April 12, 2011.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Sempio objects to this Request as it elicits an admission on which Opposer is the one with definite knowledge of the referenced application and Opposer possesses the ability to certify and ratify the facts elicited while Sempio has no direct knowledge of the referenced application other than through representations of Opposer. Subject to and without waiving the foregoing general and specific

objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 23:

23. Registration No. 3,944,887 claims a date of first use in United States commerce of November 2, 2010.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Sempio objects to this Request as it elicits an admission on which Opposer is the one with definite knowledge of the referenced application and Opposer possesses the ability to certify and ratify the facts elicited while Sempio has no direct knowledge of the referenced application other than through representations of Opposer. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 24:

24. Applicant does not contest that the first date of use in United States commerce for Registration No. 3,944,887 was November 2, 2010.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Sempio objects to this admission as vague in that the term “first date of use in United States commerce for Registration No. 3,944,887” is undefined. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 25:

25. On January 19, 2009, Opposer filed the application that became Registration No. 3,944,888 with the United States Patent and Trademark Office.

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Sempio objects to this Request as it elicits an admission on which Opposer is the one with definite knowledge of the referenced application and Opposer possesses the ability to certify and ratify the facts elicited while Sempio has no direct knowledge of the referenced application other than through representations of Opposer. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 26:

26. The United States Patent and Trademark Office granted Registration No. 3,944,888 on April 12, 2011.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Sempio objects to this Request as it elicits an admission on which Opposer is the one with definite knowledge of the referenced application and Opposer possesses the ability to certify and ratify the facts elicited while Sempio has no direct knowledge of the referenced application other than through representations of Opposer. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 27:

27. Registration No. 3,944,888 claims a date of first use in United States commerce of November 2, 2010.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Sempio objects to this Request as it elicits an admission on which Opposer is the one with definite knowledge of the referenced application and Opposer

possesses the ability to certify and ratify the facts elicited while Sempio has no direct knowledge of the referenced application other than through representations of Opposer. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 28:

28. Applicant does not contest that the first date of use in United States commerce for Registration No. 3,944,888 was November 2, 2010.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Sempio objects to this admission as vague in that the term “first date of use in United States commerce for Registration No. 3,944,888” is undefined. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 29:

29. Opposer's Marks have priority over Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

Sempio objects to this admission as vague in that the terms “Opposer’s Marks” and “priority” are undefined. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 30:

30. Applicant was aware of Opposer's use of Opposer's Marks before it adopted Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

Sempio objects to this admission as vague in that the terms “Opposer’s use,” “Opposer’s Marks,” “Applicant’s Marks,” and “it” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 31:

31. Applicant was aware of Opposer before it adopted Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 31:

Sempio objects to this admission as vague in that the terms “Applicant’s Marks” and “it” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 32:

32. Applicant was aware of Opposer's use of Opposer's Marks when it applied to register Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 32:

Sempio objects to this admission as vague in that the terms “Opposer’s use,” “Opposer’s Marks,” “Applicant’s Mark,” and “it” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 33:

33. Opposer's Marks are distinctive.

RESPONSE TO REQUEST FOR ADMISSION NO. 33:

Sempio objects to this admission as vague in that the terms “Opposer’s Marks” and “distinctive” are undefined and/or vague. Subject to and without

waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 34:

34. Applicant's Mark is confusingly similar to Opposer's Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 34:

Sempio objects to this admission as vague in that the terms “Applicant’s Mark” and “Opposer’s Marks” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 35:

35. Use of Applicant's Mark for Applicant's Goods creates a likelihood of confusion, mistake or deception with Opposer's Marks for Opposer's Goods.

RESPONSE TO REQUEST FOR ADMISSION NO. 35:

Sempio objects to this admission as vague in that the terms “Applicant’s Mark,” “Applicant’s Goods,” “Opposer’s Marks,” and “Opposer’s Goods” are undefined and/or vague. Subject to and without waiving the foregoing general and

specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 36:

36. Applicant's current use of Applicant's Mark infringes Opposer's Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 36:

Sempio objects to this admission as vague in that the terms "Applicant's current use," "Applicant's Mark," and "Opposer's Marks" are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 37:

37. Opposer is likely to be damaged if Applicant uses Applicant's Mark in connection with Applicant's Goods.

RESPONSE TO REQUEST FOR ADMISSION NO. 37:

Sempio objects to this admission as vague in that the terms "Applicant's Mark" and "Applicant's Goods" are undefined and/or vague. Subject to and

without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 38:

38. Applicant has not received Opposer's consent to use Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 38:

Sempio objects to this admission as vague in that the terms “Opposer’s consent” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio admits the subject matter of this Request.

REQUEST FOR ADMISSION NO. 39:

39. The word "FONTANA" is the dominant portion of Applicant's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 39:

Sempio objects to this admission as vague in that the terms “dominant portion” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 40:

40. Consumers encountering Applicant's Goods in connection with Applicant's Mark are likely to believe that such goods are associated with Opposer.

