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

Proceeding	91201052
Party	Defendant Chrysler Group LLC
Correspondence Address	Judith A. Powell KILPATRICK TOWNSEND & STOCKTON LLP 1100 Peachtree Street, NE Suite 2800 ATLANTA, GA 30309 UNITED STATES jpowell@kilpatricktownsend.com,chooker@kilpatricktownsend.com,jash@kilpatricktownsend.com,tmadmin@kilpatricktownsend.com,rgordon@kiltown.com
Submission	Opposition/Response to Motion
Filer's Name	Judith A. Powell
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Signature	/Judith A. Powell/
Date	12/06/2011
Attachments	Pure Detroit - Opposition to EOT.pdf (106 pages)(454966 bytes)

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91200995
	)	Opposition No. 91201015
CHRYSLER GROUP LLC,	)	Opposition No. 91201052
)	
Applicant.)	
_____)	

**APPLICANT’S OPPOSITION TO OPPOSER’S MOTION FOR EXTENSION OF
TIME TO RESPOND TO APPLICANT’S OCTOBER 20, 2011 DISCOVERY
REQUESTS AND INITIAL DISCLOSURE DEADLINE UNDER 27 C.F.R. § 2.120
AND TBMP § 403**

I. INTRODUCTION

Applicant Chrysler Group LLC (“Applicant” or “Chrysler”) respectfully opposes the motion of Opposer Moda Group, LLC (“Opposer” or “Moda”) to extend the deadlines for serving initial disclosures set by the Board and for responding to discovery requests served by Chrysler.

First, the Board should deny Moda’s motion because Moda has failed to show good cause for an extension. The basis for Moda’s motion is essentially that it filed a motion to suspend the proceeding. However, if the Board had determined that proceedings should be stayed simply because a party filed a motion to suspend, it would have implemented a rule to that effect, as is the case with multiple other motions in Board proceedings. Indeed, Moda apparently recognizes that its filing of a motion to suspend does not relieve it of discovery or other obligations during the motion’s pendency. *See* Opposer’s Motion For Extension of Time to Respond to Applicant’s October 20, 2011 Discovery Requests and Initial Disclosure Deadline under 27 C.F.R. 2.120 and TBMP §

403, Dkt. 14 in Opp. Nos. 91201015 and 91200995; Dkt. 15 in Opp. No. 91201052 (“Moda’s Motion for Extension”) at 2. Nevertheless, Moda’s motion relies on little more than the arguments it presented in its motion to suspend, in effect, seeking to rely on a decision that has not been made. That is not good cause.

Second, the Board should deny the motion because Moda did not act diligently and without unreasonable delay. Moda failed to communicate with Chrysler about the disclosures or discovery at all before filing. Further, it waited to file its motion until after some of the deadlines had already passed, waiting until 4 days after the initial disclosure deadline had expired in two proceedings and until after Chrysler had served its disclosures. It waited until the day before the expiration of the deadline to serve initial disclosures in the third proceeding, and two days before the expiration of the deadline to serve responses to Chrysler’s First Set of Interrogatories (the “Interrogatories”) and Chrysler’s First Set of Requests for the Production of Documents (the “Document Requests”) (collectively, the “Discovery Requests”) in all three proceedings. By waiting to file its motion until after some deadlines had passed and others were a day or two away, Moda appears to have failed to take seriously its discovery obligations in three ongoing proceedings that *it initiated*. As the plaintiff in these three oppositions, Moda has a duty to move the proceedings forward in a timely manner so long as they are active. It failed to do so. Moda also failed to confer with Chrysler prior to filing, instead asking for Chrysler’s consent the day *after* it had already unilaterally filed the motion.

Because Moda fails to establish either that it has good cause for the requested stay or that it acted diligently and without unreasonable delay, Chrysler respectfully asks the Board to deny Moda’s motion seeking an indefinite stay of its discovery obligations.

II. FACTUAL BACKGROUND

Following Chrysler's initiation of a civil action respecting Moda's unauthorized use of Chrysler's well-known IMPORTED FROM DETROITTM trademark, Moda filed three Notices of Opposition against each of Chrysler's three intent-to-use applications. (Dkt. 1 in Opposition Nos. 91201015, 91200995, and 91201052.) Moda then sought to consolidate and suspend the oppositions pending the resolution of the civil action. (Dkts. 5 and 6 in Opposition Nos. 91201015, 91200995; Dkts. 6 and 7 in Opposition No. 91201052.) Chrysler consented to consolidation, but opposed the suspension. (Dkt. 11 in Opposition Nos. 91201015, 91200995; Dkt. 12 in Opposition No. 91201052.) Chrysler opposed the motion to suspend because the Board is uniquely qualified to address the issues in the opposition proceedings, namely whether the IMPORTED FROM DETROITTM mark is entitled to registration and whether a party who copies a mark after another party has filed an intent-to-use application for the same goods can gain priority of rights despite the prior-filed intent-to-use applications. *Id.* The motion is still pending.

Under the Board's scheduling orders, discovery opened on October 13, 2011 in Opposition Nos. 91201015 and 91200995, and on October 18, 2011 in Opposition No. 91201052. (Dkt. 2 in Opposition Nos. 91201015, 91200995, and 91201052.) The parties' initial disclosures were due on November 12, 2011 in Opposition 91201015 and 91200995 and on November 17, 2011 in Opposition No. 91201052. *Id.* Following the opening of the discovery period, Chrysler timely served Moda with its Initial Disclosures and also served Discovery Requests for each of the three opposition proceedings. *See* Declaration of Charles H. Hooker III in Support of Applicant's Opposition to Opposer's Motion for Extension of Time to Respond to Applicant's October 20, 2011 Discovery

Requests and Initial Disclosure Deadline Under 27 C.F.R. § 2.120 and TBMP § 403 (“Hooker Dec.”) ¶ 3, Exhibit B. Based on the hand-delivery service date of October 20, 2011, Moda’s responses to the Discovery Requests were due November 18. *See* Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 403.03.

On November 16—four days after the expiration of the deadline to serve initial disclosures in two proceedings (and after Chrysler’s timely service), one day before the expiration of the deadline to serve initial disclosures in the third proceeding, and two days before the expiration of the deadline to serve responses to Chrysler’s Discovery Requests in each of the three proceedings—Moda filed its motion to stay the deadlines for serving its initial disclosures and responding to Chrysler’s Discovery Requests. *See* Moda’s Motion for Extension. Although undersigned counsel is listed as the correspondent of record, Moda did not serve the motion on undersigned counsel.¹ *See* Hooker Dec. ¶ 5. On November 17, the day *after* filing its motion, Moda asked Chrysler to consent to a stay of the deadline for serving responses to the Discovery Requests pending the Board’s decision on Moda’s motion to suspend and consolidate. *See* Hooker Dec. ¶ 4, Exhibit C. In the course of the parties’ communications about this request, counsel for Moda at no time indicated that a motion seeking such a stay had already been

¹ The certificate of service indicates that a service copy was sent to Amanda Conti-Duhaime, in-house counsel at Chrysler who is out of the office on maternity leave. While counsel for Moda has since stated that this was an error from failing to update the designee in its certificate of service, Moda has known since August that undersigned counsel was to be served, and this is not the first time Moda has failed to provide Chrysler with a service copy or notice of a brief filed with the Board. *See* Hooker Dec. ¶ 2, Exhibits A & D; Moda’s Reply in Support of its Motion for Suspension and Consolidation of Proceedings Under TBMP § § 510 and 511, which does not contain a certificate of service and which counsel did not serve on Chrysler or its counsel at all. (See Dkt. 13 in Opp. Nos. 91201015 and 91200995; Dkt. 14 in Opp. No. 91201052.)

filed. *Id.* Chrysler discovered that Moda had filed the present motion only after reviewing the Board’s docket on the TTABVUE website. *Id.* at ¶ 6.

III. ARGUMENT

A. Applicable Standard

A party moving for an extension of time must show “good cause” for the requested extension. TBMP § 509.01; Fed. R. Civ. P. 6(b). Moreover, “a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party’s own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor.” TBMP § 509.01(a).²

B. Moda Has Not Established “Good Cause”

Moda has not and cannot establish “good cause” for extending the deadlines to respond to Chrysler’s Discovery Requests and to serve its initial disclosures pending the Board’s decision on its motion to consolidate and suspend. The pendency of Moda’s motion to consolidate and suspend the three opposition proceedings is insufficient to

² To the extent Moda’s motion seeks to “extend” the deadline set by the Board’s scheduling order for serving initial disclosures, the request is in fact a motion to *reopen* as opposed to a motion to *extend* with respect to the initial disclosures for Opposition Nos. 91201015 and 91200995, which were due on November 12, four days before Moda filed its motion to “extend.” See TBMP § 509.01(b) (“Where the time for taking required action, as originally set or previously reset, has expired, a party desiring to take the required action must file a motion to reopen the time for taking that action.”); Fed. R. Civ. P. 6(b). The heightened standard that Moda must meet for such a motion is whether its failure to act during the allotted time period was the result of “excusable neglect.” See TBMP § 509.01(b); Fed. R. Civ. P. 6(b). Because Moda’s motion plainly fails under the “good cause” standard, Chrysler does not include an extended analysis of the “excusable neglect” standard, but Moda has made no attempt to show any excusable neglect. Additionally, if the three oppositions were consolidated as proposed by Moda, the consolidated proceeding would bear the lowest opposition proceeding number, 91200995 (in which the deadline for initial disclosures was November 12), making Moda clearly in default as to its disclosure obligation before it filed the motion. The Board should, accordingly, find Moda in default on its initial disclosures.

establish good cause, and Moda concedes as much. *See* Moda’s Motion for Extension at 2 (stating that Moda “fully acknowledges that the ‘mere’ filing of its . . . motion to consolidate and suspend . . . does not ‘automatically’ operate as a de facto suspension of any dates or deadlines before the Board”). Indeed, while the Board will enter a suspension pending its decision on various motions (including motions to dismiss, motions for judgment on the pleadings, motions for summary judgment, and motions to compel), motions to consolidate and motions to suspend are not among such motions. *See* TBMP § 510.03(a).

In an effort to cloud this fact, Moda claims that two other factors, when combined with the pending motion to consolidate and suspend, constitute good cause. *See* Moda’s Motion for Extension at 2. First, Moda asserts that “the benefits of a streamlined consolidated proceeding under Fed. R. Civ. P. 42(a) – even if a suspension is not granted” counsels in favor of extending Moda’s time to respond to Chrysler’s discovery requests. *Id.* Moda does not elaborate on the benefits that consolidation would provide in terms of serving initial disclosures or responding to Chrysler’s Discovery Requests, but it would appear that the primary benefit of staying these deadlines pending the Board’s decision on consolidation would be that Moda could avoid providing Chrysler with three copies of its initial disclosures and written responses to Chrysler’s Discovery Requests, which are virtually identical in each of the three proceedings. This contention is a straw man: Since the disclosures and responses are virtually the same, and since Chrysler has expressly agreed to consolidation, Moda could have asked Chrysler if a single disclosure and response to discovery would be acceptable. Chrysler clearly would have agreed.

Second, Moda asserts that Chrysler's filing of a Petition to Cancel the PURE DETROIT registration (Opposition. No. 92054675) somehow counsels in favor of staying Moda's obligation to respond to the Discovery Requests and serve initial disclosures in the oppositions it filed against Chrysler's IMPORTED FROM DETROITTM mark. *Id.* However, Chrysler's Petition to Cancel the PURE DETROIT registration involves a different mark and different issues respecting use and registration, and it in no way alleviates Chrysler's need for information relevant to defending against the active oppositions that Moda filed against its applications for the IMPORTED FROM DETROITTM mark. None of these factors, alone or in combination, are sufficient to establish good cause, and Moda has provided no authority to the contrary.

Moda's assertion of good cause is premised on little more than a re-hash of its motion to consolidate and suspend the three opposition proceedings it initiated – a motion that will be evaluated on its merits by the Board. In the meantime, however, Moda has not shown good cause for extending or staying the period in which it must respond to Chrysler's Discovery Requests and serve initial disclosures.

C. Moda Has Not Established Reasonable Diligence or the Absence of Unreasonable Delay.

Moda also has failed to establish that it has acted with reasonable diligence and without unreasonable delay. Instead of preparing for the possibility that its motion to suspend could be denied or remain pending when its initial disclosures and responses to Chrysler's Discovery Requests were due, Moda apparently failed to prepare any disclosures or responses at all. As the party that filed these oppositions, Moda "carries the burden of going forward in a timely manner." *See Procyon Pharma., Inc. v. Procyon Biopharma, Inc.*, 61 U.S.P.Q.2d 1542, 1544 (T.T.A.B. 2001); *accord NFL v. DNH Mgmt.*

LLC, 85 U.S.P.Q.2d 1852, 1855 n.8 (T.T.A.B. 2008) (“In the absence of [a consented motion to suspend], the party seeking suspension is also expected to comply with its responsibilities. For a plaintiff in a Board proceeding, that means not only shouldering the burden of proof at trial but also the responsibility for moving the case forward on the prescribed schedule.”).

