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

Proceeding	91202418
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Application
Serial No. 85/342,228
For the mark BUILDING ASSETS FROM IDEAS
Published in the Trademark *Official Gazette* on November 1, 2011

Innovation Law Group, Ltd., Opposer, v. Ryan E. Alley, DBA Ryan Alley Intellectual Property Law, Applicant.	Opposition No.: 91202418 **OPPOSER'S OBJECTIONS TO APPLICANT'S TESTIMONY DECLARATION OF RYAN E. ALLEY**

Objection to Statements of Evidence Submitted by Applicant

Opposer objects to all of the evidence and declarations submitted by Applicant as not meeting the requirements of law. Testimony must be presented by affidavit or declaration. An affidavit is a sworn statement, and such oath/swearing is done before an officer authorized to administer oaths. The "Testimony Declarations" are not under oath and no officer of law administered any oath.

Declarations can be submitted in lieu of affidavits. At the TTAB there are two types of unsworn declarations that may be submitted -- 1) Declarations in accordance with Trademark Rule 2.20, or 2) Declarations in accordance with 28 USC Section 1746. The "Testimony Declarations" submitted by Applicant do not meet either standard and both should be stricken.

Specifically, Trademark Rule 2.20 provides:

§ 2.20 Declarations in lieu of oaths.

> Instead of an oath, affidavit, verification, or sworn statement, the language of 28 U.S.C. 1746, or the following language, may be used:
> The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application

> or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Clearly, the alternative language of Trademark Rule 2.20 was not used. 28 U.S.C. Section 1746 requires:

> Wherever, under any law of the United States or under any rule, regulation, order, or requirement made pursuant to law, any matter is required or permitted to be supported, evidenced, established, or proved by the sworn declaration, verification, certificate, statement, oath, or affidavit, in writing of the person making the same (other than a deposition, or an oath of office, or an oath required to be taken before a specified official other than a notary public), such matter may, with like force and effect, be supported, evidenced, established, or proved by the unsworn declaration, certificate, verification, or statement, in writing of such person which is subscribed by him, as true under penalty of perjury, and dated, in substantially the following form:
>
> (1) If executed without the United States: "I declare (or certify, verify, or state) under penalty of perjury under the laws of the United States of America that the foregoing is true and correct. Executed on (date). (Signature)".
>
> (2) If executed within the United States, its territories, possessions, or commonwealths: "I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct. Executed on (date). (Signature)"

Applicant utterly failed to "declare" that: 1) the statements were made **under penalty of perjury**, and 2) that the statements were **correct.**

This is not a mere formality. Applicant, who is an experienced lawyer, obviously knowingly and intentionally refused to invoke penalties of perjury (whether through an oath or by using approved declaration language). As such, Applicant's entire submission should be stricken.

While no further objections should be necessary, Opposer makes the following general and specific objections out of an abundance of caution and without waiver of its objection that Applicant's submission is fatally defective.

Objections of General Applicability:

Applicant's self-styled "opinion" testimony on his own behalf in support of his own case, as an attorney, is necessarily so biased that it cannot be considered sufficiently relevant to outweigh the confusion and prejudice it creates. Accordingly, all the "opinion" statements made by the Applicant are objected to under FRE 401 and 403.

In connection with Paragraph 20 and under the heading "Publicly Available Third Party Uses," Applicant referenced 135 separate web pages (Exhibits A1 through PPP1). However, no information was provided as to the extent to which any of these web pages has been viewed. With respect to Internet Materials, TBMP 704.08(b) states:

> The probative value of Internet documents is limited. They can be used to demonstrate what the documents show on their face; however, documents obtained through the Internet may not be used to demonstrate the truth of what has been printed. A printout from a webpage may have more limitations on its probative value than traditional printed publications. A party may increase the weight the Board will give website evidence by submitting testimony and proof of the extent to which a particular website has been viewed. Otherwise, the document may not be considered to have much probative value.

TBMP 704.08(b).

Additionally, none of the websites alleging showing "Publicly Available Third Party Uses" are relevant, because Applicant has not counterclaimed to invalidate any of Opposer's Marks, and none of the web pages even purports to show a similar trademark use predating Opposer's priority date (which would be inadmissible hearsay even if one did). Opposer thus objects to Exhibits A1 through PPP1 as irrelevant under FRE 401.

Applicant purports to offer Exhibits A1-PPP1 as evidence of "Publicly Available Third Party Uses." (*See* Heading above Paragraph 20.)[1] However, a majority of the cited instances in

[1] TBMP 704.08(b) requires that Opposer state the specific legal purpose for offering the Internet materials:

> for Internet documents it is not sufficient for the propounding party to broadly state that the materials are being submitted to support the ground at issue. For example, if the claim is likelihood of confusion, the propounding party should associate the materials with a

Exhibits A1-PPP1are not trademark uses at all, but rather are simply fair uses of the English language to descriptively state an idea, not to indicate source as a trademark.[2] Accordingly, the vast majority of Exhibits A1-PPP1 are irrelevant for this separate reason, as noted in the chart below.

Applicant's prolix chart of websites is part of a trend regarding the introduction of irrelevant and/or cumulative evidence at trial that the Board seeks to stop. TBMP 702.05, citing, *Corporacion Habanos S.A. v. Guantanamera Cigars, Co.*, 102 USPQ2d 1085, 1091 (TTAB 2012) (another case which does not warrant a record of this size); *UMG Recordings Inc. v. Mattel Inc.,* 100 USPQ2d 1868, 1873 (TTAB 2011) (overly large records tax the resources of the Board and are entirely unnecessary); *General Mills Inc. v. Fage Dairy Processing Industry SA*, 100 USPQ2d 1584, 1591-92 (TTAB 2011) (Board expressed frustration with sizeable record and overzealous litigation); *Calypso Technology Inc. v. Calypso Capital Management LP*, 100 USPQ2d 1213, 1218 (TTAB 2011) (with its supplemental notice of reliance, plaintiff resubmitted the first 25 items listed in its first notice of reliance, needlessly adding bulk to the record and wasting Board resources); *Stuart Spector Designs Ltd. v. Fender Musical*

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relevant likelihood of confusion factor. Further, if the same document is submitted to support more than one element of a claim or defense, the propounding party should indicate the specific element or fact supported by the document in a group of documents. TBMP 704.08(b).

[2] "Fair use" meaning "Classic" or "statutory" fair use (not "nominative fair use"), namely the traditional and long-standing notion that it is fair to use descriptive words in their purely descriptive sense even if another claims trademark rights in a mark using those words. The idea behind the classic fair use defense is that a party who chooses a mark which incorporates descriptive terms should not be permitted to exclude others from using those terms accurately and in good faith, in a descriptive, non-trademark sense. As indicated in Section 33(b)(4), there are three components required to establish a classic fair use defense: a) The use must be a non-trademark use, *i.e.* used "otherwise than as a mark;" b) The term used must be descriptive; and c) The term must be used fairly and in good faith, only to describe the goods or services of the defendant. *See* Lanham Act, Section 33(b)(4), 15 U.S.C. § 1115(b)(4). *See generally, KP Permanent Make-Up, Inc.v. Lasting Impression I, Inc.,* 543 U.S. 111, 125 S.Ct. 542, 72 U.S.P.Q.2d 1833 (2004). Here, the vast majority of the alleged "Publicly Available Third Party Uses" cited by Applicant are non-trademark, fair uses that Opposer has no right control, and thus are entirely irrelevant to Opposer's marks and these proceedings.

Instruments, Corp., 94 USPQ2d 1549, 1552 (TTAB 2009) ("voluminous" evidence of record); *Carefirst of Maryland Inc. v. FirstHealth of the Carolinas, Inc.,* 77 USPQ2d 1492, 1495 (TTAB 2005) ("It is simply inconceivable to the Board that the issues herein warranted either a record of this size or the large number of motions relating thereto."); *Blue Man Productions v. Tarmann,* 75 USPQ2d 1811, 1814 (TTAB 2005) ("[t]here are literally hundreds of documents"), *rev'd on other grounds*, slip. op. 05-2037, (D.D.C. Apr. 3, 2008).