RESPONSE TO REQUEST FOR ADMISSION NO. 40:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 41:

41. Consumers encountering Applicant's Goods in connection with Applicant's Mark are likely to believe that such goods are affiliated with Opposer.

RESPONSE TO REQUEST FOR ADMISSION NO. 41:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 42:

42. Consumers encountering Applicant's Goods in connection with Applicant's Mark are likely to believe that such goods are sponsored by Opposer.

RESPONSE TO REQUEST FOR ADMISSION NO. 42:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 43:

43. Consumers encountering Applicant's Goods in connection with Applicant's Mark are likely to believe that such goods are endorsed by Opposer.

RESPONSE TO REQUEST FOR ADMISSION NO. 43:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 44:

44. Consumers who encounter Applicant's use of Applicant's Mark are reminded of Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 44:

Sempio objects to this admission as vague in that the terms “Applicant’s use” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 45:

45. Consumers who encounter Applicant's use of Applicant's Mark are reminded of Opposer's Goods.

RESPONSE TO REQUEST FOR ADMISSION NO. 45:

Sempio objects to this admission as vague in that the terms “Applicant’s use,” “Applicant’s Mark,” and “Opposer’s Goods” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 46:

46. Consumers who encounter Applicant's use of Applicant's Mark are reminded of Opposer.

RESPONSE TO REQUEST FOR ADMISSION NO. 46:

Sempio objects to this admission as vague in that the terms “Applicant’s use” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 47:

47. Applicant's use of Applicant's Mark calls to mind Opposer's Mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 47:

Sempio objects to this admission as vague in that the terms “Applicant’s use,” “Applicant’s Mark,” and “Opposer’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 48:

48. Consumers who encounter Applicant's use of Applicant's Mark likely associate the use of that mark with Opposer.

RESPONSE TO REQUEST FOR ADMISSION NO. 48:

Sempio objects to this admission as vague in that the terms “Applicant’s use” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 49:

49. The goods in connection with Applicant's Mark include "vegetable oils."

RESPONSE TO REQUEST FOR ADMISSION NO. 49:

Sempio objects to this admission as vague in that the terms “in connection with” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio admits the subject matter of this Request.

REQUEST FOR ADMISSION NO. 50:

50. The goods in connection with Applicant's Mark include "fats."

RESPONSE TO REQUEST FOR ADMISSION NO. 50:

Sempio objects to this admission as vague in that the terms “in connection with” and “Applicant’s Mark” are undefined and/or vague. Subject to and without

waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio admits the subject matter of this Request.

REQUEST FOR ADMISSION NO. 51:

51. The goods in connection with Applicant's Mark include "salad dressings."

RESPONSE TO REQUEST FOR ADMISSION NO. 51:

Sempio objects to this admission as vague in that the terms “in connection with” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio admits the subject matter of this Request.

REQUEST FOR ADMISSION NO. 52:

52. Vegetable oil is a type of edible oil.

RESPONSE TO REQUEST FOR ADMISSION NO. 52:

Sempio objects to this admission as vague in that the term “edible oil” is undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio admits the subject matter of this Request.

REQUEST FOR ADMISSION NO. 53:

53. Salad dressing is a type of food sauce.

RESPONSE TO REQUEST FOR ADMISSION NO. 53:

Sempio objects to this admission as vague in that the term “food sauce” is undefined and/or vague. Sempio further objects to this admission as “food sauce” has numerous connotations of which Opposer has not specified which connotation should be used for this request. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 54:

54. Shortening is a type of fat.

RESPONSE TO REQUEST FOR ADMISSION NO. 54:

Sempio objects to this admission as vague in that the term “shortening” is undefined and/or vague. Sempio further objects to this admission as “a type of fat” has numerous connotations of which Opposer has not specified which connotation should be used for this request. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 55:

55. Shortening is sold in grocery stores.

RESPONSE TO REQUEST FOR ADMISSION NO. 55:

Sempio objects to this admission as vague in that the term “shortening” is undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 56:

56. Food sauces are sold in grocery stores.

RESPONSE TO REQUEST FOR ADMISSION NO. 56:

Sempio objects to this admission as vague in that the term “food sauces” is undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 57:

57. Salad dressing is sold in grocery stores.

RESPONSE TO REQUEST FOR ADMISSION NO. 57:

Admitted.

REQUEST FOR ADMISSION NO. 58:

58. Vegetable oil is sold in grocery stores.

RESPONSE TO REQUEST FOR ADMISSION NO. 58:

Admitted.

REQUEST FOR ADMISSION NO. 59:

59. Fat is sold in grocery stores.

RESPONSE TO REQUEST FOR ADMISSION NO. 59:

Sempio objects to this admission as vague in that the term “fat” is undefined and/or vague. This term is subject to numerous connotations and likely to be confused with other terms, at least in the context of this Request. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 60:

60. Edible oil is sold in grocery stores.

RESPONSE TO REQUEST FOR ADMISSION NO. 60:

Sempio objects to this admission as vague in that the term “edible oil” is undefined and/or vague. This term is subject to numerous connotations and likely to be confused with other terms, at least in the context of this Request. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 61:

61. Applicant markets and promotes Applicant's Goods in connection with Applicant's Mark through the Internet.

RESPONSE TO REQUEST FOR ADMISSION NO. 61:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio admits the subject matter of this Request.