Accordingly, Moda’s failure to take prompt action with respect to these Discovery Requests³ and disclosures is particularly inappropriate. *See Procyon Pharma.*, 61 U.S.P.Q.2d at 1544 (denying petitioner’s motion to extend testimony period, noting petitioner’s burden to move the action forward and its failure to wait until the last day of the testimony period to request extension of testimony period). By waiting to file its motion to stay until after Chrysler had served its disclosures and after its disclosures were due in two of its proceedings and until only a day or two before other deadlines were set to expire, Moda, the plaintiff in these three actions, failed to act diligently.

Moda also failed to act with diligence or reasonable care by failing to provide counsel of record with a service copy of its motion and by seeking “consent” the day after unilaterally requesting the stay.

IV. CONCLUSION

Moda’s motion fails to establish that Moda had either good cause or that it acted diligently and without unreasonable delay. Accordingly, Chrysler respectfully asks the

³ Moreover, because Moda failed, without excuse, to respond to Chrysler’s Discovery Requests within the allotted time period, Moda has forfeited its right to object to the requests on their merits. *See Fed. R. Civ. P. 33(b)(4)* (“All grounds for an objection to an interrogatory shall be stated with specificity. Any ground not stated in a *timely* objection is waived unless the party’s failure to object is excused by the court for good cause shown” (emphasis added)).

Board to deny Moda's motion seeking a stay of the deadlines to serve its initial disclosures and respond to Chryslers' Discovery Requests.

DATED: December 6, 2011

Respectfully submitted,

By: /Judith A. Powell/

Judith A. Powell

Charles H. Hooker III

Jessica A. Ash

KILPATRICK TOWNSEND &
STOCKTON LLP

1100 Peachtree Street, Suite 2800

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jpowell@ktslaw.com

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jash@ktslaw.com

Attorneys for Applicant
Chrysler Group, LLC

CERTIFICATE OF SERVICE

I certify that the foregoing APPLICANT'S OPPOSITION TO OPPOSER'S MOTION FOR EXTENSION OF TIME TO RESPOND TO APPLICANT'S OCTOBER 20, 2011 DISCOVERY REQUESTS AND INITIAL DISCLOSURE DEADLINE UNDER 27 C.F.R. § 2.120 AND TBMP § 403 has been served on Opposer's counsel by depositing a copy with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

Jeffrey P. Thennisch, Esq.
DOBRUSIN & THENNISCH PC
29 W. Lawrence Street, Suite 201
Pontiac, MI 48342
jeff@patentco.com

DATED: December 6, 2011

/Jessica A. Ash/
Jessica A. Ash

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91200995
	)	Opposition No. 91201015
CHRYSLER GROUP LLC,	)	Opposition No. 91201052
)	
Applicant.)	
_____)	

**DECLARATION OF CHARLES H. HOOKER III IN SUPPORT OF
APPLICANT’S OPPOSITION TO OPPOSER’S MOTION FOR EXTENSION OF TIME
TO RESPOND TO APPLICANT’S OCTOBER 20, 2011 DISCOVERY REQUESTS AND
INITIAL DISCLOSURE DEADLINE UNDER 27 C.F.R. § 2.120 AND TBMP § 403**

1. My name is Charles H. Hooker III. I am an associate at Kilpatrick Townsend & Stockton LLP, which represents Chrysler Group LLC (“Chrysler”) in this matter. I am over the age of twenty-one, I am competent to make this Declaration, and the facts set forth in this Declaration are based on my personal knowledge of the documents our firm has kept through the ordinary course of business in representing Chrysler. This Declaration is being submitted in support of Applicant’s Opposition to Opposer’s Motion for Extension of Time to Respond to Applicant’s October 20, 2011 Discovery Requests and Initial Disclosure Deadline Under 27 C.F.R. § 2.120 and TBMP § 403.

2. On August 10, 2011, Moda was notified that Judith A. Powell at Kilpatrick Townsend & Stockton LLP was to be served in all matters respecting the three oppositions at issue. A true and correct copy of an email providing such notification is attached as **Exhibit A**.

3. On October 20, 2011, Chrysler served Moda with three sets of discovery documents via hand-delivery for each of three opposition proceedings brought by Moda against

Chrysler's intent-to-use applications to register the IMPORTED FROM DETROIT™ mark (Opp. Nos. 91200995, 91201015, and 91201052). Included in each set of discovery documents were: (a) Applicant Chrysler Group LLC's Initial Disclosures, (b) Applicant Chrysler Group LLC's First Set of Interrogatories to Opposer (the "Interrogatories"), and (c) Applicant Chrysler Group LLC's First Request for the Production of Documents and Things to Opposer (the "Document Requests"). True and correct copies of these documents are attached as **Exhibit B**.

4. On November 17, 2011, I received an email from Moda's counsel seeking consent to a stay of the deadline for serving responses to the Interrogatories and Document Requests pending the Board's decision on Moda's motion to suspend and consolidate. I responded to that email by declining consent on behalf of Chrysler. At no time during the exchange did Moda's counsel mention that it had already filed a motion with the Trademark Trial and Appeal Board seeking such a stay. A true and correct copy of the email exchange is attached as **Exhibit C**.

5. Moda did not serve a copy of Opposer's Motion for Extension of Time to Respond to Applicant's October 20, 2011 Discovery Requests and Initial Disclosure Deadline Under 27 C.F.R. § 2.120 and TBMP § 403 ("Opposer's Motion) on anyone at Kilpatrick Townsend & Stockton LLP.

6. After Opposer's Motion was discovered on the TTABVUE website, I sent an email to counsel for Moda on November 23, 2011 regarding Moda's failure to provide a copy of Opposer's Motion to counsel of record. A true and correct copy of my email and the response I received from counsel for Moda is attached as **Exhibit D**.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: December 6, 2011

/Charles H. Hooker III/
Charles H. Hooker III

EXHIBIT A

Ash, Jessica

From: Powell, Judy
Sent: Wednesday, August 10, 2011 11:16 AM
To: 'Jeffrey Thennisch'
Cc: Hooker, Charles; Ash, Jessica
Subject: TTAB Oppositions respecting IMPORTED FROM DETROIT marks

Jeff,

Chrysler has engaged us to represent Chrysler with respect to the Oppositions. Its in-house counsel have requested that you direct all future correspondence respecting the Oppositions to our office, not to Chrysler directly.

We will review the correspondence that you sent to Chrysler and respond.

Regards,
Judy

**Judy Powell****Kilpatrick Townsend & Stockton LLP**

Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528

office 404 815 6433 | cell 404 735 0722 | fax 404 541 3347

jpowell@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

Confidentiality Notice:

This communication constitutes an electronic communication within the meaning of the Electronic Communications Privacy Act, 18 U.S.C. Section 2510, and its disclosure is strictly limited to the recipient intended by the sender of this message. This transmission, and any attachments, may contain confidential attorney-client privileged information and attorney work product. If you are not the intended recipient, any disclosure, copying, distribution or use of any of the information contained in or attached to this transmission is STRICTLY PROHIBITED. Please contact us immediately by return e-mail or at 404 815 6500, and destroy the original transmission and its attachments without reading or saving in any manner.

EXHIBIT B

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91200995
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

APPLICANT CHRYSLER GROUP LLC’S INITIAL DISCLOSURES

Pursuant to Rules 2.116 and 2.120 of the Trademark Rules of Practice and Federal Rule of Civil Procedure 26(a)(1), Applicant Chrysler Group LLC (“Chrysler”) makes the following pre-discovery initial disclosures (“Initial Disclosures”) to Opposer Moda Group, LLC (“Moda”).

INTRODUCTION

These Initial Disclosures are preliminary in nature. To the best of Chrysler’s knowledge, information, and belief, these Initial Disclosures are correct as of the time they are made.

Chrysler reserves the right to amend or supplement these Initial Disclosures as relevant facts become known in the future, as contemplated by Federal Rule of Civil Procedure 26(e).

By making these Initial Disclosures, Chrysler does not represent that it is identifying every witness, document, or tangible thing possibly relevant to the instant action, nor does Chrysler waive its right to object to the production of any document or tangible thing identified herein on the basis of any privilege, the work-product doctrine, relevancy, undue burden, confidentiality, or any other valid ground for objection. These Initial Disclosures are also made without in any way waiving: (1) the right to object on grounds of competency, relevancy and materiality, hearsay, or any other grounds, to the use of such information for any purpose, in

whole or in part, at any subsequent time in this action or in any other action; and (2) the right to object on any and all grounds, at any time, to any other discovery request or proceeding involving or relating to the subject matter of these Initial Disclosures. All of the Initial Disclosures set forth below are subject to the above qualifications.

RULE 26(a)(1)(A)(i)

At this time, without having conducted discovery, Chrysler is not aware of all persons who may have discoverable information. Although Chrysler may supplement its disclosures as investigation and discovery proceed, Chrysler has identified the individuals listed below as people who may have knowledge or information of facts or circumstances regarding the claims, events or transactions forming the subject matter of this action:

<u>Name</u>	<u>Subject</u>
Amanda Conti-Duhaime Senior Staff Counsel Chrysler Group LLC	Chrysler's IMPORTED FROM DETROIT™ trademark applications and approval of the applications by the United States Patent and Trademark Office.
Donna Berry Chief Trademark Counsel Chrysler Group LLC	Chrysler's IMPORTED FROM DETROIT™ trademark applications and approval of the applications by the United States Patent and Trademark Office.
Melissa Garlick Head of Chrysler Brand Advertising for Chrysler Group LLC	Chrysler's IMPORTED FROM DETROIT™ mark, adoption and use of the mark, advertising campaign respecting IMPORTED FROM DETROIT™, including its Super Bowl debut, and consumer response.
Joe Staples Creative Staff Member Wieden + Kennedy	Chrysler's communications and marketing respecting IMPORTED FROM DETROIT™.
Alan White Director of Consumer and Media Insights for Universal McCann	Development of Chrysler's advertising plan and media placements for the Chrysler® brand for 2011, including the Chrysler® 200 IMPORTED FROM DETROIT™ advertising and the public

	response.
Kevin Venet Brand Protection Manager for Chrysler Group LLC	Chrysler's trademark enforcement and Chrysler's awareness of Moda's conduct.
Olivier Francois Head of Fiat Brand, Chief Marketing Office and Brand Marketing Communications	Chrysler's adoption of IMPORTED FROM DETROIT™
Saad Chehab President and Chief Executive Officer of Chrysler Brand Chrysler Group LLC	Advertising and use of IMPORTED FROM DETROIT™
Susan Thompson Media and Customer Relations Management Chrysler Group LLC	Media plan for IMPORTED FROM DETROIT™
Arleen Janks Merchandising Chrysler Group LLC	Merchandising under IMPORTED FROM DETROIT™
Kevin Borsay	Moda's products, marketing, advertising, sales, and communications with third parties.
Shawn Santo	Moda's products, marketing, advertising, sales, and communications with third parties.

RULE 26(a)(1)(A)(ii)

At this time, without having conducted discovery, Chrysler is not aware of all documents, data compilations, and tangible things within its possession, custody, or control that Chrysler may use to support its claims and defenses. In fact, Chrysler anticipates that many of the documents it may use to support its claims and defenses are within the possession, custody, or control of Moda. While Chrysler may supplement its disclosure as investigation and discovery proceed, Chrysler has at this time identified the documents listed below, all of which are located

at Kilpatrick Townsend & Stockton LLP, 1100 Peachtree Street, Atlanta, Georgia 30309 or
Chrysler, 1000 Chrysler Drive, Auburn Hills, Michigan 48326:

1. Representative samples of Chrysler's advertising and marketing materials relating to the IMPORTED FROM DETROIT™ mark;
2. Representative samples of third-party media references to the IMPORTED FROM DETROIT™ mark;
3. Chrysler's advertising and marketing expenditures regarding the IMPORTED FROM DETROIT™ mark;
4. Representative samples of Chrysler's clothing displaying the IMPORTED FROM DETROIT™ mark;
5. Chrysler's trademark applications to register the IMPORTED FROM DETROIT™ mark and related prosecution documentation.
6. Moda's advertising and marketing materials;
7. Screen shots of Moda's Internet Website;
8. Representative samples of Moda's clothing displaying the IMPORTED FROM DETROIT™ mark;
9. Correspondence between the parties; and
10. All exhibits, annexes and attachments associated with any pleading, brief, declaration, or deposition, or otherwise filed by the parties in the action styled *Chrysler Group LLC v. Moda Group LLC, dba Pure Detroit, Kevin Borsay and Shawn Santo*, 2:11-cv-11074, pending in the United States District Court for the Eastern District of Michigan.

RULE 26(a)(1)(A)(iii)

Because Chrysler is not seeking any damages in this TTAB proceeding, the requirement to disclose "a computation of each category of damages claimed by the disclosing party" is inapplicable.

RULE 26(a)(1)(A)(iv)

Chrysler does not have any such insurance agreements.