The Board views parties who engage in this practice with disfavor. TBMP 702.05, citing, *General Mills Inc. v. Fage Dairy Processing Industry SA*, 100 USPQ2d 1584, 1591 (TTAB 2011) ("Even counsel at the oral hearing acknowledged that the present record is of a magnitude generally reserved for district court litigation."); *Carefirst of Maryland Inc. v. FirstHealth of the Carolinas, Inc.,* 77 USPQ2d 1492, 1495 (TTAB 2005) ("It is simply inconceivable to the Board that the issues herein warranted either a record of this size or the large number of motions relating thereto."). The introduction of such evidence impedes the orderly administration of the case, and obscures the impact of truly relevant evidence. TBMP 702.05. In addition to diminishing the effectiveness of a party's evidentiary record, "papering" the Board causes delays in rendering a final decision. *Id.* "Parties should submit only relevant, non-cumulative evidence." TBMP 702.05, citing, *Safer, Inc. v. OMS Investments, Inc*., 94 USPQ2d 1031, 1040 n.19 (TTAB 2010) ("It is not necessary for the parties to introduce every document obtained from an Internet search especially when it includes duplicative and irrelevant materials."); *Blue Man Productions v. Tarmann,* 75 USPQ2d 1811, 1814 (TTAB 2005) (foreign language materials submitted with no translation), *rev'd on other grounds*, No. 05-2037, slip op. (D.D.C. Apr. 3, 2008). "**For materials obtained from the Internet, parties should only submit relevant evidence, and should not submit duplicative and irrelevant materials**." TBMP 702.05 (emphasis added), citing, *Safer, Inc. v. OMS Investments, Inc*., 94 USPQ2d 1031 (TTAB 2010).

Since the web pages are irrelevant on their face, and since Applicant failed to submit testimony and proof of the extent to which any of these web pages have been viewed, Exhibits

A1 through PPP1 lack probative value, are needlessly cumulatively, confusing, and prejudicial. *Accord,* TBMP 702.05. Further, many of the cited web pages are foreign, and are thus doubly-irrelevant. Accordingly, Applicant's prolix presentation of 135 non-probative web pages is objected to under FRE 401, 403, and 611a.

Many of the documents submitted by Applicant appear not to have been timely produced in discovery. Since there are no document control numbers (e.g., Bates numbers) on the documents to assist in verifying production, it is Applicant's burden to show they were timely produced during discovery. To the extent any document was not, Opposer objects.

Finally, as noted in the chart below, much of the material Applicant now seeks to introduce were never produced during discovery, which ended November 30, 2012. Accordingly, Opposer has had no chance during the discovery process to address these materials, many of which are being revealed now for the first time during trial. Applicant presented no excuse for not producing these website materials earlier. Allowing Applicant to sandbag Opposer with this cumulative and redundant mountain of documents at trial severely prejudices Opposer. *Accord*, TBMP 509.01(b)(2), citing *Harjo v. Pro-Football, Inc*., 45 USPQ2d 1789, 1790 (TTAB 1998) (newly discovered evidence was cumulative and redundant and did not have significant probative value to justify further delay of case), *citing Canadian Tire Corp. Ltd. v. Cooper Tire & Rubber Co.,* 40 USPQ2d 1537, 1539 (Comm'r 1996) (newly discovered evidence was hearsay in nature and pertained to unpleaded defense). Accordingly, Opposer objects to the late and never-produced documents identified below under Fed. R. Civ. P. 37(c)(1).

Indeed, the needless submission of cumulative evidence forces Opposer to make extensive objections (set forth herein) to avoid a finding that Opposer has waived such objections.[3] Opposer apologizes in advance for the length of these objections but Opposer simply had no choice in view of the cumulative materials submitted by Applicant.

[3] In this case there is a stipulation and order allowing testimony to be entered through declaration/affidavit. The parties recognized that by having testimony by declaration, there would not be normal ability to object as documents are marked in a testimony deposition. The

All general objections above are hereby incorporated into the specific following specific objections without further reference.

Chart of Additional Specific Objections:

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
1			
2			
3	**Argumentative** (611a) **Improper Characterization** (403) **Lack of Foundation** (602; 901a) **Improper Lay Opinion** (701)	"I conceived Applicant Mark as a catchy way of restating intellectual property services that used the **quirky** term '**build**,' …"	Characterizing the conventional word "build" as "quirky" is argumentative and an improper characterization that lacks foundation and constitutes an improper lay opinion.
4			
5	**Argumentative** (611a) **Lack of Foundation** (602; 901a) **Improper Lay Opinion** (701) **Improper Expert Opinion** (702)	"My search uncovered no prior registrations and **no relevant uses** on the Internet."	Relevancy is a legal conclusion.
6			