REQUEST FOR ADMISSION NO. 62:

62. Applicant markets and promotes Applicant's Goods in connection with Applicant's Mark to retail stores.

RESPONSE TO REQUEST FOR ADMISSION NO. 62:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio admits the subject matter of this Request.

REQUEST FOR ADMISSION NO. 63:

63. Applicant markets and promotes Applicant's Goods in connection with Applicant's Mark to the food service industry.

RESPONSE TO REQUEST FOR ADMISSION NO. 63:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods,” “Applicant’s Mark,” and “food service industry” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 64:

64. Applicant markets and promotes Applicant's Goods in connection with Applicant's Mark to wholesale stores.

RESPONSE TO REQUEST FOR ADMISSION NO. 64:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods,” “Applicant’s Mark,” and “wholesale stores” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 65:

65. Applicant markets and promotes Applicant's Goods in connection with Applicant's Mark to grocery stores.

RESPONSE TO REQUEST FOR ADMISSION NO. 65:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio admits the subject matter of this Request.

REQUEST FOR ADMISSION NO. 66:

66. Applicant sells Applicant's Goods in connection with Applicant's Mark through the Internet.

RESPONSE TO REQUEST FOR ADMISSION NO. 66:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 67:

67. Applicant sells Applicant's Goods in connection with Applicant's Mark to retail stores.

RESPONSE TO REQUEST FOR ADMISSION NO. 67:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 68:

68. Applicant sells Applicant's Goods in connection with Applicant's Mark to

the food service industry.

RESPONSE TO REQUEST FOR ADMISSION NO. 68:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods,” “Applicant’s Mark,” and “food service industry” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 69:

69. Applicant sells Applicant's Goods in connection with Applicant's Mark to wholesale stores.

RESPONSE TO REQUEST FOR ADMISSION NO. 69:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods,” “Applicant’s Mark,” and “wholesale stores” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 70:

70. Applicant sells Applicant's Goods in connection with Applicant's Mark to grocery stores.

RESPONSE TO REQUEST FOR ADMISSION NO. 70:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods” and “Applicant’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

REQUEST FOR ADMISSION NO. 71:

71. Applicant's Goods sold in connection with Applicant's Mark and Opposer's Goods sold in connection with Opposer's Mark are sold through the same channels of trade.

RESPONSE TO REQUEST FOR ADMISSION NO. 71:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods,” “Applicant’s Mark,” “Opposer’s Goods,” and “Opposer’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 72:

72. Applicant's Goods sold in connection with Applicant's Mark and Opposer's Goods sold in connection with Opposer's Mark are sold to the same class of customers.

RESPONSE TO REQUEST FOR ADMISSION NO. 72:

Sempio objects to this admission as vague in that the terms “Applicant’s Goods,” “Applicant’s Mark,” “Opposer’s Goods,” “in connection with,” and “Opposer’s Mark” are undefined and/or vague. Subject to and without waiving the foregoing general and specific objections, and to the extent it understands this Request, Sempio made a reasonable inquiry into the substance of this Request and the information known or readily available to Sempio is insufficient for a denial or admission.

REQUEST FOR ADMISSION NO. 73:

73. Applicant's Mark is derived from Opposer's Marks.

RESPONSE TO REQUEST FOR ADMISSION NO. 73:

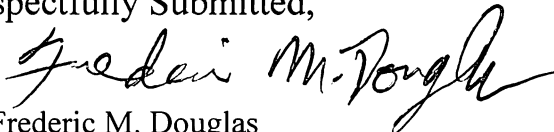
Opposer objects to this admission as vague in that the terms “Applicant’s Mark” and “Opposer’s Mark” are undefined. Subject to and without waiving the

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foregoing general and specific objections, and to the extent it understands this Request, Sempio denies the subject matter of this Request.

Dated: July 8, 2011

Respectfully Submitted,



/s/ Frederic M. Douglas

Frederic M. Douglas

Reg. No. 48,813

California Bar. No. 212778

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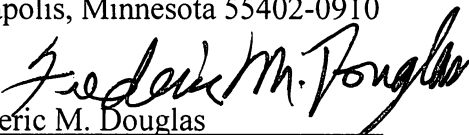
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CERTIFICATE OF SERVICE

This certifies that a copy of the **APPLICANT'S FIRST SET OF INTERROGATORIES TO OPPOSER** was served this 8th day of July 2011 by First Class Mail, postage pre-paid, upon counsel for Opposer:

William D. Schultz
Merchant & Gould, Inc.
P.O. Box 2910
Minneapolis, Minnesota 55402-0910


/s/ Frederic M. Douglas
Frederic M. Douglas

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