Dated: October 20, 2011

/Judith A. Powell/
Judith A. Powell
Charles H. Hooker
Jessica A. Ash
**KILPATRICK TOWNSEND &
STOCKTON LLP**
1100 Peachtree Street
Suite 2800
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404-815-6500 (phone)
404-815-6555 (fax)

*Attorneys for Applicant
Chrysler Group LLC*

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91200995
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPLICANT CHRYSLER GROUP LLC'S INITIAL DISCLOSURES has been served on Opposer's counsel by hand delivery to:

Jeffrey P. Thennisch
John VanOphem
DOBRUSIN & THENNISCH PC
29 W. Lawrence Street, Suite 201
Pontiac, MI 48342
jvanophem@patentco.com
jeff@patentco.com

DATED: October 20, 2011

/Judith A. Powell/
Judith A. Powell

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

MODA GROUP, LLC,)	
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CHRYSLER GROUP LLC,)	
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Applicant.)	
_____)	

**APPLICANT CHRYSLER GROUP LLC’S FIRST SET OF INTERROGATORIES
TO OPPOSER**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 33 of the Federal Rules of Civil Procedure, Applicant Chrysler Group LLC (“Chrysler”) requests that Opposer Moda Group, LLC (“Moda”) answer the following Interrogatories (the “Interrogatories”), under oath and in writing, within thirty (30) days after service:

DEFINITIONS

1. “Moda” shall mean Opposer Moda Group, LLC, dba Pure Detroit, and its officers, directors, employees, agents, attorneys, subsidiaries, affiliated corporations, predecessors-in-interest, licensees, and any other person or entity acting on Moda’s behalf or subject to Moda’s control.

2. “Chrysler” shall mean Applicant Chrysler Group LLC and its officers, directors, employees, agents, attorneys, subsidiaries, affiliated corporations, predecessors-in-interest, licensees, and any other person or entity acting on Chrysler’s behalf or subject to Chrysler’s control.

3. “Person” shall mean any natural person, group of natural persons, corporation, company, unincorporated association, partnership, joint venture, or other business, legal or governmental entity or association.

4. “Third Party” includes both the singular and plural, and means any Person other than Chrysler or Moda.

5. “Board” shall mean the Trademark Trial and Appeal Board.

6. The “Notice” shall mean the Notice of Opposition styled *Moda Group LLC v. Chrysler Group LLC.*, Opp. No. 91200995, pending in the United States Patent and Trademark Office’s Trademark Trial and Appeal Board.

7. The “IMPORTED FROM DETROITTM mark” shall mean the trademark owned by Chrysler that is the subject of three applications filed with the United States Patent and Trademark Office by Chrysler (Serial Nos. 85/183,477, 85/237,193, and 85/219,920), and that appeared at the end of Chrysler’s two-minute “Born of Fire” advertisement airing on February 6, 2011 during Super Bowl XLV.

8. “Chrysler’s Application” shall mean the trademark application filed by Chrysler, Serial No. 85/219,920, in which Chrysler has applied to register the IMPORTED FROM DETROITTM mark with the United States Patent and Trademark Office.

9. “Moda’s Goods” shall include t-shirts, bags, and all other goods that Moda has offered for sale or intends to offer for sale bearing IMPORTED FROM DETROIT, including but not limited to goods “in the nature of clothing, wearing apparel, and other consumer items,” *see* Notice ¶ 2.

10. “Document” includes “thing” and is defined in the broadest possible construction under Federal Rule of Civil Procedure 34(a). “Document” includes, without limiting the

generality of the foregoing, the original and all copies, drafts, and translations of any document in any written, recorded, or graphic form, including memoranda and notes of oral conversations, as well as compilations, catalogs and summaries of information or data, whether typed, handwritten, printed, recorded (including voice mails), or otherwise produced or reproduced, and any other retrievable data (whether email, discs, tapes, cards, or coded electrostatically, electromagnetically, optically or otherwise). “Document” includes electronically stored information (ESI), including the metadata. “Document” also means any nonidentical copy thereof.

11. “Identify” with respect to a person means to provide the following information: the name, job title, current or last known address and telephone number, last known place of employment, and the address and telephone number of such place of employment.

12. “Identify” with respect to a document means to provide the following information: the title and date of the document, if any; its author, addressees, and recipients; and a description of its contents.

13. “Describe in detail” shall mean to give the date and a full and complete narrative account of the information requested, including but not limited to identifying all persons with knowledge of any of the information contained in the response and identifying any and all documents that describe, refer, or relate to any of the information contained in the response, without omission of any information, whether or not deemed to be admissible or inadmissible at trial, that is reasonably calculated to lead to the discovery of admissible evidence.

14. “Customer” means any Person to whom goods are sold or offered for sale, including but not limited to wholesalers, retailers, discount stores, sales agents, dealerships, distributors, or other sales outlets.

15. “Refer or relate” means concerning, regarding, referring to, relating to, discussing, noting, mentioning, describing, evidencing, or constituting.
16. “Date” means the exact day, month and year if ascertainable, or, if not, the best available approximation (including relationship to other events).
17. The conjunctive form “and” and the disjunctive form “or” shall be mutually interchangeable and shall not be construed to limit any request.
18. The terms “any” and “all” shall be mutually interchangeable and shall not be construed to limit any request.
19. The singular and the plural shall be mutually interchangeable, and usage of words either in the singular or plural shall not be construed to limit any request.

INSTRUCTIONS

1. Pursuant to Federal Rule of Civil Procedure 26(b)(5), if Moda withholds information otherwise discoverable under the Federal Rules of Civil Procedure by claiming that it is a privileged communication, attorney work product, or otherwise protected from disclosure, Moda must make the claim expressly and describe the nature of the communications or information not disclosed in a manner that, without revealing information itself privileged or protected, will enable Chrysler and the Board to assess the applicability of the privilege or protection.
2. Each Interrogatory, and sub-part, and the Definitions, are to be construed independently and, unless so stated, not by or with reference to any other Interrogatory, sub-part, or Definition, if such construction would limit the scope of any particular Interrogatory or the subject matter.

3. If any of these Interrogatories cannot be answered in full, Moda is to answer to the fullest extent possible, specifying the reason for Moda's inability to answer the remainder, and stating what information, knowledge, or belief Moda has concerning the unanswered portion. If exact dates, amounts, or other figures or facts are not known, but Moda has information sufficient to make an approximate or estimated answer, make such answer and indicate it is an approximation or estimate because more precise information is not known to Moda.

4. These Interrogatories are continuing. Pursuant to Federal Rule of Civil Procedure 26(e), Moda is under a duty to supplement, correct, or amend its responses to any of these Interrogatories if it learns that any response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Chrysler during the discovery process or in writing.

5. If any Interrogatory is unclear, please contact the undersigned counsel and, if possible, the Interrogatory will be clarified in a reply letter. Any such reply letter may be treated as a modification of the Interrogatory.

INTERROGATORIES

1. Identify the date on which Moda first became aware of Chrysler's use of the IMPORTED FROM DETROIT™ mark.

RESPONSE:

2. Describe in detail the circumstances under which Moda first became aware of Chrysler's use of the IMPORTED FROM DETROIT™ mark.

RESPONSE:

3. Identify the date(s) on which Moda decided to offer for sale each of Moda's Goods bearing IMPORTED FROM DETROIT.

RESPONSE:

4. Describe in detail the circumstances under which Moda decided to offer for sale each of Moda's Goods bearing IMPORTED FROM DETROIT.

RESPONSE:

5. Identify each Person (including but not limited to vendors, printers, and persons assisting with Opposer's website) that has assisted Moda in producing, obtaining, marketing, offering for sale, or selling each type of Moda's Goods bearing IMPORTED FROM DETROIT and the date(s) when Moda first contacted each such Person to provide such assistance.

RESPONSE:

6. Identify the date(s) on which Moda began offering for sale each type of Moda's Goods bearing IMPORTED FROM DETROIT.

RESPONSE:

7. Identify the date(s) on which Moda made its first sale of each of Moda's Goods bearing IMPORTED FROM DETROIT.

RESPONSE:

8. Describe all facts that Moda contends support the averment in the first un-numbered paragraph of the Notice that Moda “will be damaged by the application for, and any resulting registration of, the putative mark, IMPORTED FROM DETROIT . . . for the goods and services identified therein.”

RESPONSE:

9. Describe in detail each instance of Moda’s use in connection with the promotion, marketing, or sale of Moda’s Goods of IMPORTED FROM DETROIT in a purportedly descriptive sense.

RESPONSE:

10. Describe in detail each instance of Moda’s use in connection with the promotion, marketing, or sale of Moda’s Goods of IMPORTED FROM DETROIT in a trademark sense.

RESPONSE:

11. Describe in detail any plans or intentions by Moda to use IMPORTED FROM DETROIT in connection with any goods or services.

RESPONSE:

12. Describe in detail each instance (of which Moda is aware) of purportedly descriptive use of IMPORTED FROM DETROIT by any Third Party in connection with apparel or accessories, including but not limited to t-shirts and bags.

RESPONSE:

13. Identify each Third Party mark that Moda contends bears on Chrysler's rights in the IMPORTED FROM DETROIT™ mark.

RESPONSE:

14. Identify each mark or phrase incorporating "Detroit" that Moda has used on any goods marketed or sold by it.

RESPONSE:

15. Identify the geographic areas in which Moda has offered for sale, advertised, marketed, or sold products bearing IMPORTED FROM DETROIT.

RESPONSE:

16. Identify the geographic distribution by state of Moda's sales of products bearing IMPORTED FROM DETROIT, including the quantity of products bearing IMPORTED FROM DETROIT that Moda has sold or shipped to customers outside of the greater Metro-Detroit area and the city and state of each customer to whom such product has been shipped.

RESPONSE:

17. Identify the quantity of products bearing IMPORTED FROM DETROIT that Moda has sold or shipped to customers in the greater Metro-Detroit area.

RESPONSE:

18. Identify the quantity of products bearing IMPORTED FROM DETROIT that Moda has shipped to customers outside the greater Metro-Detroit area.

RESPONSE:

19. Identify the retail dollar value of products bearing IMPORTED FROM DETROIT that Moda has shipped to customers outside of the greater Metro-Detroit area.

RESPONSE:

20. Identify the retail dollar value of products bearing IMPORTED FROM DETROIT that Moda has sold or shipped to customers in the greater Metro-Detroit area.

RESPONSE:

21. Identify the quantity of products bearing IMPORTED FROM DETROIT that Moda has sold or shipped to customers in the State of Michigan.

RESPONSE:

22. Identify the retail dollar value of products bearing IMPORTED FROM DETROIT that Moda has sold or shipped to customers in the State of Michigan.

RESPONSE:

23. Identify the quantity of products bearing IMPORTED FROM DETROIT that Moda has sold through its website, www.puredetroit.com.

RESPONSE:

24. Identify the quantity of products bearing IMPORTED FROM DETROIT that Moda has sold at its retail stores.

RESPONSE:

25. Identify the retail dollar value of products bearing IMPORTED FROM DETROIT that Moda has sold through its website, www.puredetroit.com.

RESPONSE:

26. Identify the retail dollar value of products bearing IMPORTED FROM DETROIT that Moda has sold at its retail stores.

RESPONSE:

27. Describe in detail Moda's relationship to Pure Detroit, Inc., including any transfers between Moda and Pure Detroit, Inc. of rights in any trademarks incorporating the word "Detroit."

RESPONSE:

28. Identify the years during which Pure Detroit, Inc. was an active corporation duly registered with the Michigan Secretary of State's Office.

RESPONSE:

29. Describe in detail the circumstances surrounding the dissolution of Pure Detroit, Inc. on July 15, 2007, including the distribution of any of its rights in any trademarks incorporating the word “Detroit.”

RESPONSE:

30. Describe in detail all action taken by Moda, excluding the substance of any attorney-client communications or any information protected by the work-product doctrine, in “the process of investigating whether its use of at least the designation, IMPORTED FROM DETROIT, for its various goods has resulted in any form of protectable trademark or other legal rights.” *See* Notice ¶ 2.

RESPONSE:

31. Describe all facts that Moda contends support the averment in paragraph 25 of the Notice that “the putative mark set forth in the ‘920 application is contrary to the provisions of at least 15 U.S.C. 1052(a) of the Lanham Act and is, or has become, deceptive of the Applicant’s cited goods in the ‘920 application.”

RESPONSE:

32. Describe all facts that Moda contends support the averment in paragraph 30 of the Notice that “the putative mark set forth in the ‘920 application is contrary to the provisions of at least 15 U.S.C. 1052(e)(2) of the Lanham Act and is, or has become, primarily geographically descriptive of the Applicant’s cited goods in the ‘920 application.”

RESPONSE:

33. Describe all facts that Moda contends support the averment in paragraph 36 of each of the Notices that “the putative mark set forth in the ‘920 application is contrary to the provisions of at least 15 U.S.C. 1052(e)(3) of the Lanham Act and is, or has become, primarily geographically deceptively misdescriptive of the Applicant’s cited goods in the ‘920 application.”

RESPONSE:

34. Identify each person Moda intends to use as a witness in this matter.

RESPONSE:

35. With regard to each person identified in response to the preceding Interrogatory, identify the subject matter on which he or she is expected to testify.