stipulation provided for written objections to be made within 15 days after service of the testimony declaration, and Opposer is submitting these objections pursuant to such stipulation and order.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
7	**Improper Characterization** (403) **Lack of Foundation** (602; 901a)	"I have used Applicant Mark publicly on website and related Internet pages linking thereto, such as **Google search results** for website or a **Technorati page** directing to website."	Google search results are generated and controlled by third-party Google Inc., and thus do not constitute a "use" by Applicant. Applicant provides no explanation of what a "Technorati page" might be.
8	**Hearsay** (802) **Lack of Foundation** (602; 901a) **Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	"The [Google Analytics] services are popular, publicly accessible, and described at [**web page links**]"	Applicant relies on links to web pages to offer the statements thereon for the truth of the matters asserted by others. The linked-to web pages are live and subject to constant change. Copies of the applicable web pages were not produced during discovery.
9	**Hearsay** (802) **Lack of Foundation/ Lack of Personal Knowledge** (602; 901a) **Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	"Exhibit 2 is a screenshot I took today of the Google Analytics account …."	Applicant relies on copies of web pages to offer information thereon for the truth of the matters asserted by others. No competent evidence has been proffered explaining the meaning of the alleged web pages. The referenced exhibit was admittedly not produced during discovery.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
10	**Hearsay** (802) **Lack of Foundation/Lack of Personal Knowledge** (602; 901a) **Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	"Exhibit 3 is screenshots from Webmaster Tools…November 30, 2013-Feb 28, 2014 (pages 13-21)."	Applicant relies on copies of others' web pages to offer information thereon for the truth of the matters asserted. No competent evidence has been proffered explaining the meaning of the alleged web pages. At least a portion of the referenced exhibit was admittedly not produced during discovery.
11			
12	**Lack of Foundation/Lack of Personal Knowledge** (602; 901a) **Improper Lay Opinion** (701) **Improper Expert Opinion** (702)	"all potential and engaged consumers of IP legal services exercise extreme care in selecting IP legal services providers[.]"	Applicant can testify as to his own experiences with consumers, but this provides no basis for the blanket statement that "all" consumers exercise extreme care. Applicant does not have personal experience with "all" consumers in the marketplace, and Applicant has not qualified himself to render such a sweeping opinion as an expert.
13	**Hearsay** (802) **Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	"Exhibit 4 .. published January 1, 2013 …."	Applicant relies on a copy of another's web document to offer information thereon for the truth of the matters asserted. Exhibit 4 was admittedly not produced during discovery.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
14	**Lack of Foundation/Lack of Personal Knowledge** (602; 901a) **Improper Lay Opinion** (701) **Improper Expert Opinion** (702)	"consumers of IP legal services, are **always** provided with the identity of the IP legal service provider **in any encounter with these services and marketing for the same**."	Applicant has provided no competent evidence to support his broad generalization that the service provider's identity is *always* provided in *any* marketing encounter. A review of any Google search results page proves this statement false on its face. Applicant does not have personal experience with all marketing encounters that consumers might experience, and Applicant has not qualified himself as an expert to propound this supposition as truth.
15	**Hearsay** (802) **Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	Exhibit 7 (link to web page) Exhibit 8 (link to web page)	Applicant relies on links to others' web pages to offer the statements thereon for the truth of the matters asserted, namely that they constitute a study and a discussion thereof. The live links are subject to being directed to revised, replacement or different material. Copies of the applicable web pages were not produced during discovery.
16(1)	**Hearsay** (802) **Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	"Exhibits 9-18 are articles and pamphlets from providers, public interest websites, and bar associations discussing how consumers should select legal services providers."	Applicant presents random statements of others made on the internet and elsewhere outside this proceeding for the truth of the matters asserted. Exhibits 9-18 were not produced in discovery.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
16(2)	**Hearsay** (802) **Lack of Foundation** (602; 901a) **Improper Lay Opinion** (701) **Improper Expert Opinion** (702) **Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	"as summarized on page 5 of Exhibit 7, consumer selection of legal services providers is extremely identity driven, being most influenced by referrals and in-person introductions that exchange personal information about the provider and relatively much less by advertising."	Applicant is attempting to boot-strap into evidence inadmissible hearsay by saying he read it and agrees with it (and then repeating the inadmissible hearsay). Applicant provides no competent evidence as foundation for this statement, has insufficient personal knowledge to render this hearsay information as his own lay opinion, and has not been qualified as an expert to render this as his own opinion. Exhibit 7 was not produced in discovery.
17	**Hearsay** (802) **Lack of Foundation** (602; 901a) **Improper Lay Opinion** (701) **Improper Expert Opinion** (702) **Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	"I have read the articles and pamphlets of Exhibits 9-18, and based on my experience, they reflect how consumers hire IP attorneys. Exhibits 14-16 address hiring patent attorneys, and these articles especially align with my experience …."	Applicant is attempting to boot-strap into evidence inadmissible hearsay by saying he read it and agrees with it. Applicant provides no competent evidence as foundation for the numerous statements in the cited Exhibits, has insufficient personal knowledge to render this hearsay information as his own lay opinion, and has not been qualified as an expert to render this as his own opinion. Exhibit 9-18 was not produced in discovery.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
18	**Hearsay** (802) **Lack of Foundation** (602; 901a) **Improper Lay Opinion** (701) **Improper Expert Opinion** (702) **Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	"Exhibit 19 is the AIPLA 2011 Report of the Economic Survey and Exhibit 20 is the AIPLA 2013 Report of the Economic Survey. … Based on my experience, I agree with the values reported in Exhibits 19 and 20." …	Applicant is attempting to boot-strap into evidence inadmissible hearsay by saying he read it and agrees with it (and then repeating the inadmissible hearsay data). Applicant provides no competent evidence as foundation for his statements in this paragraph, has insufficient personal knowledge to render this hearsay information as his own lay opinion, and has not been qualified as an expert to render this as his own opinion. Exhibits 19 and 20 were not produced in discovery.
19	**Hearsay** (802) **Lack of Foundation/Lack of Personal Knowledge** (602; 901a) **Improper Lay Opinion** (701) **Improper Expert Opinion** (702) **Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	"Based on my experience and Exhibits 4-20, it is my opinion that legal services in IP are exclusively business or commercially-based." ... "IP legal services are wholly unlike commoditized services and goods bought off the shelf and goods and services whose consumption is responsive to marketing presence or impulse."	Applicant's opinion is based at least in part on inadmissible hearsay, key parts of which were not produced in discovery. Applicant provides no competent evidence as foundation for his statements in this paragraph, has insufficient personal knowledge to render this hearsay information as his own lay opinion, and has not been qualified as an expert to render this as his own opinion. The second quoted statement was not made as an opinion, but rather as a declaratory statement of fact. There is no competent evidence or other foundation to support this statement. Exhibits 4 and 20 were not produced in discovery.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
20	**Internet Materials** TBMP 704.08(b) **Irrelevant** (401)	Exhibits A1-PPP1 are offered as evidence of "Publicly Available Third Party Uses"	TBMP 704.08(b) states that "for Internet documents it is not sufficient for the propounding party to broadly state that the materials are being submitted to support the ground at issue. For example, if the claim is likelihood of confusion, the propounding party should associate the materials with a relevant likelihood of confusion factor. Further, if the same document is submitted to support more than one element of a claim or defense, the propounding party should indicate the specific element or fact supported by the document in a group of documents." Here, Exhibits A1-PPP1 are offered as evidence of "Publicly Available Third Party Uses," but many of the cited instances are not trademark uses, and are thus irrelevant, as noted below.
A1	**Irrelevant** (401)	"transform those ideas into assets" *[practice description, first sentence]*	Non-trademark use of similar words in a descriptive sentence is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
A2	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1) **Irrelevant** (401)	"Date(s) 2/26/2014" "transform those ideas into assets" *[practice description, first sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a descriptive sentence is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
A3	**Irrelevant** (401)	"Transforming Ideas into Assets *[article title]"*	Non-trademark use of similar words in a descriptive article title is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802) **Lack of Foundation** (602; 901a)	"(Publication Date 2008)"	Applicant seeks to prove the publication date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
A4	**Irrelevant** (401)	"transform those ideas into assets" *[pg. 10, middle column, first sentence of sponsor description]"*	Non-trademark use of similar words in a description of a sponsor is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802) **Lack of Foundation** (602; 901a)	"(Conference Date 2008)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
A5	**Irrelevant** (401)	"Hoffmann & Barron transforms ideas into assets" *[pg. 24, bottom, final sentence of sponsor description]"*	Non-trademark use of similar words in a description of a sponsor is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802) **Lack of Foundation** (602; 901a)	"(Conference Date 2009)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
A6	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1) **Irrelevant** (401)	"Date(s) 2/27/2014" "Hoffmann & Barron transforms ideas into assets" *[final sentence of sponsor description]"*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a description of a sponsor is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
A7	**Irrelevant** (401) **Hearsay** (802)	"Hoffmann & Barron transforms ideas into assets" *[pg. 30, fifth sponsor, final sentence of sponsor description]"* "(Conference Date 2010)"	Non-trademark use of similar words in a description of a sponsor is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant. Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
A8	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1) **Irrelevant** (401)	"Date(s) 2/27/2014" "Hoffmann & Barron transforms ideas into assets" *[final sentence of sponsor description]"*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a description of a sponsor is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