RESPONSE:

Dated: October 20, 2011

/Judith A. Powell/

Judith A. Powell

jpowell@ktslaw.com

Charles H. Hooker III

chooker@ktslaw.com

Jessica A. Ash

jash@ktslaw.com

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Atlanta, Georgia 30309-4530

Phone: (404) 815-6500

Fax: (404) 815-6555

Attorneys for Applicant Chrysler Group LLC

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91200995
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT CHRYSLER GROUP LLC'S FIRST SET OF INTERROGATORIES TO OPPOSER has been served on Opposer's counsel by hand delivery to:

Jeffrey P. Thennisch
John VanOphem
DOBRUSIN & THENNISCH PC
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Pontiac, MI 48342
jvanophem@patentco.com
jeff@patentco.com

DATED: October 20, 2011

/Judith A. Powell/
Judith A. Powell

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91200995
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

**APPLICANT CHRYSLER GROUP LLC’S FIRST REQUEST FOR THE PRODUCTION
OF DOCUMENTS AND THINGS TO OPPOSER**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 34 of the Federal Rules of Civil Procedure, Applicant Chrysler Group LLC (“Chrysler”) requests that Moda Group, LLC (“Moda”) respond to these document requests in writing within thirty (30) days after service, and produce the documents identified below for inspection and copying at the offices of Kilpatrick Townsend & Stockton LLP, 1100 Peachtree St. N.E., Atlanta, Georgia 30309, or at such other place as the parties may agree.

DEFINITIONS

Chrysler incorporates by reference, as if fully set forth herein, the Definitions in Applicant Chrysler Group LLC’s First Set of Interrogatories to Opposer, served contemporaneously.

INSTRUCTIONS

1. Moda is requested to produce all documents in its possession, custody, or control or the possession, custody or control of any of its representatives, including persons consulted concerning any factual matters or matters of opinion relating to any of the facts or issues

involved in this case; such persons shall include attorneys with whom Moda consulted unless Moda claims such documents are privileged or otherwise protected.

2. Each Document Request, and any portions, are to be responded to separately, but responses to one Document Request, or portion, may be incorporated by reference in responses to other Document Requests, or portions.

3. All documents produced pursuant to these Requests for Production of Documents must be produced either in separate groups of documents responsive to each separate request or in the form and order in which they were kept by Moda in the ordinary course of business before being produced.

4. Each request for a document – whether requesting memoranda, reports, letters, minutes or other documents of any description – requires the production of the document in its entirety, including all pages and attachments or exhibits, without redaction or expurgation.

5. These Document Requests are continuing in nature and require amendment or supplementation if Moda or Moda's attorneys later become aware of facts or documents that indicate that the response previously given was incorrect or incomplete. If Moda does not have all of the information necessary to make a complete response to any Document Request, provide all documents available, state that the information is incomplete, identify the information needed to make a complete production of documents, and provide a supplemental production when the information necessary to do so is obtained.

6. The production of responsive Documents should include electronically stored information ("ESI"), including any metadata relating to such ESI.

7. If Moda withholds any documents otherwise discoverable under the Federal Rules of Civil Procedure by claiming that it is a privileged communication, attorney work product, or

otherwise protected from disclosure, Moda must make the claim expressly and describe specifically each withheld document in a privilege log in a manner that, without revealing information itself privileged or protected, will enable Chrysler and the Board to assess the applicability of the privilege or protection.

DOCUMENTS REQUESTED

1. Documents that refer or relate to Moda's first contact with any Person (including but not limited to vendors, printers, and persons assisting with Opposer's website) respecting that Person's assisting Moda in producing, obtaining, marketing, offering for sale, or selling any Goods bearing IMPORTED FROM DETROIT.

RESPONSE:

2. Documents sufficient to show use of each mark or phrase incorporating "Detroit" that Moda has used on any goods marketed or sold by it.

RESPONSE:

3. Documents that refer or relate to the circumstances surrounding the dissolution of Pure Detroit, Inc. of July 15, 2007, including the distribution of any of its rights in any trademarks incorporating the word "Detroit."

RESPONSE:

4. Documents that support, refer or relate to the averment in the first un-numbered paragraph of the Notice that Moda "will be damaged by the application for, and any resulting

registration of, the putative mark, IMPORTED FROM DETROIT . . . for the goods and services identified therein.”

RESPONSE:

5. Documents that support, refer or relate to the averment in paragraph 2 of the Notice that “Opposer is in the process of investigating whether its use of at least the designation, IMPORTED FROM DETROIT, for its various goods has resulted in any form of protectable trademark or other legal rights,” excluding all attorney-client communications and documents protected from discovery by the work-product doctrine.

RESPONSE:

6. Documents that support, refer or relate to the averment in paragraph 25 of the Notice that “the putative mark set forth in the ‘920 application is contrary to the provisions of at least 15 U.S.C. 1052(a) of the Lanham Act and is, or has become, deceptive of the Applicant’s cited goods in the ‘920 application.”

RESPONSE:

7. Documents that support, refer or relate to the averment in paragraph 30 of the Notice that “the putative mark set forth in the ‘920 application is contrary to the provisions of at least 15 U.S.C. 1052(e)(2) of the Lanham Act and is, or has become, primarily geographically descriptive of the Applicant’s cited goods in the ‘920 application.”

RESPONSE:

8. Documents that support, refer or relate to the averment in paragraph 36 of the Notice that “the putative mark set forth in the ‘920 application is contrary to the provisions of at least 15 U.S.C. 1052(e)(3) of the Lanham Act and is, or has become, primarily geographically deceptively misdescriptive of the Applicant’s cited goods in the ‘920 application.”

RESPONSE:

9. Documents relied upon, used, or referred to in responding to Applicant Chrysler Group LLC’s First Set of Interrogatories to Opposer.

RESPONSE:

10. Documents that refer or relate to communications between Moda and any Third Party, other than communications between Moda and its attorneys, regarding this proceeding.

RESPONSE:

11. Documents that refer or relate to communications between Moda and any Third Party, other than communications between Moda and its attorneys, regarding the use of IMPORTED FROM DETROIT.

RESPONSE:

12. Documents sufficient to identify the relationship between Moda and Pure Detroit, Inc.

RESPONSE:

13. Documents sufficient to identify the years during which Pure Detroit, Inc. was considered an active corporation by the Michigan Secretary of State's Office.

RESPONSE:

14. All documents regarding any transfer of rights in any trademark or trademark registration incorporating "DETROIT," including PURE DETROIT.

RESPONSE:

15. The resume or Curriculum Vitae of each Person that Moda may call as an expert witness in connection with this proceeding.

RESPONSE:

16. All documents reviewed or referred to by any person Moda may call to testify as an expert witness in the course of formulating his opinions, for this proceeding, whether or not the documents were relied on in the expert's report.

RESPONSE:

Dated: October 20, 2011

/Judith A. Powell/

Judith A. Powell

jpowell@ktslaw.com

Charles H. Hooker III

chooker@ktslaw.com

Jessica A. Ash

jash@ktslaw.com

KILPATRICK TOWNSEND & STOCKTON LLP

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Phone: (404) 815-6500

Fax: (404) 815-6555

Attorneys for Applicant Chrysler Group LLC

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91200995
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT CHRYSLER GROUP LLC'S FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER has been served on Opposer's counsel by hand delivery to:

Jeffrey P. Thennisch
John VanOphem
DOBRUSIN & THENNISCH PC
29 W. Lawrence Street, Suite 201
Pontiac, MI 48342
jvanophem@patentco.com
jeff@patentco.com

DATED: October 20, 2011

/Judith A. Powell/
Judith A. Powell

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91201015
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

APPLICANT CHRYSLER GROUP LLC’S INITIAL DISCLOSURES

Pursuant to Rules 2.116 and 2.120 of the Trademark Rules of Practice and Federal Rule of Civil Procedure 26(a)(1), Applicant Chrysler Group LLC (“Chrysler”) makes the following pre-discovery initial disclosures (“Initial Disclosures”) to Opposer Moda Group, LLC (“Moda”).

INTRODUCTION

These Initial Disclosures are preliminary in nature. To the best of Chrysler’s knowledge, information, and belief, these Initial Disclosures are correct as of the time they are made.

Chrysler reserves the right to amend or supplement these Initial Disclosures as relevant facts become known in the future, as contemplated by Federal Rule of Civil Procedure 26(e).

By making these Initial Disclosures, Chrysler does not represent that it is identifying every witness, document, or tangible thing possibly relevant to the instant action, nor does Chrysler waive its right to object to the production of any document or tangible thing identified herein on the basis of any privilege, the work-product doctrine, relevancy, undue burden, confidentiality, or any other valid ground for objection. These Initial Disclosures are also made without in any way waiving: (1) the right to object on grounds of competency, relevancy and materiality, hearsay, or any other grounds, to the use of such information for any purpose, in

whole or in part, at any subsequent time in this action or in any other action; and (2) the right to object on any and all grounds, at any time, to any other discovery request or proceeding involving or relating to the subject matter of these Initial Disclosures. All of the Initial Disclosures set forth below are subject to the above qualifications.

RULE 26(a)(1)(A)(i)

At this time, without having conducted discovery, Chrysler is not aware of all persons who may have discoverable information. Although Chrysler may supplement its disclosures as investigation and discovery proceed, Chrysler has identified the individuals listed below as people who may have knowledge or information of facts or circumstances regarding the claims, events or transactions forming the subject matter of this action:

<u>Name</u>	<u>Subject</u>
Amanda Conti-Duhaime Senior Staff Counsel Chrysler Group LLC	Chrysler's IMPORTED FROM DETROIT™ trademark applications and approval of the applications by the United States Patent and Trademark Office.
Donna Berry Chief Trademark Counsel Chrysler Group LLC	Chrysler's IMPORTED FROM DETROIT™ trademark applications and approval of the applications by the United States Patent and Trademark Office.
Melissa Garlick Head of Chrysler Brand Advertising for Chrysler Group LLC	Chrysler's IMPORTED FROM DETROIT™ mark, adoption and use of the mark, advertising campaign respecting IMPORTED FROM DETROIT™, including its Super Bowl debut, and consumer response.
Joe Staples Creative Staff Member Wieden + Kennedy	Chrysler's communications and marketing respecting IMPORTED FROM DETROIT™.
Alan White Director of Consumer and Media Insights for Universal McCann	Development of Chrysler's advertising plan and media placements for the Chrysler® brand for 2011, including the Chrysler® 200 IMPORTED FROM DETROIT™ advertising and the public

	response.
Kevin Venet Brand Protection Manager for Chrysler Group LLC	Chrysler's trademark enforcement and Chrysler's awareness of Moda's conduct.
Olivier Francois Head of Fiat Brand, Chief Marketing Officer and Brand Marketing Communications	Chrysler's adoption of IMPORTED FROM DETROIT™
Saad Chehab President and Chief Executive Officer, Chrysler Brand Chrysler Group LLC	Advertising and use of IMPORTED FROM DETROIT™
Susan Thompson Media and Customer Relations Management Chrysler Group LLC	Media plan for IMPORTED FROM DETROIT™
Arleen Janks Merchandising Chrysler Group LLC	Merchandising under IMPORTED FROM DETROIT™
Kevin Borsay	Moda's products, marketing, advertising, sales, and communications with third parties.
Shawn Santo	Moda's products, marketing, advertising, sales, and communications with third parties.

RULE 26(a)(1)(A)(ii)

At this time, without having conducted discovery, Chrysler is not aware of all documents, data compilations, and tangible things within its possession, custody, or control that Chrysler may use to support its claims and defenses. In fact, Chrysler anticipates that many of the documents it may use to support its claims and defenses are within the possession, custody, or control of Moda. While Chrysler may supplement its disclosure as investigation and discovery proceed, Chrysler has at this time identified the documents listed below, all of which are located

at Kilpatrick Townsend & Stockton LLP, 1100 Peachtree Street, Atlanta, Georgia 30309 or
Chrysler, 1000 Chrysler Drive, Auburn Hills, Michigan 48326:

1. Representative samples of Chrysler's advertising and marketing materials relating to the IMPORTED FROM DETROIT™ mark;
2. Representative samples of third-party media references to the IMPORTED FROM DETROIT™ mark;
3. Chrysler's advertising and marketing expenditures regarding the IMPORTED FROM DETROIT™ mark;
4. Representative samples of Chrysler's clothing displaying the IMPORTED FROM DETROIT™ mark;
5. Chrysler's trademark applications to register the IMPORTED FROM DETROIT™ mark and related prosecution documentation.
6. Moda's advertising and marketing materials;
7. Screen shots of Moda's Internet Website;
8. Representative samples of Moda's clothing displaying the IMPORTED FROM DETROIT™ mark;
9. Correspondence between the parties; and
10. All exhibits, annexes and attachments associated with any pleading, brief, declaration, or deposition, or otherwise filed by the parties in the action styled *Chrysler Group LLC v. Moda Group LLC, dba Pure Detroit, Kevin Borsay and Shawn Santo*, 2:11-cv-11074, pending in the United States District Court for the Eastern District of Michigan.

RULE 26(a)(1)(A)(iii)

Because Chrysler is not seeking any damages in this TTAB proceeding, the requirement to disclose "a computation of each category of damages claimed by the disclosing party" is inapplicable.

RULE 26(a)(1)(A)(iv)

Chrysler does not have any such insurance agreements.

Dated: October 20, 2011

/Judith A. Powell/
Judith A. Powell
Charles H. Hooker
Jessica A. Ash
**KILPATRICK TOWNSEND &
STOCKTON LLP**
1100 Peachtree Street
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404-815-6500 (phone)
404-815-6555 (fax)

*Attorneys for Applicant
Chrysler Group LLC*

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91201015
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPLICANT CHRYSLER GROUP LLC'S INITIAL DISCLOSURES has been served on Opposer's counsel by hand delivery to:

Jeffrey P. Thennisch
John VanOphem
DOBRUSIN & THENNISCH PC
29 W. Lawrence Street, Suite 201
Pontiac, MI 48342
jvanophem@patentco.com
jeff@patentco.com

DATED: October 20, 2011

/Judith A. Powell/
Judith A. Powell

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

MODA GROUP, LLC,)	
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Opposer,)	
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v.)	Opposition No. 91201015
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

**APPLICANT CHRYSLER GROUP LLC’S FIRST SET OF INTERROGATORIES
TO OPPOSER**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 33 of the Federal Rules of Civil Procedure, Applicant Chrysler Group LLC (“Chrysler”) requests that Opposer Moda Group, LLC (“Moda”) answer the following Interrogatories (the “Interrogatories”), under oath and in writing, within thirty (30) days after service:

DEFINITIONS

1. “Moda” shall mean Opposer Moda Group, LLC, dba Pure Detroit, and its officers, directors, employees, agents, attorneys, subsidiaries, affiliated corporations, predecessors-in-interest, licensees, and any other person or entity acting on Moda’s behalf or subject to Moda’s control.

2. “Chrysler” shall mean Applicant Chrysler Group LLC and its officers, directors, employees, agents, attorneys, subsidiaries, affiliated corporations, predecessors-in-interest, licensees, and any other person or entity acting on Chrysler’s behalf or subject to Chrysler’s control.

3. “Person” shall mean any natural person, group of natural persons, corporation, company, unincorporated association, partnership, joint venture, or other business, legal or governmental entity or association.

4. “Third Party” includes both the singular and plural, and means any Person other than Chrysler or Moda.

5. “Board” shall mean the Trademark Trial and Appeal Board.

6. The “Notice” shall mean the Notice of Opposition styled *Moda Group LLC v. Chrysler Group LLC.*, Opp. No. 91201015, pending in the United States Patent and Trademark Office’s Trademark Trial and Appeal Board.

7. The “IMPORTED FROM DETROITTM mark” shall mean the trademark owned by Chrysler that is the subject of three applications filed with the United States Patent and Trademark Office by Chrysler (Serial Nos. 85/183,477, 85/237,193, and 85/219,920), and that appeared at the end of Chrysler’s two-minute “Born of Fire” advertisement airing on February 6, 2011 during Super Bowl XLV.

8. “Chrysler’s Application” shall mean the trademark application filed by Chrysler, Serial No. 85/237,193, in which Chrysler has applied to register the IMPORTED FROM DETROITTM mark with the United States Patent and Trademark Office.

9. “Moda’s Goods” shall include t-shirts, bags, and all other goods that Moda has offered for sale or intends to offer for sale bearing IMPORTED FROM DETROIT, including but not limited to goods “in the nature of clothing, wearing apparel, and other consumer items,” *see* Notice ¶ 2.

10. “Document” includes “thing” and is defined in the broadest possible construction under Federal Rule of Civil Procedure 34(a). “Document” includes, without limiting the

generality of the foregoing, the original and all copies, drafts, and translations of any document in any written, recorded, or graphic form, including memoranda and notes of oral conversations, as well as compilations, catalogs and summaries of information or data, whether typed, handwritten, printed, recorded (including voice mails), or otherwise produced or reproduced, and any other retrievable data (whether email, discs, tapes, cards, or coded electrostatically, electromagnetically, optically or otherwise). “Document” includes electronically stored information (ESI), including the metadata. “Document” also means any nonidentical copy thereof.

11. “Identify” with respect to a person means to provide the following information: the name, job title, current or last known address and telephone number, last known place of employment, and the address and telephone number of such place of employment.

12. “Identify” with respect to a document means to provide the following information: the title and date of the document, if any; its author, addressees, and recipients; and a description of its contents.

13. “Describe in detail” shall mean to give the date and a full and complete narrative account of the information requested, including but not limited to identifying all persons with knowledge of any of the information contained in the response and identifying any and all documents that describe, refer, or relate to any of the information contained in the response, without omission of any information, whether or not deemed to be admissible or inadmissible at trial, that is reasonably calculated to lead to the discovery of admissible evidence.

14. “Customer” means any Person to whom goods are sold or offered for sale, including but not limited to wholesalers, retailers, discount stores, sales agents, dealerships, distributors, or other sales outlets.

15. “Refer or relate” means concerning, regarding, referring to, relating to, discussing, noting, mentioning, describing, evidencing, or constituting.
16. “Date” means the exact day, month and year if ascertainable, or, if not, the best available approximation (including relationship to other events).
17. The conjunctive form “and” and the disjunctive form “or” shall be mutually interchangeable and shall not be construed to limit any request.
18. The terms “any” and “all” shall be mutually interchangeable and shall not be construed to limit any request.
19. The singular and the plural shall be mutually interchangeable, and usage of words either in the singular or plural shall not be construed to limit any request.

INSTRUCTIONS

1. Pursuant to Federal Rule of Civil Procedure 26(b)(5), if Moda withholds information otherwise discoverable under the Federal Rules of Civil Procedure by claiming that it is a privileged communication, attorney work product, or otherwise protected from disclosure, Moda must make the claim expressly and describe the nature of the communications or information not disclosed in a manner that, without revealing information itself privileged or protected, will enable Chrysler and the Board to assess the applicability of the privilege or protection.
2. Each Interrogatory, and sub-part, and the Definitions, are to be construed independently and, unless so stated, not by or with reference to any other Interrogatory, sub-part, or Definition, if such construction would limit the scope of any particular Interrogatory or the subject matter.

3. If any of these Interrogatories cannot be answered in full, Moda is to answer to the fullest extent possible, specifying the reason for Moda's inability to answer the remainder, and stating what information, knowledge, or belief Moda has concerning the unanswered portion. If exact dates, amounts, or other figures or facts are not known, but Moda has information sufficient to make an approximate or estimated answer, make such answer and indicate it is an approximation or estimate because more precise information is not known to Moda.

4. These Interrogatories are continuing. Pursuant to Federal Rule of Civil Procedure 26(e), Moda is under a duty to supplement, correct, or amend its responses to any of these Interrogatories if it learns that any response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Chrysler during the discovery process or in writing.

5. If any Interrogatory is unclear, please contact the undersigned counsel and, if possible, the Interrogatory will be clarified in a reply letter. Any such reply letter may be treated as a modification of the Interrogatory.

INTERROGATORIES

1. Identify the date on which Moda first became aware of Chrysler's use of the IMPORTED FROM DETROIT™ mark.

RESPONSE:

2. Describe in detail the circumstances under which Moda first became aware of Chrysler's use of the IMPORTED FROM DETROIT™ mark.

RESPONSE:

3. Identify the date(s) on which Moda decided to offer for sale each of Moda's Goods bearing IMPORTED FROM DETROIT.

RESPONSE:

4. Describe in detail the circumstances under which Moda decided to offer for sale each of Moda's Goods bearing IMPORTED FROM DETROIT.

RESPONSE:

5. Identify each Person (including but not limited to vendors, printers, and persons assisting with Opposer's website) that has assisted Moda in producing, obtaining, marketing, offering for sale, or selling each type of Moda's Goods bearing IMPORTED FROM DETROIT and the date(s) when Moda first contacted each such Person to provide such assistance.

RESPONSE:

6. Identify the date(s) on which Moda began offering for sale each type of Moda's Goods bearing IMPORTED FROM DETROIT.

RESPONSE:

7. Identify the date(s) on which Moda made its first sale of each of Moda's Goods bearing IMPORTED FROM DETROIT.

RESPONSE:

8. Describe all facts that Moda contends support the averment in the first un-numbered paragraph of the Notice that Moda “will be damaged by the application for, and any resulting registration of, the putative mark, IMPORTED FROM DETROIT . . . for the goods and services identified therein.”

RESPONSE:

9. Describe in detail each instance of Moda’s use in connection with the promotion, marketing, or sale of Moda’s Goods of IMPORTED FROM DETROIT in a purportedly descriptive sense.

RESPONSE:

10. Describe in detail each instance of Moda’s use in connection with the promotion, marketing, or sale of Moda’s Goods of IMPORTED FROM DETROIT in a trademark sense.

RESPONSE:

11. Describe in detail any plans or intentions by Moda to use IMPORTED FROM DETROIT in connection with any goods or services.

RESPONSE:

12. Describe in detail each instance (of which Moda is aware) of purportedly descriptive use of IMPORTED FROM DETROIT by any Third Party in connection with apparel or accessories, including but not limited to t-shirts and bags.

RESPONSE:

13. Identify each Third Party mark that Moda contends bears on Chrysler's rights in the IMPORTED FROM DETROIT™ mark.

RESPONSE:

14. Identify each mark or phrase incorporating "Detroit" that Moda has used on any goods marketed or sold by it.

RESPONSE:

15. Identify the geographic areas in which Moda has offered for sale, advertised, marketed, or sold products bearing IMPORTED FROM DETROIT.

RESPONSE:

16. Identify the geographic distribution by state of Moda's sales of products bearing IMPORTED FROM DETROIT, including the quantity of products bearing IMPORTED FROM DETROIT that Moda has sold or shipped to customers outside of the greater Metro-Detroit area and the city and state of each customer to whom such product has been shipped.

RESPONSE:

17. Identify the quantity of products bearing IMPORTED FROM DETROIT that Moda has sold or shipped to customers in the greater Metro-Detroit area.

RESPONSE:

18. Identify the quantity of products bearing IMPORTED FROM DETROIT that Moda has shipped to customers outside the greater Metro-Detroit area.

RESPONSE:

19. Identify the retail dollar value of products bearing IMPORTED FROM DETROIT that Moda has shipped to customers outside of the greater Metro-Detroit area.

RESPONSE:

20. Identify the retail dollar value of products bearing IMPORTED FROM DETROIT that Moda has sold or shipped to customers in the greater Metro-Detroit area.

RESPONSE:

21. Identify the quantity of products bearing IMPORTED FROM DETROIT that Moda has sold or shipped to customers in the State of Michigan.

RESPONSE:

22. Identify the retail dollar value of products bearing IMPORTED FROM DETROIT that Moda has sold or shipped to customers in the State of Michigan.

RESPONSE:

23. Identify the quantity of products bearing IMPORTED FROM DETROIT that Moda has sold through its website, www.puredetroit.com.

RESPONSE:

24. Identify the quantity of products bearing IMPORTED FROM DETROIT that Moda has sold at its retail stores.

RESPONSE:

25. Identify the retail dollar value of products bearing IMPORTED FROM DETROIT that Moda has sold through its website, www.puredetroit.com.

RESPONSE:

26. Identify the retail dollar value of products bearing IMPORTED FROM DETROIT that Moda has sold at its retail stores.

RESPONSE:

27. Describe in detail Moda's relationship to Pure Detroit, Inc., including any transfers between Moda and Pure Detroit, Inc. of rights in any trademarks incorporating the word "Detroit."

RESPONSE:

28. Identify the years during which Pure Detroit, Inc. was an active corporation duly registered with the Michigan Secretary of State's Office.

RESPONSE:

29. Describe in detail the circumstances surrounding the dissolution of Pure Detroit, Inc. on July 15, 2007, including the distribution of any of its rights in any trademarks incorporating the word “Detroit.”

RESPONSE:

30. Describe in detail all action taken by Moda, excluding the substance of any attorney-client communications or any information protected by the work-product doctrine, in “the process of investigating whether its use of at least the designation, IMPORTED FROM DETROIT, for its various goods has resulted in any form of protectable trademark or other legal rights.” *See* Notice ¶ 2.

RESPONSE:

31. Describe all facts that Moda contends support the averment in paragraph 25 of the Notice that “the putative mark set forth in the ‘193 application is contrary to the provisions of at least 15 U.S.C. 1052(a) of the Lanham Act and is, or has become, deceptive of the Applicant’s cited goods and services in the ‘193 application.”

RESPONSE:

32. Describe all facts that Moda contends support the averment in paragraph 30 of the Notice that “the putative mark set forth in the ‘193 application is contrary to the provisions of at least 15 U.S.C. 1052(e)(2) of the Lanham Act and is, or has become, primarily geographically descriptive of the Applicant’s cited goods and services in the ‘193 application.”

RESPONSE:

33. Describe all facts that Moda contends support the averment in paragraph 36 of each of the Notices that “the putative mark set forth in the ‘193 application is contrary to the provisions of at least 15 U.S.C. 1052(e)(3) of the Lanham Act and is, or has become, primarily geographically deceptively misdescriptive of the Applicant’s cited goods and services in the ‘193 application.”

RESPONSE:

34. Identify each person Moda intends to use as a witness in this matter.

RESPONSE:

35. With regard to each person identified in response to the preceding Interrogatory, identify the subject matter on which he or she is expected to testify.