A9	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	"Date(s) 2/27/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"Hoffmann & Barron transforms ideas into assets" *[pg. 11, middle left column, final sentence of sponsor description]"*	Non-trademark use of similar words in a description of a sponsor is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(Conference Date 2013)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
A10	**Hearsay** (802)	"(Publication Date July 2002)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
A11	**Hearsay** (802)	"(Publication Date December 2002)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
A12	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	"Date(s) 2/27/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"3866 US patents with 'hoffmann and baron' on their face"	Use of completely different words that have nothing to do with the marks at issue is not a "Third Party Use" of a relevant mark, and is thus irrelevant.
A13	**Irrelevant** (401)	"transforming those ideas into assets" *[second page, middle, second sentence of paragraph starting "The stimulus…"]*	Non-trademark use of similar words in a description of their activities is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
B1	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1) **Irrelevant** (401)	"Date(s) 2/15/2014" "Transforming Ideas Into Assets *[slogan on page heading]"*	This document was admittedly not produced as required during discovery. This is an article title, not a mark. Non-trademark use of similar words in a descriptive article title is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
B2	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1) **Irrelevant** (401)	"Date(s) 2/15/2014" "TRANSFORM YOUR IDEAS INTO MARKETABLE ASSETS *[picture caption]*	This document was admittedly not produced as required during discovery. This is a picture caption, not a mark. Non-trademark use of similar words in a descriptive picture caption is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
B3	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1) **Irrelevant** (401)	"Date(s) 2/15/2014" "transform your idea into an asset" *[final paragraph, first sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a descriptive sentence is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
B4	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1) **Irrelevant** (401)	"Date(s) 10/1/2013" "Transform Your Ideas Into Marketable Assets *[page subtitle]*; "transforms your ideas into marketable assets" *[company description first sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a descriptive statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
C1	**Irrelevant** (401)	Turning your ideas into assets *[slogan on page subheading]*	No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a descriptive statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
C2	**Irrelevant** (401)	Turning your ideas into assets *[tagline]*	No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a descriptive statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
C3	**Irrelevant** (401)	Turning your ideas into assets *[slogan under firm name]*	No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a descriptive statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
D1	**Irrelevant** (401)	Transforming Ideas into Assets *[title of firm overview page]*	No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a descriptive statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
D2	**Irrelevant** (401)	Transforming Ideas into Assets *[title of firm overview page]*	No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a descriptive statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(September 2010 Web Archive Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted. Documents from the WayBackMachine Internet Archive are inherently not self-authenticating, are hearsay and are unreliable.
E1			
F1	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	"Date(s) 2/27/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401) **No Proper Authentication**	"We turn ideas into assets *[first sentence]*	Non-trademark use of similar words in a descriptive statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
F2	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	"Date(s) 2/27/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"Creating value from Ideas since 1978 *[slogan under About Us]*	Non-trademark use of similar words in a descriptive statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
F3	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1) **Irrelevant** (401)	"Date(s) 11/1/2013" "Turning ideas into assets *[slogan at end of listing]*	This document was admittedly not produced as required during discovery. No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a descriptive statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
G1	**Irrelevant** (401)	Transform ideas into assets. *[first page, right side slogan]*	No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a descriptive statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
G2	**Irrelevant** (401) **Hearsay** (802) **No Proper Authentication**	Turning intangible ideas into business assets *[homepage heading]* "(October 2004 Web Archive Date)"	Documents from the WayBackMachine Internet Archive are inherently not self-authenticating, are hearsay and are unreliable. No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a descriptive statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant. Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
H1	**Irrelevant** (401)	Turning Ideas Into Assets *[flyer title]*; www.idea-asset.com*[right column, bottom]*	No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a descriptive document title is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
H2	**Irrelevant** (401)	"turn their creativity and ideas into significant proprietary assets" *[final sentence]*; The idea Asset Group *[caption under firm name]*	No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a description is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
H3	**Irrelevant** (401) **Hearsay** (802) **No Proper Authentication**	"turn their creativity and ideas into significant proprietary assets" *[final sentence]*; The idea Asset Group *[caption under firm name]* "(February 2008 Web Archive Date)"	Documents from the WayBackMachine Internet Archive are inherently not self-authenticating, are hearsay and are unreliable. No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a description is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant. Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
I1	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1) **Irrelevant** (401) **No Proper Authentication**	"Date(s) 2/11/2013" Transforming Ideas Into Assets *[center homepage slogan]*	This document was admittedly not produced as required during discovery. Documents from the WayBackMachine Internet Archive as well as other Internet archives are inherently not self-authenticating, are hearsay and are unreliable. No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a descriptive statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
I2	**Irrelevant** (401)	"turning ideas into assets" *[left, second paragraph, second sentence]*	Non-trademark use of similar words in a description is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
I3	**Irrelevant** (401)	"Transofrming [sic] ideas into assets" *[first sentence under Experience]*	Non-trademark use of similar words in a description is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
J1	**Irrelevant** (401)	Transforming ideas into valuable IP assets *[second page, first sentence]*	Non-trademark use of similar words in a description is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
J2	**Irrelevant** (401) **Hearsay** (802) **No Proper Authentication**	Transforming ideas into valuable IP assets *[first sentence]* *"(June 2010 Web Archive Date)*	Documents from the WayBackMachine Internet Archive are inherently not self-authenticating, are hearsay and are unreliable. Non-trademark use of similar words in a description is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant. Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
K1	**Irrelevant** (401) **Failure to Properly Introduce Alleged 3rd-Party Registration.** TBMP704.03(b) **Hearsay** (802) **Lack of Foundation** (602; 901a)	Turning concepts into assets *[intent-to-use trademark application]*	This purports to be an intent-to-use trademark application that was abandoned before any statement of use was filed. This is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
K2			
K3			
K4	**Irrelevant** (401)	"Concepts2Assets" *[second page twitter handle]*; "Turning concepts into assets" *[second page, first Objective sentence]*	This purports to be a Twitter page, with no "TM" "SM" or other indicia of trademark use present. Non-trademark use of similar words as a twitter handle is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
K5	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	"Date(s) 11/08/2013"	This document was admittedly not produced as required during discovery.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
K6	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1) **Irrelevant** (401)	"Date(s) 2/27/2014" Turning concepts into assets *[objective section under name]*	This document was admittedly not produced as required during discovery. This purports to be a Pinterest page, with no "TM" "SM" or other indicia of trademark use present. Non-trademark use of similar words at the top of a non-commercial Pinterest page is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
L1	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1) **Irrelevant** (401)	"Date(s) 8/08/2013" "turn great ideas into valuable assets" *[right middle, final sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a description is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
M1	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1) **Irrelevant** (401)	"Date(s) 6/19/2013" "turning ideas into business assets" *[middle section "Establishing your IP. . .", second paragraph, second sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a description is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
N1	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1) **Irrelevant** (401)	"Date(s) 6/19/2013" "turning ideas into assets" *[final sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a description is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
O1	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1) **Irrelevant** (401)	"Date(s) 6/19/2013" "turn your ideas into assets" *[first paragraph, third sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a description is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
P1	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1) **Irrelevant** (401)	"Date(s) 6/19/2013" "turn our client's ideas into assets" *[bottom section "Trademark," first paragraph, final sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a description is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
Q1	**Failure to Properly Introduce Alleged 3rd-Party Registration.** TBMP704.03(b) **Hearsay** (802) **Lack of Foundation** (602; 901a)	CREATING VALUE FROM IDEAS *[trademark registration]*	A purported printout of a web page showing a trademark registration is hearsay lacking proper foundation. TBMP704.03(b)fn 3 ("the Board does not take judicial notice of either third-party registrations or a party's own registration[s] insofar as the Trademark Rules of Practice specify, as discussed above, how to make such registrations of record in an inter parties proceeding.", citing *UMG Recordings Inc. v. O'Rourke*, 92 USPQ2d 1042, 1046 (TTAB 2009), *citing Corporate Fitness Programs Inc. v. Weider Health and Fitness Inc.*, 2 USPQ2d 1682, 1683-84, n.3 (TTAB 1987) ("The Board does not take judicial notice of registrations that reside in the Patent and Trademark Office."); *Black & Decker Corp. v. Emerson Electric Co*., 84 USPQ2d 1482, 1485 n.4 (TTAB 2007).)