RESPONSE:

Dated: October 20, 2011

/Judith A. Powell/

Judith A. Powell

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Charles H. Hooker III

chooker@ktslaw.com

Jessica A. Ash

jash@ktslaw.com

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1100 Peachtree Street, Suite 2800

Atlanta, Georgia 30309-4530

Phone: (404) 815-6500

Fax: (404) 815-6555

Attorneys for Applicant Chrysler Group LLC

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91201015
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT CHRYSLER GROUP LLC'S FIRST SET OF INTERROGATORIES TO OPPOSER has been served on Opposer's counsel by hand delivery to:

Jeffrey P. Thennisch
John VanOphem
DOBRUSIN & THENNISCH PC
29 W. Lawrence Street, Suite 201
Pontiac, MI 48342
jvanophem@patentco.com
jeff@patentco.com

DATED: October 20, 2011

/Judith A. Powell/
Judith A. Powell

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91201015
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

**APPLICANT CHRYSLER GROUP LLC’S FIRST REQUEST FOR THE PRODUCTION
OF DOCUMENTS AND THINGS TO OPPOSER**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 34 of the Federal Rules of Civil Procedure, Applicant Chrysler Group LLC (“Chrysler”) requests that Moda Group, LLC (“Moda”) respond to these document requests in writing within thirty (30) days after service, and produce the documents identified below for inspection and copying at the offices of Kilpatrick Townsend & Stockton LLP, 1100 Peachtree St. N.E., Atlanta, Georgia 30309, or at such other place as the parties may agree.

DEFINITIONS

Chrysler incorporates by reference, as if fully set forth herein, the Definitions in Applicant Chrysler Group LLC’s First Set of Interrogatories to Opposer, served contemporaneously.

INSTRUCTIONS

1. Moda is requested to produce all documents in its possession, custody, or control or the possession, custody or control of any of its representatives, including persons consulted concerning any factual matters or matters of opinion relating to any of the facts or issues

involved in this case; such persons shall include attorneys with whom Moda consulted unless Moda claims such documents are privileged or otherwise protected.

2. Each Document Request, and any portions, are to be responded to separately, but responses to one Document Request, or portion, may be incorporated by reference in responses to other Document Requests, or portions.

3. All documents produced pursuant to these Requests for Production of Documents must be produced either in separate groups of documents responsive to each separate request or in the form and order in which they were kept by Moda in the ordinary course of business before being produced.

4. Each request for a document – whether requesting memoranda, reports, letters, minutes or other documents of any description – requires the production of the document in its entirety, including all pages and attachments or exhibits, without redaction or expurgation.

5. These Document Requests are continuing in nature and require amendment or supplementation if Moda or Moda's attorneys later become aware of facts or documents that indicate that the response previously given was incorrect or incomplete. If Moda does not have all of the information necessary to make a complete response to any Document Request, provide all documents available, state that the information is incomplete, identify the information needed to make a complete production of documents, and provide a supplemental production when the information necessary to do so is obtained.

6. The production of responsive Documents should include electronically stored information ("ESI"), including any metadata relating to such ESI.

7. If Moda withholds any documents otherwise discoverable under the Federal Rules of Civil Procedure by claiming that it is a privileged communication, attorney work product, or

otherwise protected from disclosure, Moda must make the claim expressly and describe specifically each withheld document in a privilege log in a manner that, without revealing information itself privileged or protected, will enable Chrysler and the Board to assess the applicability of the privilege or protection.

DOCUMENTS REQUESTED

1. Documents that refer or relate to Moda's first contact with any Person (including but not limited to vendors, printers, and persons assisting with Opposer's website) respecting that Person's assisting Moda in producing, obtaining, marketing, offering for sale, or selling any Goods bearing IMPORTED FROM DETROIT.

RESPONSE:

2. Documents sufficient to show use of each mark or phrase incorporating "Detroit" that Moda has used on any goods marketed or sold by it.

RESPONSE:

3. Documents that refer or relate to the circumstances surrounding the dissolution of Pure Detroit, Inc. of July 15, 2007, including the distribution of any of its rights in any trademarks incorporating the word "Detroit."

RESPONSE:

4. Documents that support, refer or relate to the averment in the first un-numbered paragraph of the Notice that Moda "will be damaged by the application for, and any resulting

registration of, the putative mark, IMPORTED FROM DETROIT . . . for the goods and services identified therein.”

RESPONSE:

5. Documents that support, refer or relate to the averment in paragraph 2 of the Notice that “Opposer is in the process of investigating whether its use of at least the designation, IMPORTED FROM DETROIT, for its various goods has resulted in any form of protectable trademark or other legal rights,” excluding all attorney-client communications and documents protected from discovery by the work-product doctrine.

RESPONSE:

6. Documents that support, refer or relate to the averment in paragraph 25 of the Notice that “the putative mark set forth in the ‘193 application is contrary to the provisions of at least 15 U.S.C. 1052(a) of the Lanham Act and is, or has become, deceptive of the Applicant’s cited goods and services in the ‘193 application.”

RESPONSE:

7. Documents that support, refer or relate to the averment in paragraph 30 of the Notice that “the putative mark set forth in the ‘193 application is contrary to the provisions of at least 15 U.S.C. 1052(e)(2) of the Lanham Act and is, or has become, primarily geographically descriptive of the Applicant’s cited goods and services in the ‘193 application.”

RESPONSE:

8. Documents that support, refer or relate to the averment in paragraph 36 of the Notice that “the putative mark set forth in the ‘193 application is contrary to the provisions of at least 15 U.S.C. 1052(e)(3) of the Lanham Act and is, or has become, primarily geographically deceptively misdescriptive of the Applicant’s cited goods and services in the ‘193 application.”

RESPONSE:

9. Documents relied upon, used, or referred to in responding to Applicant Chrysler Group LLC’s First Set of Interrogatories to Opposer.

RESPONSE:

10. Documents that refer or relate to communications between Moda and any Third Party, other than communications between Moda and its attorneys, regarding this proceeding.

RESPONSE:

11. Documents that refer or relate to communications between Moda and any Third Party, other than communications between Moda and its attorneys, regarding the use of IMPORTED FROM DETROIT.

RESPONSE:

12. Documents sufficient to identify the relationship between Moda and Pure Detroit, Inc.

RESPONSE:

13. Documents sufficient to identify the years during which Pure Detroit, Inc. was considered an active corporation by the Michigan Secretary of State's Office.

RESPONSE:

14. All documents regarding any transfer of rights in any trademark or trademark registration incorporating "DETROIT," including PURE DETROIT.

RESPONSE:

15. The resume or Curriculum Vitae of each Person that Moda may call as an expert witness in connection with this proceeding.

RESPONSE:

16. All documents reviewed or referred to by any person Moda may call to testify as an expert witness in the course of formulating his opinions, for this proceeding, whether or not the documents were relied on in the expert's report.

RESPONSE:

Dated: October 20, 2011

/Judith A. Powell/

Judith A. Powell

jpowell@ktslaw.com

Charles H. Hooker III

chooker@ktslaw.com

Jessica A. Ash

jash@ktslaw.com

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Attorneys for Applicant Chrysler Group LLC

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition Nos. 91201015
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT CHRYSLER GROUP LLC'S FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER has been served on Opposer's counsel by hand delivery to:

Jeffrey P. Thennisch
John VanOphem
DOBRUSIN & THENNISCH PC
29 W. Lawrence Street, Suite 201
Pontiac, MI 48342
jvanophem@patentco.com
jeff@patentco.com

DATED: October 20, 2011

/Judith A. Powell/
Judith A. Powell

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91201052
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

APPLICANT CHRYSLER GROUP LLC’S INITIAL DISCLOSURES

Pursuant to Rules 2.116 and 2.120 of the Trademark Rules of Practice and Federal Rule of Civil Procedure 26(a)(1), Applicant Chrysler Group LLC (“Chrysler”) makes the following pre-discovery initial disclosures (“Initial Disclosures”) to Opposer Moda Group, LLC (“Moda”).

INTRODUCTION

These Initial Disclosures are preliminary in nature. To the best of Chrysler’s knowledge, information, and belief, these Initial Disclosures are correct as of the time they are made.

Chrysler reserves the right to amend or supplement these Initial Disclosures as relevant facts become known in the future, as contemplated by Federal Rule of Civil Procedure 26(e).

By making these Initial Disclosures, Chrysler does not represent that it is identifying every witness, document, or tangible thing possibly relevant to the instant action, nor does Chrysler waive its right to object to the production of any document or tangible thing identified herein on the basis of any privilege, the work-product doctrine, relevancy, undue burden, confidentiality, or any other valid ground for objection. These Initial Disclosures are also made without in any way waiving: (1) the right to object on grounds of competency, relevancy and materiality, hearsay, or any other grounds, to the use of such information for any purpose, in

whole or in part, at any subsequent time in this action or in any other action; and (2) the right to object on any and all grounds, at any time, to any other discovery request or proceeding involving or relating to the subject matter of these Initial Disclosures. All of the Initial Disclosures set forth below are subject to the above qualifications.

RULE 26(a)(1)(A)(i)

At this time, without having conducted discovery, Chrysler is not aware of all persons who may have discoverable information. Although Chrysler may supplement its disclosures as investigation and discovery proceed, Chrysler has identified the individuals listed below as people who may have knowledge or information of facts or circumstances regarding the claims, events or transactions forming the subject matter of this action:

<u>Name</u>	<u>Subject</u>
Amanda Conti-Duhaime Senior Staff Counsel Chrysler Group LLC	Chrysler's IMPORTED FROM DETROIT™ trademark applications and approval of the applications by the United States Patent and Trademark Office.
Donna Berry Chief Trademark Counsel Chrysler Group LLC	Chrysler's IMPORTED FROM DETROIT™ trademark applications and approval of the applications by the United States Patent and Trademark Office.
Melissa Garlick Head of Chrysler Brand Advertising for Chrysler Group LLC	Chrysler's IMPORTED FROM DETROIT™ mark, adoption and use of the mark, advertising campaign respecting IMPORTED FROM DETROIT™, including its Super Bowl debut, and consumer response.
Joe Staples Creative Staff Member Wieden + Kennedy	Chrysler's communications and marketing respecting IMPORTED FROM DETROIT™.
Alan White Director of Consumer and Media Insights for Universal McCann	Development of Chrysler's advertising plan and media placements for the Chrysler® brand for 2011, including the Chrysler® 200 IMPORTED FROM DETROIT™ advertising and the public

	response.
Kevin Venet Brand Protection Manager for Chrysler Group LLC	Chrysler's trademark enforcement and Chrysler's awareness of Moda's conduct.
Olivier Francois Head of Fiat Brand, Chief Marketing Officer and Brand Marketing Communications	Chrysler's adoption of IMPORTED FROM DETROIT™
Saad Chehab President and Chief Executive Officer, Chrysler Brand Chrysler Group LLC	Advertising and use of IMPORTED FROM DETROIT™
Susan Thompson Media and Customer Relations Management Chrysler Group LLC	Media plan for IMPORTED FROM DETROIT™
Arleen Janks Merchandising Chrysler Group LLC	Merchandising under IMPORTED FROM DETROIT™
Kevin Borsay	Moda's products, marketing, advertising, sales, and communications with third parties.
Shawn Santo	Moda's products, marketing, advertising, sales, and communications with third parties.

RULE 26(a)(1)(A)(ii)

At this time, without having conducted discovery, Chrysler is not aware of all documents, data compilations, and tangible things within its possession, custody, or control that Chrysler may use to support its claims and defenses. In fact, Chrysler anticipates that many of the documents it may use to support its claims and defenses are within the possession, custody, or control of Moda. While Chrysler may supplement its disclosure as investigation and discovery proceed, Chrysler has at this time identified the documents listed below, all of which are located

at Kilpatrick Townsend & Stockton LLP, 1100 Peachtree Street, Atlanta, Georgia 30309 or
Chrysler, 1000 Chrysler Drive, Auburn Hills, Michigan 48326:

1. Representative samples of Chrysler's advertising and marketing materials relating to the IMPORTED FROM DETROIT™ mark;
2. Representative samples of third-party media references to the IMPORTED FROM DETROIT™ mark;
3. Chrysler's advertising and marketing expenditures regarding the IMPORTED FROM DETROIT™ mark;
4. Representative samples of Chrysler's clothing displaying the IMPORTED FROM DETROIT™ mark;
5. Chrysler's trademark applications to register the IMPORTED FROM DETROIT™ mark and related prosecution documentation.
6. Moda's advertising and marketing materials;
7. Screen shots of Moda's Internet Website;
8. Representative samples of Moda's clothing displaying the IMPORTED FROM DETROIT™ mark;
9. Correspondence between the parties; and
10. All exhibits, annexes and attachments associated with any pleading, brief, declaration, or deposition, or otherwise filed by the parties in the action styled *Chrysler Group LLC v. Moda Group LLC, dba Pure Detroit, Kevin Borsay and Shawn Santo*, 2:11-cv-11074, pending in the United States District Court for the Eastern District of Michigan.

RULE 26(a)(1)(A)(iii)

Because Chrysler is not seeking any damages in this TTAB proceeding, the requirement to disclose "a computation of each category of damages claimed by the disclosing party" is inapplicable.

RULE 26(a)(1)(A)(iv)

Chrysler does not have any such insurance agreements.

Dated: October 20, 2011

/Judith A. Powell/
Judith A. Powell
Charles H. Hooker
Jessica A. Ash
**KILPATRICK TOWNSEND &
STOCKTON LLP**
1100 Peachtree Street
Suite 2800
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404-815-6500 (phone)
404-815-6555 (fax)

*Attorneys for Applicant
Chrysler Group LLC*

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91201052
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that the foregoing APPLICANT CHRYSLER GROUP LLC'S INITIAL DISCLOSURES has been served on Opposer's counsel by hand delivery to:

Jeffrey P. Thennisch
John VanOphem
DOBRUSIN & THENNISCH PC
29 W. Lawrence Street, Suite 201
Pontiac, MI 48342
jvanophem@patentco.com
jeff@patentco.com

DATED: October 20, 2011

/Judith A. Powell/
Judith A. Powell

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

MODA GROUP, LLC,)	
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Opposer,)	
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v.)	Opposition No. 91201052
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CHRYSLER GROUP LLC,)	
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Applicant.)	
_____)	

**APPLICANT CHRYSLER GROUP LLC’S FIRST SET OF INTERROGATORIES
TO OPPOSER**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 33 of the Federal Rules of Civil Procedure, Applicant Chrysler Group LLC (“Chrysler”) requests that Opposer Moda Group, LLC (“Moda”) answer the following Interrogatories (the “Interrogatories”), under oath and in writing, within thirty (30) days after service:

DEFINITIONS

1. “Moda” shall mean Opposer Moda Group, LLC, dba Pure Detroit, and its officers, directors, employees, agents, attorneys, subsidiaries, affiliated corporations, predecessors-in-interest, licensees, and any other person or entity acting on Moda’s behalf or subject to Moda’s control.

2. “Chrysler” shall mean Applicant Chrysler Group LLC and its officers, directors, employees, agents, attorneys, subsidiaries, affiliated corporations, predecessors-in-interest, licensees, and any other person or entity acting on Chrysler’s behalf or subject to Chrysler’s control.

3. “Person” shall mean any natural person, group of natural persons, corporation, company, unincorporated association, partnership, joint venture, or other business, legal or governmental entity or association.

4. “Third Party” includes both the singular and plural, and means any Person other than Chrysler or Moda.

5. “Board” shall mean the Trademark Trial and Appeal Board.

6. The “Notice” shall mean the Notice of Opposition styled *Moda Group LLC v. Chrysler Group LLC.*, Opp. No. 91201052, pending in the United States Patent and Trademark Office’s Trademark Trial and Appeal Board.

7. The “IMPORTED FROM DETROITTM mark” shall mean the trademark owned by Chrysler that is the subject of three applications filed with the United States Patent and Trademark Office by Chrysler (Serial Nos. 85/183,477, 85/237,193, and 85/219,920), and that appeared at the end of Chrysler’s two-minute “Born of Fire” advertisement airing on February 6, 2011 during Super Bowl XLV.

8. “Chrysler’s Application” shall mean the trademark application filed by Chrysler, Serial No. 85/183,477, in which Chrysler has applied to register the IMPORTED FROM DETROITTM mark with the United States Patent and Trademark Office.

9. “Moda’s Goods” shall include t-shirts, bags, and all other goods that Moda has offered for sale or intends to offer for sale bearing IMPORTED FROM DETROIT, including but not limited to goods “in the nature of clothing, wearing apparel, and other consumer items,” *see* Notice ¶ 2.

10. “Document” includes “thing” and is defined in the broadest possible construction under Federal Rule of Civil Procedure 34(a). “Document” includes, without limiting the

generality of the foregoing, the original and all copies, drafts, and translations of any document in any written, recorded, or graphic form, including memoranda and notes of oral conversations, as well as compilations, catalogs and summaries of information or data, whether typed, handwritten, printed, recorded (including voice mails), or otherwise produced or reproduced, and any other retrievable data (whether email, discs, tapes, cards, or coded electrostatically, electromagnetically, optically or otherwise). “Document” includes electronically stored information (ESI), including the metadata. “Document” also means any nonidentical copy thereof.

11. “Identify” with respect to a person means to provide the following information: the name, job title, current or last known address and telephone number, last known place of employment, and the address and telephone number of such place of employment.

12. “Identify” with respect to a document means to provide the following information: the title and date of the document, if any; its author, addressees, and recipients; and a description of its contents.

13. “Describe in detail” shall mean to give the date and a full and complete narrative account of the information requested, including but not limited to identifying all persons with knowledge of any of the information contained in the response and identifying any and all documents that describe, refer, or relate to any of the information contained in the response, without omission of any information, whether or not deemed to be admissible or inadmissible at trial, that is reasonably calculated to lead to the discovery of admissible evidence.

14. “Customer” means any Person to whom goods are sold or offered for sale, including but not limited to wholesalers, retailers, discount stores, sales agents, dealerships, distributors, or other sales outlets.

15. “Refer or relate” means concerning, regarding, referring to, relating to, discussing, noting, mentioning, describing, evidencing, or constituting.
16. “Date” means the exact day, month and year if ascertainable, or, if not, the best available approximation (including relationship to other events).
17. The conjunctive form “and” and the disjunctive form “or” shall be mutually interchangeable and shall not be construed to limit any request.
18. The terms “any” and “all” shall be mutually interchangeable and shall not be construed to limit any request.
19. The singular and the plural shall be mutually interchangeable, and usage of words either in the singular or plural shall not be construed to limit any request.

INSTRUCTIONS

1. Pursuant to Federal Rule of Civil Procedure 26(b)(5), if Moda withholds information otherwise discoverable under the Federal Rules of Civil Procedure by claiming that it is a privileged communication, attorney work product, or otherwise protected from disclosure, Moda must make the claim expressly and describe the nature of the communications or information not disclosed in a manner that, without revealing information itself privileged or protected, will enable Chrysler and the Board to assess the applicability of the privilege or protection.
2. Each Interrogatory, and sub-part, and the Definitions, are to be construed independently and, unless so stated, not by or with reference to any other Interrogatory, sub-part, or Definition, if such construction would limit the scope of any particular Interrogatory or the subject matter.

3. If any of these Interrogatories cannot be answered in full, Moda is to answer to the fullest extent possible, specifying the reason for Moda's inability to answer the remainder, and stating what information, knowledge, or belief Moda has concerning the unanswered portion. If exact dates, amounts, or other figures or facts are not known, but Moda has information sufficient to make an approximate or estimated answer, make such answer and indicate it is an approximation or estimate because more precise information is not known to Moda.

4. These Interrogatories are continuing. Pursuant to Federal Rule of Civil Procedure 26(e), Moda is under a duty to supplement, correct, or amend its responses to any of these Interrogatories if it learns that any response is in some material respect incomplete or incorrect and if the additional or corrective information has not otherwise been made known to Chrysler during the discovery process or in writing.

5. If any Interrogatory is unclear, please contact the undersigned counsel and, if possible, the Interrogatory will be clarified in a reply letter. Any such reply letter may be treated as a modification of the Interrogatory.

INTERROGATORIES

1. Identify the date on which Moda first became aware of Chrysler's use of the IMPORTED FROM DETROIT™ mark.

RESPONSE:

2. Describe in detail the circumstances under which Moda first became aware of Chrysler's use of the IMPORTED FROM DETROIT™ mark.

RESPONSE:

3. Identify the date(s) on which Moda decided to offer for sale each of Moda's Goods bearing IMPORTED FROM DETROIT.

RESPONSE:

4. Describe in detail the circumstances under which Moda decided to offer for sale each of Moda's Goods bearing IMPORTED FROM DETROIT.

RESPONSE:

5. Identify each Person (including but not limited to vendors, printers, and persons assisting with Opposer's website) that has assisted Moda in producing, obtaining, marketing, offering for sale, or selling each type of Moda's Goods bearing IMPORTED FROM DETROIT and the date(s) when Moda first contacted each such Person to provide such assistance.

RESPONSE:

6. Identify the date(s) on which Moda began offering for sale each type of Moda's Goods bearing IMPORTED FROM DETROIT.

RESPONSE:

7. Identify the date(s) on which Moda made its first sale of each of Moda's Goods bearing IMPORTED FROM DETROIT.

RESPONSE:

8. Describe all facts that Moda contends support the averment in the first un-numbered paragraph of the Notice that Moda “will be damaged by the application for, and any resulting registration of, the putative mark, IMPORTED FROM DETROIT . . . for the goods and services identified therein.”

RESPONSE:

9. Describe in detail each instance of Moda’s use in connection with the promotion, marketing, or sale of Moda’s Goods of IMPORTED FROM DETROIT in a purportedly descriptive sense.

RESPONSE:

10. Describe in detail each instance of Moda’s use in connection with the promotion, marketing, or sale of Moda’s Goods of IMPORTED FROM DETROIT in a trademark sense.

RESPONSE:

11. Describe in detail any plans or intentions by Moda to use IMPORTED FROM DETROIT in connection with any goods or services.

RESPONSE:

12. Describe in detail each instance (of which Moda is aware) of purportedly descriptive use of IMPORTED FROM DETROIT by any Third Party in connection with apparel or accessories, including but not limited to t-shirts and bags.

RESPONSE:

13. Identify each Third Party mark that Moda contends bears on Chrysler's rights in the IMPORTED FROM DETROIT™ mark.

RESPONSE:

14. Identify each mark or phrase incorporating "Detroit" that Moda has used on any goods marketed or sold by it.

RESPONSE:

15. Identify the geographic areas in which Moda has offered for sale, advertised, marketed, or sold products bearing IMPORTED FROM DETROIT.

RESPONSE:

16. Identify the geographic distribution by state of Moda's sales of products bearing IMPORTED FROM DETROIT, including the quantity of products bearing IMPORTED FROM DETROIT that Moda has sold or shipped to customers outside of the greater Metro-Detroit area and the city and state of each customer to whom such product has been shipped.

RESPONSE:

17. Identify the quantity of products bearing IMPORTED FROM DETROIT that Moda has sold or shipped to customers in the greater Metro-Detroit area.

RESPONSE:

18. Identify the quantity of products bearing IMPORTED FROM DETROIT that Moda has shipped to customers outside the greater Metro-Detroit area.

RESPONSE:

19. Identify the retail dollar value of products bearing IMPORTED FROM DETROIT that Moda has shipped to customers outside of the greater Metro-Detroit area.

RESPONSE:

20. Identify the retail dollar value of products bearing IMPORTED FROM DETROIT that Moda has sold or shipped to customers in the greater Metro-Detroit area.

RESPONSE:

21. Identify the quantity of products bearing IMPORTED FROM DETROIT that Moda has sold or shipped to customers in the State of Michigan.

RESPONSE:

22. Identify the retail dollar value of products bearing IMPORTED FROM DETROIT that Moda has sold or shipped to customers in the State of Michigan.

RESPONSE:

23. Identify the quantity of products bearing IMPORTED FROM DETROIT that Moda has sold through its website, www.puredetroit.com.

RESPONSE:

24. Identify the quantity of products bearing IMPORTED FROM DETROIT that Moda has sold at its retail stores.

RESPONSE:

25. Identify the retail dollar value of products bearing IMPORTED FROM DETROIT that Moda has sold through its website, www.puredetroit.com.

RESPONSE:

26. Identify the retail dollar value of products bearing IMPORTED FROM DETROIT that Moda has sold at its retail stores.

RESPONSE:

27. Describe in detail Moda's relationship to Pure Detroit, Inc., including any transfers between Moda and Pure Detroit, Inc. of rights in any trademarks incorporating the word "Detroit."

RESPONSE:

28. Identify the years during which Pure Detroit, Inc. was an active corporation duly registered with the Michigan Secretary of State's Office.

RESPONSE:

29. Describe in detail the circumstances surrounding the dissolution of Pure Detroit, Inc. on July 15, 2007, including the distribution of any of its rights in any trademarks incorporating the word “Detroit.”

RESPONSE:

30. Describe in detail all action taken by Moda, excluding the substance of any attorney-client communications or any information protected by the work-product doctrine, in “the process of investigating whether its use of at least the designation, IMPORTED FROM DETROIT, for its various goods has resulted in any form of protectable trademark or other legal rights.” *See* Notice ¶ 2.

RESPONSE:

31. Describe all facts that Moda contends support the averment in paragraph 25 of the Notice that “the putative mark set forth in the ‘477 application is contrary to the provisions of at least 15 U.S.C. 1052(a) of the Lanham Act and is, or has become, deceptive of the Applicant’s cited goods in the ‘477 application.”

RESPONSE:

32. Describe all facts that Moda contends support the averment in paragraph 30 of the Notice that “the putative mark set forth in the ‘477 application is contrary to the provisions of at least 15 U.S.C. 1052(e)(2) of the Lanham Act and is, or has become, primarily geographically descriptive of the Applicant’s cited goods in the ‘477 application.”

RESPONSE:

33. Describe all facts that Moda contends support the averment in paragraph 36 of each of the Notices that “the putative mark set forth in the ‘477 application is contrary to the provisions of at least 15 U.S.C. 1052(e)(3) of the Lanham Act and is, or has become, primarily geographically deceptively misdescriptive of the Applicant’s cited goods in the ‘477 application.”

RESPONSE:

34. Identify each person Moda intends to use as a witness in this matter.

RESPONSE:

35. With regard to each person identified in response to the preceding Interrogatory, identify the subject matter on which he or she is expected to testify.