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
Q2			
Q3	**Failure to Properly Introduce Alleged 3rd-Party Registration.** TBMP704.03(b) **Hearsay** (802) **Lack of Foundation** (602; 901a)	Creating Value from Ideas *[purported registration specimen]* "(August 2003 Transmission Date)"	A purported printout of a web page showing trademark registration papers is hearsay lacking proper foundation. TBMP704.03(b)fn 3. Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
R1	**Irrelevant** (401) **Hearsay** (802)	"From Ideas to Assets *[book cover, item title]"* "(December 2001 Publication Date)"	Non-trademark use of similar words in a book title is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant. Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
R2	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401) **Hearsay** (802)	"Date(s) 2/27/2014" "From Ideas to Assets *[book cover, item title]"* "(December 2001 Publication Date)"	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a book title is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant. Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
R3	**Irrelevant** (401)	"turn ideas into assets" *[middle page, first sentence]*	Non-trademark use of similar words in a description is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
R4	**Irrelevant** (401)	"From Ideas to Assets" *[near bottom "New Book" section, book cover and title]*	Non-trademark use of similar words in a book title is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(May 2002 Web Archive Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
R5	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 12/19/2013"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"From ideas to ASSETS" *[right ad column, middle]*	Non-trademark use of similar words in a book title is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
R6	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 12/19/2013"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"From ideas to ASSETS" *[fourth page, second paragraph, final sentence]*	Non-trademark use of similar words in a book title is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
R7	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 10/30/2013"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"From Ideas to Assets, *[second page, entry 11]*; 11th bestseller on Amazon.com in Patent category *[first page, left department listings]*	Non-trademark use of similar words in a book titleis fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
S1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 8/8/2013" "Turn Abstract Ideas into Tangible Assets" *[tagline under name]*; "turn their ideas into tangible assets" *[summary, first paragraph, third sentence]*	This document was admittedly not produced as required during discovery. This purports to be a Linkedin page, with no "TM" "SM" or other indicia of trademark use present. Non-trademark use of similar words in a statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
T1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 2/27/2014" "Ideas to Assets"*[image caption/slogan]*	This document was admittedly not produced as required during discovery. No "TM" "SM" or other indicia of trademark use present. Non-trademark use of similar words in a statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
U1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 2/27/2014" "guide you from idea to asset" *[second page, second paragraph, final sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
V1	**Failure to Properly Introduce Alleged 3rd-Party Registration.** TBMP704.03(b) **Hearsay** (802) **Lack of Foundation** (602; 901a)	WHERE INNOVATION BECOMES ASSETS *[trademark registration]*	A purported printout of a web page showing a trademark registration is hearsay lacking proper foundation. TBMP704.03(b)fn 3 ("the Board does not take judicial notice of either third-party registrations or a party's own registration[s] insofar as the Trademark Rules of Practice specify, as discussed above, how to make such registrations of record in an inter parties proceeding.", citing *UMG Recordings Inc. v. O'Rourke*, 92 USPQ2d 1042, 1046 (TTAB 2009), *citing Corporate Fitness Programs Inc. v. Weider Health and Fitness Inc.*, 2 USPQ2d 1682, 1683-84, n.3 (TTAB 1987) ("The Board does not take judicial notice of registrations that reside in the Patent and Trademark Office."); *Black & Decker Corp. v. Emerson Electric Co*., 84 USPQ2d 1482, 1485 n.4 (TTAB 2007).)
	Hearsay (802)	"(April 2004 Filing Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
V2	**Irrelevant** (401)	Where Innovation Becomes Assets *[right side slogan after firm name]*	No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a descriptive document title is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
V3	**Failure to Properly Introduce Alleged 3rd-Party Registration.** TBMP704.03(b) **Hearsay** (802) **Lack of Foundation** (602; 901a)	WHERE INNOVATION BECOMES ASSETS™ *[purported registration specimen]* "(May 2005 Submission Date)"	A purported printout of a web page showing trademark registration papers is hearsay lacking proper foundation. TBMP704.03(b)fn 3. Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
W1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Failure to Properly Introduce Alleged 3rd-Party Registration.** TBMP704.03(b) **Hearsay** (802) **Lack of Foundation** (602; 901a)	"Date(s) 11/01/2013" FROM IDEAS TO PROFITS *[trademark registration]*	This document was admittedly not produced as required during discovery. A purported printout of a web page showing a trademark registration is hearsay lacking proper foundation. TBMP704.03(b)fn 3 ("the Board does not take judicial notice of either third-party registrations or a party's own registration[s] insofar as the Trademark Rules of Practice specify, as discussed above, how to make such registrations of record in an inter parties proceeding.", citing *UMG Recordings Inc. v. O'Rourke*, 92 USPQ2d 1042, 1046 (TTAB 2009), *citing Corporate Fitness Programs Inc. v. Weider Health and Fitness Inc.*, 2 USPQ2d 1682, 1683-84, n.3 (TTAB 1987) ("The Board does not take judicial notice of registrations that reside in the Patent and Trademark Office."); *Black & Decker Corp. v. Emerson Electric Co*., 84 USPQ2d 1482, 1485 n.4 (TTAB 2007).)
	Hearsay (802)	"(June 2003 Filing Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
W2	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 2/27/2014"	This document was admittedly not produced as required during discovery.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
W3	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Hearsay (802)** **No Proper Authentication**	"Date(s) 2/27/2014" "(January 2009 Web Archive Date)"	This document was admittedly not produced as required during discovery. Documents from the WayBackMachine Internet Archive are inherently not self-authenticating, are hearsay and are unreliable. Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
X1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 6/19/2013" "grow their creative ideas into business assets" *[first sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
Y1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Failure to Properly Introduce Alleged 3rd-Party Registration.** TBMP704.03(b) **Hearsay** (802) **Lack of Foundation** (602; 901a)	"Date(s) 11/01/2013" "TURNING INNOVATION TO CAPITAL" *[trademark registration]*	This document was admittedly not produced as required during discovery. A purported printout of a web page showing a trademark registration is hearsay lacking proper foundation. TBMP704.03(b)fn 3 ("the Board does not take judicial notice of either third-party registrations or a party's own registration[s] insofar as the Trademark Rules of Practice specify, as discussed above, how to make such registrations of record in an inter parties proceeding.", citing *UMG Recordings Inc. v. O'Rourke*, 92 USPQ2d 1042, 1046 (TTAB 2009), *citing Corporate Fitness Programs Inc. v. Weider Health and Fitness Inc.*, 2 USPQ2d 1682, 1683-84, n.3 (TTAB 1987) ("The Board does not take judicial notice of registrations that reside in the Patent and Trademark Office."); *Black & Decker Corp. v. Emerson Electric Co*., 84 USPQ2d 1482, 1485 n.4 (TTAB 2007).)
	Hearsay (802)	"(December 2011 Filing Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
Y2	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 11/01/2013" TURNING INNOVATION TO CAPITAL *[bottom left of gear image]*	This document was admittedly not produced as required during discovery. No "TM" "SM" or other indicia of trademark use present. Non-trademark use of similar words in a statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
Z1	**Failure to Properly Introduce Alleged 3rd-Party Registration.** TBMP704.03(b) **Hearsay** (802) **Lack of Foundation** (602; 901a)	"IDEAS ARE VALUABLE" *[trademark registration]*	A purported printout of a web page showing a trademark registration is hearsay lacking proper foundation. TBMP704.03(b)fn 3 ("the Board does not take judicial notice of either third-party registrations or a party's own registration[s] insofar as the Trademark Rules of Practice specify, as discussed above, how to make such registrations of record in an inter parties proceeding.", citing *UMG Recordings Inc. v. O'Rourke*, 92 USPQ2d 1042, 1046 (TTAB 2009), *citing Corporate Fitness Programs Inc. v. Weider Health and Fitness Inc.*, 2 USPQ2d 1682, 1683-84, n.3 (TTAB 1987) ("The Board does not take judicial notice of registrations that reside in the Patent and Trademark Office."); *Black & Decker Corp. v. Emerson Electric Co*., 84 USPQ2d 1482, 1485 n.4 (TTAB 2007).)
	Hearsay (802)	"(January 2009 Filing Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
Z2	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 2/26/2014"	This document was admittedly not produced as required during discovery.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
Z3	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Failure to Properly Introduce Alleged 3rd-Party Registration.** TBMP704.03(b) **Hearsay** (802) **Lack of Foundation** (602; 901a)	"Date(s) 2/26/2014" IDEAS ARE VALUABLE *[purported registration specimen]*	This document was admittedly not produced as required during discovery. A purported printout of a web page showing trademark registration papers is hearsay lacking proper foundation. TBMP704.03(b)fn 3.
AA1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 6/19/2013" "turning ideas into business assets" *[first page, second paragraph, second sentence]*	This document was admittedly not produced as required during discovery. This is a non-U.S. publication and is irrelevant. Non-trademark use of similar words in a non-commercial statement in a WIPO publication is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
AA2	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401) **Not Properly Authenticated** **Hearsay** (802)	"Date(s) 6/19/2013" "turning ideas into business assets" *[first page, second paragraph, second sentence]* *(June 2002 Web Archive Date)*	This document was admittedly not produced as required during discovery. Documents from the WayBackMachine Internet Archive are inherently not self-authenticating, are hearsay and are unreliable. Non-trademark use of similar words in a non-commercial statement in a WIPO publication is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant. Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
AA3	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 6/19/2013" "turning ideas into business assets" *[first page, second paragraph, second sentence]*	This document was admittedly not produced as required during discovery. WIPO is a non-U.S. publication and is irrelevant. Non-trademark use of similar words in a non-commercial statement in a WIPO publication is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
AA4	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 2/27/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	830 results for WIPO's "turning ideas into business assets with a real market value" *[first page, near top, under search bar]*	Non-trademark use of similar words in a non-commercial statement in a WIPO publication is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)		Applicant seeks to prove the number of results available on a search engine by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
	Not Properly Authenticated.		Google search results are not self-authenticating or admissible under TTAB rules and decisions.
AA5	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 6/19/2013"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"turning ideas into profit-making assets" *[page 3, final bullet]*	Non-trademark use of similar words in a non-commercial statement in a WIPO publication is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant. This is a foreign publication and foreign use is irrelevant.
	Hearsay (802)	"(July 2002 Publication Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
BB1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 8/09/2013" TURNING IDEAS INTO ASSETS *[left side, vertical tab]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a non-commercial statement on the Danish Patent Office website is fair use and is not a "Third Party Use" of a mark, is not use in the U.S., and is thus irrelevant.
BB2	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401) **Not Properly Authenticated**	"Date(s) 8/09/2013" "turn ideas into assets" *[description under first result for DKPTO]*	This document was admittedly not produced as required during discovery. Google search results are not self-authenticating or admissible under TTAB rules and decisions. Non-trademark use of similar words in a non-commercial statement on the Danish Patent Office website is fair use and is not a "Third Party Use" of a mark, is not use in the U.S., and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
BB3	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 8/09/2013"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"transforming ideas into assets" *[page 17, right sidebar, second bullet]*; TURNING IDEAS INTO ASSETS® *[all pages, left side, vertical tab]*	Non-trademark use of similar words in a non-commercial statement on the Danish Patent Office website is fair use and is not a "Third Party Use" of a mark, is not use in the U.S., and is thus irrelevant. Likewise, a foreign trademark registration purportedly belonging to the Danish Patent Office is fair use and is not a "Third Party Use" of a mark, is not use in the U.S., and is thus irrelevant.
	Hearsay (802)	"(November 2007 Publication Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