RESPONSE:

Dated: October 20, 2011

/Judith A. Powell/

Judith A. Powell

jpowell@ktslaw.com

Charles H. Hooker III

chooker@ktslaw.com

Jessica A. Ash

jash@ktslaw.com

KILPATRICK TOWNSEND & STOCKTON LLP

1100 Peachtree Street, Suite 2800

Atlanta, Georgia 30309-4530

Phone: (404) 815-6500

Fax: (404) 815-6555

Attorneys for Applicant Chrysler Group LLC

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91201052
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT CHRYSLER GROUP LLC'S FIRST SET OF INTERROGATORIES TO OPPOSER has been served on Opposer's counsel by hand delivery to:

Jeffrey P. Thennisch
John VanOphem
DOBRUSIN & THENNISCH PC
29 W. Lawrence Street, Suite 201
Pontiac, MI 48342
jvanophem@patentco.com
jeff@patentco.com

DATED: October 20, 2011

/Judith A. Powell/
Judith A. Powell

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

MODA GROUP, LLC,)	
)	
Opposer,)	
)	
v.	)	Opposition No. 91201052
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

**APPLICANT CHRYSLER GROUP LLC’S FIRST REQUEST FOR THE PRODUCTION
OF DOCUMENTS AND THINGS TO OPPOSER**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 34 of the Federal Rules of Civil Procedure, Applicant Chrysler Group LLC (“Chrysler”) requests that Moda Group, LLC (“Moda”) respond to these document requests in writing within thirty (30) days after service, and produce the documents identified below for inspection and copying at the offices of Kilpatrick Townsend & Stockton LLP, 1100 Peachtree St. N.E., Atlanta, Georgia 30309, or at such other place as the parties may agree.

DEFINITIONS

Chrysler incorporates by reference, as if fully set forth herein, the Definitions in Applicant Chrysler Group LLC’s First Set of Interrogatories to Opposer, served contemporaneously.

INSTRUCTIONS

1. Moda is requested to produce all documents in its possession, custody, or control or the possession, custody or control of any of its representatives, including persons consulted concerning any factual matters or matters of opinion relating to any of the facts or issues

involved in this case; such persons shall include attorneys with whom Moda consulted unless Moda claims such documents are privileged or otherwise protected.

2. Each Document Request, and any portions, are to be responded to separately, but responses to one Document Request, or portion, may be incorporated by reference in responses to other Document Requests, or portions.

3. All documents produced pursuant to these Requests for Production of Documents must be produced either in separate groups of documents responsive to each separate request or in the form and order in which they were kept by Moda in the ordinary course of business before being produced.

4. Each request for a document – whether requesting memoranda, reports, letters, minutes or other documents of any description – requires the production of the document in its entirety, including all pages and attachments or exhibits, without redaction or expurgation.

5. These Document Requests are continuing in nature and require amendment or supplementation if Moda or Moda's attorneys later become aware of facts or documents that indicate that the response previously given was incorrect or incomplete. If Moda does not have all of the information necessary to make a complete response to any Document Request, provide all documents available, state that the information is incomplete, identify the information needed to make a complete production of documents, and provide a supplemental production when the information necessary to do so is obtained.

6. The production of responsive Documents should include electronically stored information ("ESI"), including any metadata relating to such ESI.

7. If Moda withholds any documents otherwise discoverable under the Federal Rules of Civil Procedure by claiming that it is a privileged communication, attorney work product, or

otherwise protected from disclosure, Moda must make the claim expressly and describe specifically each withheld document in a privilege log in a manner that, without revealing information itself privileged or protected, will enable Chrysler and the Board to assess the applicability of the privilege or protection.

DOCUMENTS REQUESTED

1. Documents that refer or relate to Moda's first contact with any Person (including but not limited to vendors, printers, and persons assisting with Opposer's website) respecting that Person's assisting Moda in producing, obtaining, marketing, offering for sale, or selling any Goods bearing IMPORTED FROM DETROIT.

RESPONSE:

2. Documents sufficient to show use of each mark or phrase incorporating "Detroit" that Moda has used on any goods marketed or sold by it.

RESPONSE:

3. Documents that refer or relate to the circumstances surrounding the dissolution of Pure Detroit, Inc. of July 15, 2007, including the distribution of any of its rights in any trademarks incorporating the word "Detroit."

RESPONSE:

4. Documents that support, refer or relate to the averment in the first un-numbered paragraph of the Notice that Moda "will be damaged by the application for, and any resulting

registration of, the putative mark, IMPORTED FROM DETROIT . . . for the goods and services identified therein.”

RESPONSE:

5. Documents that support, refer or relate to the averment in paragraph 2 of the Notice that “Opposer is in the process of investigating whether its use of at least the designation, IMPORTED FROM DETROIT, for its various goods has resulted in any form of protectable trademark or other legal rights,” excluding all attorney-client communications and documents protected from discovery by the work-product doctrine.

RESPONSE:

6. Documents that support, refer or relate to the averment in paragraph 25 of the Notice that “the putative mark set forth in the ‘477 application is contrary to the provisions of at least 15 U.S.C. 1052(a) of the Lanham Act and is, or has become, deceptive of the Applicant’s cited goods in the ‘477 application.”

RESPONSE:

7. Documents that support, refer or relate to the averment in paragraph 30 of the Notice that “the putative mark set forth in the ‘477 application is contrary to the provisions of at least 15 U.S.C. 1052(e)(2) of the Lanham Act and is, or has become, primarily geographically descriptive of the Applicant’s cited goods in the ‘477 application.”

RESPONSE:

8. Documents that support, refer or relate to the averment in paragraph 36 of the Notice that “the putative mark set forth in the ‘477 application is contrary to the provisions of at least 15 U.S.C. 1052(e)(3) of the Lanham Act and is, or has become, primarily geographically deceptively misdescriptive of the Applicant’s cited goods in the ‘477 application.”

RESPONSE:

9. Documents relied upon, used, or referred to in responding to Applicant Chrysler Group LLC’s First Set of Interrogatories to Opposer.

RESPONSE:

10. Documents that refer or relate to communications between Moda and any Third Party, other than communications between Moda and its attorneys, regarding this proceeding.

RESPONSE:

11. Documents that refer or relate to communications between Moda and any Third Party, other than communications between Moda and its attorneys, regarding the use of IMPORTED FROM DETROIT.

RESPONSE:

12. Documents sufficient to identify the relationship between Moda and Pure Detroit, Inc.

RESPONSE:

13. Documents sufficient to identify the years during which Pure Detroit, Inc. was considered an active corporation by the Michigan Secretary of State's Office.

RESPONSE:

14. All documents regarding any transfer of rights in any trademark or trademark registration incorporating "DETROIT," including PURE DETROIT.

RESPONSE:

15. The resume or Curriculum Vitae of each Person that Moda may call as an expert witness in connection with this proceeding.

RESPONSE:

16. All documents reviewed or referred to by any person Moda may call to testify as an expert witness in the course of formulating his opinions, for this proceeding, whether or not the documents were relied on in the expert's report.

RESPONSE:

Dated: October 20, 2011

/Judith A. Powell/

Judith A. Powell

jpowell@ktslaw.com

Charles H. Hooker III

chooker@ktslaw.com

Jessica A. Ash

jash@ktslaw.com

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Fax: (404) 815-6555

Attorneys for Applicant Chrysler Group LLC

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

MODA GROUP, LLC,)	
)	
Opposer,)	
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v.)	Opposition No. 91201052
)	
CHRYSLER GROUP LLC,)	
)	
Applicant.)	
_____)	

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing APPLICANT CHRYSLER GROUP LLC'S FIRST REQUEST FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO OPPOSER has been served on Opposer's counsel by hand delivery to:

Jeffrey P. Thennisch
John VanOphem
DOBRUSIN & THENNISCH PC
29 W. Lawrence Street, Suite 201
Pontiac, MI 48342
jvanophem@patentco.com
jeff@patentco.com

DATED: October 20, 2011

/Judith A. Powell/
Judith A. Powell

EXHIBIT C

Ash, Jessica

From: Hooker, Charles
Sent: Thursday, November 17, 2011 4:27 PM
To: 'John VanOphem'
Subject: RE: Chrysler v. Moda: Scheduling Order

John –

We will respond further to your questions and points below shortly. As to your immediate question concerning an extension of your clients' time to respond to the discovery Chrysler served in the TTAB proceeding, Chrysler does not agree to extend the time for your clients to respond until after there is a decision on the Motion to Suspend.

Thanks,
Charles

Charles Hooker**Kilpatrick Townsend & Stockton LLP**

Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528
office 404 815 6376 | cell 404 822 5338 | fax 404 541 3498
chooker@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

From: John VanOphem [mailto:JVanOphem@PatentCo.com]
Sent: Thursday, November 17, 2011 8:59 AM
To: Hooker, Charles
Subject: RE: Chrysler v. Moda: Scheduling Order

Charles, sorry for my slight delay in getting back to you. As I noted during our phone call, Defendants are always willing to coordinate to make the process as efficient and reasonable as possible. I'm available most any time today to further discuss and to call the Clerk.

EDMI Scheduling

As for the prior dates, there are some details I'd like to discuss before calling the Clerk. For example, we had targeted the end of January for the close of fact discovery. Given the progress of the case to date, it seems to Defendants that date should maybe be moved closer to the end of February.

Oppositions Discovery

The Motion to Suspend the Oppositions remains pending in the TTAB. Chrysler served discovery upon Defendants and Responses are due, by our calculation, tomorrow. The Parties have agreed that discovery in the Oppositions and in the EDM I action will be usable in both actions. Given the above, Defendants request Chrysler agree to extend the due date for Defendants to provide answers and objections to Chrysler's discovery in the Oppositions until after there is a decision on the Motion to Suspend. Please advise either way.

There are a few other items to coordinate and discuss as well. Please let me know your availability today for a phone conference. Thank you.

Kind regards,

John VanOphem

12/6/2011

Dobrusin & Thennisch PC
(248) 292-2920 x 226

From: Hooker, Charles [<mailto:chooker@kilpatricktownsend.com>]
Sent: Monday, November 14, 2011 3:18 PM
To: John VanOphem
Cc: Powell, Judy; Ash, Jessica
Subject: Chrysler v. Moda: Scheduling Order

Dear John –

In keeping with our telephone conversation earlier today, Chrysler requests that Defendants joint it in either (a) a call to Judge Tarnow's clerk or (b) a motion to request that the Court enter into the record the full scheduling order previously presented to the Court. As you know, the Court entered part of this scheduling order in its August 25, 2011 minute entry. Among other things, this minute entry omits dates for the completion of fact discovery, exchanges of expert reports, and the like.

Please advise us as to whether Defendants will join Chrysler in contacting the Court in this regard.

Thanks,
Charles



Charles Hooker

Kilpatrick Townsend & Stockton LLP

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EXHIBIT D

Ash, Jessica

From: Jeffrey Thennisch [JThennisch@PatentCo.com]
Sent: Wednesday, November 23, 2011 2:15 PM
To: Hooker, Charles; John VanOphem
Cc: Powell, Judy; Ash, Jessica
Subject: RE: Moda v. Chrysler (TTAB): Problems with Service
Charles,

This one is on me. I used the prior motion form in the proceeding before your office filed an appearance and didn't catch the "old" proof of service language.

It won't happen again.

Regards,

Jeff

From: Hooker, Charles [mailto:chooker@kilpatricktownsend.com]
Sent: Wednesday, November 23, 2011 11:20 AM
To: John VanOphem; Jeffrey Thennisch
Cc: Powell, Judy; Ash, Jessica
Subject: Moda v. Chrysler (TTAB): Problems with Service

Dear John and Jeff –

In reviewing the TTAB docket, we noticed that Moda filed motions on November 16th to extend the time to respond to the discovery that Chrysler served in the TTAB matters until after the Board rules on Moda's motion to suspend. Oddly, John e-mailed me on November 17th to request Chrysler's consent to extend the time for Moda to respond without mentioning that Moda already had filed motions to that effect. We are at a loss in trying to understand why you would request consent for motions you already had filed unilaterally.

More troubling is Moda's failure to serve anyone at Kilpatrick Townsend with the November 16th motions. It appears that Moda sent service copies to Amanda Conti-Duhaime (who is out on maternity leave), despite the fact that our review of the TTAB Oppositions shows Judy Powell as the correspondent for Chrysler and despite the fact that Judy e-mailed Jeff on August 10, 2011 to inform Moda that our firm represents Chrysler in the TTAB proceedings. As you know, the Board's Rules and the Federal Rules of Civil Procedure require Moda to serve opposing counsel. We are especially troubled by this because it is not the first time it has happened; Moda failed to serve anyone at Chrysler or at Kilpatrick Townsend with its reply in support of the motion to suspend. In the future, Chrysler demands that Moda comply with its obligations under the Rules to serve Chrysler's counsel with documents filed in the TTAB proceedings.

Regards,
Charles



Charles Hooker

Kilpatrick Townsend & Stockton LLP

Suite 2800 | 1100 Peachtree Street | Atlanta, GA 30309-4528

office 404 815 6376 | cell 404 822 5338 | fax 404 541 3498

chooker@kilpatricktownsend.com | [My Profile](#) | [VCard](#)

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