CC1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 8/09/2013"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"Turning ideas into assets" *[lower middle "Our vision" section, translation of slogan]*	Non-trademark use of similar words in a non-commercial statement on the Norwegian Patent Office website is fair use and is not a "Third Party Use" of a mark, is not use in the U.S., and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
CC2	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 6/19/2013" "turning ideas into assets" *[first page, second paragraph, third sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a non-commercial statement on the Norwegian Patent Office website is fair use and is not a "Third Party Use" of a mark, is not use in the U.S., and is thus irrelevant.
DD1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 2/27/2014" "Turning ideas into value" *[first page, title; pages 13+ top margin]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a non-commercial statement on the Canadian Patent Office website is fair use and is not a "Third Party Use" of a mark, is not use in the U.S., and is thus irrelevant.
EE1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401) **Hearsay** (802)	"Date(s) 8/09/2013" IDEAS TO ASSETS *[event title]* "(January 2013 Event Date)"	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a non-commercial title of a presentation by the U.S. Small Business Administration is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant. Applicant seeks to prove the date of an event, not even the date of the document itself, by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
FF1	**Irrelevant** (401)	"Turning Ideas into Assets *[first page, bottom, event title]*	Non-trademark use of similar words in a non-commercial title of a presentation by the Louisiana Small Business Development Center is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(July 2012 Event Date)"	Applicant seeks to prove the date of an event, not even the date of the document itself, by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
FF2	**Irrelevant** (401)	"Turning Ideas into Assets *[first page, middle, event title]*	Non-trademark use of similar words in a non-commercial title of a presentation by the Louisiana Small Business Development Center is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(July 2012 Event Date)"	Applicant seeks to prove the date of an event, not even the date of the document itself, by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
FF3	**Irrelevant** (401)	"Turning Ideas into Assets *[first page, bottom section, first para.]*	Non-trademark use of similar words in a non-commercial title of a presentation by the Louisiana Small Business Development Center is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(July 2012 Event Date)"	Applicant seeks to prove the date of an event, not even the date of the document itself, by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
FF4	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 7/19/2013"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"Turning Ideas into Assets *[page title]*	Non-trademark use of similar words in a non-commercial title of a presentation by the Louisiana Small Business Development Center is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(July 2012 Event Date)"	Applicant seeks to prove the date of an event, not even the date of the document itself, by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
GG1	**Irrelevant** (401)	Ideas to Assets *[first page, title]*	Non-trademark use of similar words in a non-commercial title of an article on the Arkansas State University Small Business Blog is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(October 2010 Event Date)"	Applicant seeks to prove the date of an event, not even the date of the document itself, by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
GG2	**Irrelevant** (401)	"Turning Ideas into Assets" *[first sentence]*	Non-trademark use of similar words in a non-commercial title of a presentation to be given by Arkansas State University is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(March 2012 Event Date)"	Applicant seeks to prove the date of an event, not even the date of the document itself, by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
GG3	**Irrelevant** (401)	Ideas to Assets *[first line under image]*	Non-trademark use of similar words in a non-commercial title of a presentation to be given by Arkansas State University is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(March 2012 Event Date)"	Applicant seeks to prove the date of an event, not even the date of the document itself, by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
HH1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 2/27/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"converting ideas into assets" *[second page (19), second bullet]*	Non-trademark use of similar words in a non-commercial presentation by a German company, presented on a Japanese website, is fair use and is not a "Third Party Use" of a mark, is not a use in the U.S., and is thus irrelevant.
	Hearsay (802)	"(2013 copyright date)	Applicant seeks to prove the date of the document by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
II1	**Irrelevant** (401)	"Turning Innovation Into Assets *[page 2, first bullet; page 3 title]*	Non-trademark use of similar words in a non-commercial presentation by a professor at State University of New York is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(2009 Publication Date)"	No evidence this is a proper web page submission. No download date or web publication date. Applicant seeks to prove the date of the document by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
JJ1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 2/27/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"Turning ideas into assets" *[second page (29), second full paragraph, first sentence]*	Non-trademark use of similar words in a non-commercial presentation to an Inventors' Forum is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(December 2007 copyright date)"	Applicant seeks to prove the date of the document by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
KK1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 2/27/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"Turn Your Great Ideas into Valuable Assets *[second page (19), title]*	Non-trademark use of similar words in a non-commercial presentation entitled "Protect Your Great Ideas for Free!" is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(August 2006 Publication Date)"	Applicant seeks to prove the date of the document by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
KK2	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 2/27/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	Nothing indicated.	No alleged "Third Party Use" of a mark is indicated, and is thus irrelevant.
	Hearsay (802)	"(August 2006 Publication Date)"	Applicant seeks to prove the date of the document by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
LL1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 2/27/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"turn ideas into assets" *[second page, contents on right, "9 Property Values" description]*; "ideas as assets" *[third page (9) subtitle]*	Non-trademark use of similar words in a non-commercial "news story" is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(Fall 2001 Publication Date)"	Applicant seeks to prove the date of the document by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
MM1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 8/08/2013"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"turn your ideas into income generating assets" *[first paragraph, third sentence]*	Non-trademark use of similar words in a statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
MM2	**Irrelevant** (401)	"Creating Fortunes from Your Ideas" *[book cover, book title page]*	Non-trademark use of similar words in a book title is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(June 2001 Publication Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
NN1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 10/27/2013"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	Ideas as Assets *[title]*; ideas are valuable *[first page, paragraph below image]*	Non-trademark use of similar words in a blog title is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(October 2012 Publication Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
OO1	**Failure to Disclose** Fed. R. Civ. P. 37(c)(1)	"Date(s) 10/1/2013"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"Transform Your Ideas Into Marketable Assets" *[page subtitle]*; "transforms your ideas into marketable assets" *[company description first sentence]*	No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a descriptive statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
PP1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 2/27/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	Ideas are Assets *[second page, Friday 11:30am track on left, third page (7), second presentation]*	Non-trademark use of similar words in a non-commercial title of a conference brochure is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(December 2013 Event Date)"	Applicant seeks to prove the date of an event, not even the date of the document itself, by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
QQ1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 2/27/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	Turning Ideas Into Profits *[event title]*	Non-trademark use of similar words in a title of a seminar is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(March 2007 Event Date)"	Applicant seeks to prove the date of an event, not even the date of the document itself, by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
QQ2	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 2/27/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	Turning Ideas Into Profits *[event title]*	Non-trademark use of similar words in a title of a seminar is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(April 2008 Event Date)"	Applicant seeks to prove the date of an event, not even the date of the document itself, by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
RR1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 12/19/2013"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"from idea to asset" *[final presentation, first bullet]*	Non-trademark use of similar words in a title of a bullet point in a seminar is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(March 2013 Event Date)"	Applicant seeks to prove the date of an event, not even the date of the document itself, by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
SS1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 11/7/2013"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	Ideas as Assets *[post title]*	Non-trademark use of similar words in a blog title is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(October 2006 Publication Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
TT1	**Irrelevant** (401)	"creating assets from ideas" *[first page, third paragraph, second sentence]*	Non-trademark use of similar words within a blog based in Israelis fair use and is not a "Third Party Use" of a mark, is not a use in the U.S., and is thus irrelevant.
	Hearsay (802)	"(June 2011 Publication Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
UU1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 8/8/2013"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"turning those ideas into tangible assets" *[second paragraph, second sentence]*	Non-trademark use of similar words within a blog is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(July 2013 Publication Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
UU2	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401) **Hearsay** (802)	"Date(s) 2/05/2014" "Turning Ideas Into Value"*[article subtitle]* "(May 2008 Publication Date)"	This document was admittedly not produced as required during discovery. Non-trademark use of similar words as the title of a magazine article is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant. Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
UU3	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 2/05/2014" "Turning Ideas Into Value"*[article subtitle]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words as the title of a magazine article is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
VV1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 6/11/2013" "turn your ideas into assets" *[final sentence, second page]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words in a FAQ section of a website of a Canadian company is fair use and is not a "Third Party Use" of a mark, is not use in the U.S., and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
WW1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 2/15/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"ideas are assets" *[second page (5), item 5]*	Non-trademark use of similar words as a statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(May 2012 Publication Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
XX1	**Irrelevant** (401)	"turn your idea into an intellectual property asset" *[first sentence]*	Non-trademark use of similar words as a statement is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
YY1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 2/26/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"turn their ideas into IP assets" *[first line under twitter handle]*	This purports to be a Twitter page, with no "TM" "SM" or other indicia of trademark use present. Non-trademark use of similar words as part of a twitter handle is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)		Twitter posts are inherently unreliable and are hearsay.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
ZZ1	**Failure to Properly Introduce Alleged 3rd-Party Registration.** TBMP704.03(b) **Hearsay** (802) **Lack of Foundation** (602; 901a)	"WE CREATE WEALTH FROM YOUR WEALTH OF IDEAS" *[trademark registration]*	A purported printout of a web page showing a trademark registration is hearsay lacking proper foundation. TBMP704.03(b)fn 3 ("the Board does not take judicial notice of either third-party registrations or a party's own registration[s] insofar as the Trademark Rules of Practice specify, as discussed above, how to make such registrations of record in an inter parties proceeding.", citing *UMG Recordings Inc. v. O'Rourke*, 92 USPQ2d 1042, 1046 (TTAB 2009), *citing Corporate Fitness Programs Inc. v. Weider Health and Fitness Inc.*, 2 USPQ2d 1682, 1683-84,n.3 (TTAB 1987) ("The Board does not take judicial notice of registrations that reside in the Patent and Trademark Office."); *Black & Decker Corp. v. Emerson Electric Co.*, 84 USPQ2d 1482, 1485 n.4 (TTAB 2007).) Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
	Hearsay (802)	"(June 200 Filing Date)"	
ZZ2			

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
AAA1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 2/14/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"Converting a creative idea into a financial asset" *[first page abstract & first sentence];* "concert creative ideas into assets" *[third page, first full paragraph;* "From Ideas to Assets" *[n.1]*	Non-trademark use of similar words as a statement or title is fair use and is not a "Third Party Use" of a mark, and is thus irrelevant.
	Hearsay (802)	"(January 2006 Publication Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
BBB1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 2/14/2014"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"turn ideas into assets" *[fifth page, second full paragraph, third sentence]*	Non-trademark use of similar words as a statement or title is fair use and is not a "Third Party Use" of a mark, this use is on a European website and is not use in the U.S., and is thus irrelevant.
	Hearsay (802)	"(June 2013 Publication Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
CCC1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 6/11/2013" "turns ideas into assets" *[page title]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words as a page title is fair use and is not a "Third Party Use" of a mark, this use is on an Australian website and is not use in the U.S., and is thus irrelevant.
DDD1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 9/19/2013" "turning ideas into business assets" *[first paragraph, third sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words as a statement is fair use and is not a "Third Party Use" of a mark, this use is on a website from Greece and is not use in the U.S., and is thus irrelevant.
EEE1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 2/27/2014" Turning IDEAS into ASSETS *[left box with slogan]*	This document was admittedly not produced as required during discovery. No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a descriptive statement is fair use and is not a "Third Party Use" of a mark, this use is on an Australian website and is not use in the U.S., and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
FFF1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 6/19/2013" "turn your good ideas into business assets" *[second sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words as a statement is fair use and is not a "Third Party Use" of a mark, this use is on a website from Europe and is not use in the U.S., and is thus irrelevant.
GGG1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 2/27/2014" "Turning Ideas into Assets"*[first page banner graphic, third page heading]*	This document was admittedly not produced as required during discovery. No "TM" "SM" or other indicia of trademark use is present. Non-trademark use of similar words in a descriptive statement is fair use and is not a "Third Party Use" of a mark, this use is on an South African website and is not use in the U.S., and is thus irrelevant.
HHH1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 6/19/2013" "turn ideas into assets" *[second page, first paragraph, second sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words as a statement is fair use and is not a "Third Party Use" of a mark, this use is on a website from Canada and is not use in the U.S., and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
III1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 6/19/2013" "transform ideas into assets" *[third paragraph to right of graphic]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words as a statement is fair use and is not a "Third Party Use" of a mark, this use is on a website from Italy and is not use in the U.S., and is thus irrelevant.
JJJ1	**Irrelevant** (401)	Ideas into Assets® *[top blog title]*	This is an Australian blog regarding an Australian organization and is purportedly using an Australian trademark registration symbol, and thus is not use in the U.S., and is therefore irrelevant.
KKK1	**Irrelevant** (401)	turning ideas into assets *[slogan under firm name]*; Transition From Idea to Asset *[middle page subheading]*	Non-trademark use of similar words as a statement is fair use and is not a "Third Party Use" of a mark, this use is on a website from the UK regarding a UK organization and thus is not use in the U.S., and is therefore irrelevant.
LLL1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 2/15/2014" Ideas are assets *[first page, right sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words as a statement is fair use and is not a "Third Party Use" of a mark, this use is on a website from Canada and is not use in the U.S., and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
LLL2	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 2/15/2014" Ideas are assets *[first page, right sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words as a statement is fair use and is not a "Third Party Use" of a mark, this website is referring to an organization in Canada doing business in Canada and is not use in the U.S., and is thus irrelevant.
LLL3	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 2/15/2014" Ideas are assets *[first page, right sentence]*	This document was admittedly not produced as required during discovery. Non-trademark use of similar words as a statement is fair use and is not a "Third Party Use" of a mark, this website is referring to an organization in Canada doing business in Canada and is not use in the U.S., and is thus irrelevant.
MMM1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)** **Irrelevant** (401)	"Date(s) 2/26/2014" Turn your ideas into assets ™ *[top right slogan]*	This document was admittedly not produced as required during discovery. This is an Australian website regarding an Australian organization and is purportedly using an Australian trademark symbol, and thus is not use in the U.S., and is therefore irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
MMM2	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 6/11/2013"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	Turn your ideas into assets™ *[top right slogan]*	This is an Australian website regarding an Australian organization and is purportedly using an Australian trademark symbol, and thus is not use in the U.S., and is therefore irrelevant.
	Hearsay (802)	"(September 2012 Publication Date)"	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
NNN1	**Irrelevant** (401)	"turn ideas into assets" *[title]*	Non-trademark use of similar words as a title of an article is not a "Third Party Use" of a mark, this use is on a website from the UK regarding a UK organization and thus is not use in the U.S., and is therefore irrelevant.
	Hearsay (802)	(2006 Copyright Date)	Applicant seeks to prove the date by offering as a foundation only the hearsay content of the web page for the truth of the matter asserted.
OOO1	**Failure to Disclose Fed. R. Civ. P. 37(c)(1)**	"Date(s) 6/19/2013"	This document was admittedly not produced as required during discovery.
	Irrelevant (401)	"turning ideas into business assets" *[middle answer, first sentence]*	Non-trademark use of similar words as a statement is fair use and is not a "Third Party Use" of a mark, this website is referring to an organization in the UK, Australia, and Singapore doing business there and is not use in the U.S., and is thus irrelevant.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
PPP1	**Irrelevant** (401)	"intangible asset that consists of human knowledge and ideas" *[page 6, first sentence]* "an intangible creation of the human mind, usually expressed or translated into a tangible form, that is assigned certain rights of property. . . .one of the most valuable assets a person or small business can own." *[page 9, first paragraph, first and last sentences]* "property (as an idea, invention, or process) that derives from the or of the mind . . . : an application, right, or registration relating to this" *[page 3, first definition]* "Any product of someone's intellect that has commercial value" *[page 7, first definition]*	Non-trademark uses of similar words in dictionary definitions are fair use and do not constitute "Third Party Uses" of a mark, and thus are irrelevant.
21	**Cumulatively, Confusing, and Prejudicial** TBMP 702.05; FRE 401, 403, and 611a. **Hearsay** (802)	"Exhibits A1-OOO1 … include 67 distinct individuals or organizations grouped by letter, with **multiple usages by a single individual** or organization being followed by numerals increasing from "2."	Exhibits A1 through PPP1 lack probative value, are needlessly cumulatively, confusing, and prejudicial. *Accord*, TBMP 702.05. Accordingly, Applicant's prolix presentation of 135 non-probative web pages is objected to under FRE 401, 403, and 611a. The truth of the matter asserted in the exhibits is hearsay. Applicant can't use the contents of the exhibits to prove the truth of the matters asserted therein.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
22	**Argumentative** (611a) **Lack of Foundation/Lack of Personal Knowledge** (602; 901a) **Improper Lay Opinion** (701) **Improper Expert Opinion** (702)	"it is my opinion that it is **universally understood** that there is an equivalency between ideas and assets and, further, that changing ideas into assets involve services in intellectual property." … "it is further my opinion that the U.S. public has been **significantly exposed** to '[change]ing ideas into assets' to describe legal services in intellectual property and to caption providers of the same, including several versions using synonyms like 'turn,' 'transform,' and 'convert' for 'change.'"	As at least part of the basis of these opinions, Applicant explicitly relies on links to web pages to offer the statements thereon for the truth of the matters asserted by others. But the linked-to web pages are live and subject to constant change, and copies of the applicable web pages were not produced during discovery. Applicant can testify as to his own experiences with consumers, but this provides no basis for the blanket statements that consumers "universally understand" the asserted conclusion, or that consumers have been "significantly exposed" to these statements. Applicant does not have personal experience with all consumers in the marketplace, and Applicant has not qualified himself to render such a sweeping opinion as an expert. Moreover, Applicant has utterly failed to provide any evidence indicating the level of exposure of the cited web pages to relevant consumers. In fact, a large fraction of the cited web pages are foreign, and thus are not directed to US consumers for services in the US. Accordingly, "the document[s] may not be considered to have much probative value." TBMP 704.08(b). Applicant thus lacks foundation for his stated opinions.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
23	**Argumentative** (611a) **Lack of Foundation/Lack of Personal Knowledge** (602; 901a) **Improper Lay Opinion** (701) **Improper Expert Opinion** (702)	"A number of IP lawyers identified in Exhibits A- Z have made **extensive public trademark use** of marks closer in sound, appearance, and connotation to Opposer's Marks than Applicant's Mark is to Opposer's Mark."	Applicant does not have personal experience with the extent of use of any of these websites, and Applicant has not qualified himself to render his opinion as an expert. In fact, Applicant has utterly failed to provide any evidence indicating the level of exposure of the cited web pages to relevant consumers. In fact, a large fraction of the cited web pages are foreign, and thus are not directed to US consumers for services in the US. Accordingly, "the document[s] may not be considered to have much probative value." TBMP 704.08(b). Applicant thus lacks foundation for his stated opinions.
24	**Argumentative** (611a) **Irrelevant** (401) **Prejudicial** (403) **Lack of Foundation (602)** **Improper Lay Opinion** (701) **Improper Expert Opinion** (702)	"In my opinion, "Building" does not sound or appear like "Transforming""	Applicant's self-interested subjective opinion provided by himself on his own behalf, as a trained legal advocate, is so obviously and necessarily biased as to have no probative value. Accordingly, it should be considered what it is, attorney argument, not evidence.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
25	**Argumentative** (611a) **Irrelevant** (401) **Prejudicial** (403) **Lack of Foundation (602; 901a)** **Improper Lay Opinion** (701) **Improper Expert Opinion** (702)	""Transforming" and "Building" are not synonyms." … "'Building' **gives an impression** of physically constructing or assembling a larger whole from individual pieces whose nature does not change, like 'building wooden logs into a cabin.'" "In Applicant's Mark, **'Building' is fanciful** in that ideas cannot be physically put together, and an asset requires some metamorphosis from an idea's intangible nature, like a legal transformation, not a mere assemblage of the same, to be created." "…'Transforming' **gives a different impression** of fundamentally changing and consuming one thing to create another thing of a completely different character, like 'transforming wooden logs into ash and heat in a fire.'"	Applicant's self-interested subjective opinions provided by himself on his own behalf, as a trained legal advocate, are so obviously and necessarily biased as to have no probative value. Accordingly, these statements should be considered what they are, attorney argument, not evidence. Also, Applicant's hand-picking certain dictionary definitions that do not list "Transforming" and "Building" as synonyms does not mean that they are never considered synonyms, and Applicant is not qualified as an expert to opine otherwise. Applicant has no credible basis on which to opine what impressions consumers might form.

Para.	Objections (FRE)	Testimony (emphasis added)	Analysis
26	**Argumentative** (611a) **Irrelevant** (401) **Prejudicial** (403) **Lack of Foundation (602; 901a)** **Improper Lay Opinion** (701) **Improper Expert Opinion** (702)	"Opposer's and Applicant's Marks are **altogether different in protectable commercial impression** in my opinion." ... "In my opinion, **consumers** exposed to the Marks **would be most influenced** by these unique, non-descriptive differences in required actions and foci between in the Marks **and understand** that Applicant's Mark is a fanciful thought of constructing an asset using ideas as the pieces, whereas Opposer's Mark is a more straightforward depiction of removing the abstract nature of an idea to gain the financial nature of an asset."	Applicant's self-interested subjective opinions provided by himself on his own behalf, as a trained legal advocate, are so obviously and necessarily biased as to have no probative value. Accordingly, these statements should be considered what they are, attorney argument, not evidence. Applicant has no credible basis on which to opine what would most influence consumers, and what consumers would understand. Applicant has provided no evidence indicating the consumers would consult Applicant's dictionary definitions when forming a general impression of the parties' respective marks.

INNOVATION LAW GROUP, LTD.

Dated March 17, 2014

By: _____
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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **OPPOSER'S OBJECTIONS TO APPLICANT'S TESTIMONY DECLARATION OF RYAN E. ALLEY** is being served on Applicant's Attorney of Record, by emailing said copy on March 17, 2014 to the following:

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Dated: March 17, 2014

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