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Filing date: **08/07/2013**

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

Proceeding	91207983
Party	Plaintiff Emanuel Ungaro Italia S.r.l.
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Submission	Motion to Compel Discovery
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Signature	/Ralph H. Cathcart/
Date	08/07/2013
Attachments	Reply in Support of Motion to Compel Discovery Responses - Added Extras.pdf(993418 bytes) Reply Declaration of Ralph H. Cathcart - Added Extras.pdf(712242 bytes) Reply RHC Declaration Exhibits A - I - Added Extras.pdf(5146185 bytes)

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

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EMANUEL UNGARO ITALIA S.R.L.	:	
	:	
Opposer,	:	Opposition No. 91/207,983
	:	Application No. 85/500,670
v.	:	
	:	
ADDED EXTRAS LLC,	:	
	:	
Applicant.	:	
-----X		

**OPPOSER'S REPLY IN SUPPORT OF MOTION TO COMPEL DISCOVERY RESPONSES,
SANCTIONS, ENTRY OF PROTECTIVE ORDER AND STAY**

Opposer, Emanuel Ungaro S.r.l., by its undersigned attorneys, submits this reply brief and supporting Declaration of Ralph H. Cathcart to refute Applicant's Opposition to Opposer's Motion to Compel and in further support thereof.

DISCUSSION

Tellingly, Applicant wholly fails to address its default in responding to Opposer's discovery requests, offering not a single excuse for its total discovery noncompliance. Thus, Applicant has conceded its discovery noncompliance is inexcusable.

Applicant's objection to Opposer's Motion to Compel is nothing more than a charade, aimed at avoiding the consequences of its inexcusable discovery noncompliance, which has delayed proceedings, frustrated the discovery process, and resulted in unnecessary motion practice.

Applicant insults the Board's intelligence and attempts to paint itself as a victim, based on its groundless allegation that Opposer failed to sufficiently attempt to resolve Applicant's total discovery noncompliance prior to moving to compel. Applicant's position is as desperate as it is disingenuous. Cathcart Dec'l. ¶¶ 3-30.

To further underscore Applicant's unsavory discovery noncompliance tactics, Applicant's counsel now makes allegations that are knowingly false concerning the Parties' agreement to revise the Standard Protective Order. Cathcart Dec'l. ¶¶ 16-26.

It is manifestly apparent, now more than ever, that absent an Order compelling Applicant's discovery compliance, Applicant and its counsel will continue to seek to preclude Opposer from obtaining meaningful discovery and the ability to lay bare its proofs in support of its Notice of Opposition.

**OPPOSER ATTEMPTED IN GOOD FAITH TO RESOLVE
APPLICANT'S TOTAL DISCOVERY NONCOMPLIANCE**

On June 24, 2013, Opposer's counsel received Applicant's sham responses to Opposer's First Request for Production of Documents.¹ As stated in the moving papers, Applicant recited in rote-like fashion, boilerplate objections to each and every one of Opposer's 70 Document Requests and failed to produce even one page of documents responsive thereto. Cathcart Dec'l. ¶ 4.

On July 2, 2013, Opposer sent Applicant a letter pointing out that Opposer had yet to receive any responsive documents to its First Request for Production of Documents. Cathcart Dec'l. ¶ 8, Exh. C. Opposer also requested an extension of discovery and trial deadlines given that discovery was set to close on July 22, 2013. *Id.* Opposer specifically put Applicant on notice of the need to produce such documents and resolve its discovery noncompliance. *Id.* Applicant never responded concerning its discovery noncompliance. Cathcart Dec'l. ¶ 14.

Instead of responsive documents, on July 3, 2013, Opposer received Applicant's putative Response to Opposer's First Set of Interrogatories. Again, Applicant interposed in rote-like fashion, boilerplate objections to each and every Interrogatory and incredibly refused to answer a single

¹ On June 25, 2013, for the first time, Applicant requested a Word version of the revised Standard Protective Order so that Applicant could propose changes thereto. Cathcart Dec'l. ¶ 6.

interrogatory, falsely claiming that Applicant exceeded the permitted limit of interrogatories.

Cathcart Dec'l. ¶ 11.

Thus, it was glaringly obvious that there were no responsive documents “in the mail” and that Applicant did not intend to engage in meaningful discovery and/or abide by the Board’s rules. As per 37 C.F.R. § 2.120 and TBMP § 523.10, by letter dated July 10, 2013, in a good faith attempt to resolve Applicant’s total discovery noncompliance prior to moving to compel, Opposer again pointed out Applicant’s wrongful conduct and discovery noncompliance, yet nevertheless offered to compromise and accept tardy discovery responses, provided that Applicant respond “on the merits”. Cathcart Dec'l. ¶¶ 12-14, Exh. D. Again, Applicant did not respond. Cathcart Dec'l. ¶ 14. On July 12, 2013, Applicant then sent Opposer a WORD format version of its proposed Protective Order that specifically struck out the very changes that the Parties had agreed to during the Discovery Conference. Cathcart Dec'l. ¶ 14.

Plainly, Applicant never intended to respond to Opposer’s discovery from the very beginning. Otherwise, Applicant would have objected upon receipt of the amended Standard Protective Order from Opposer’s counsel, so that the Parties could resolve any issues related thereto. Tellingly, Applicant said nothing, waiting until after serving its sham discovery responses, so that it could attempt to partially justify its discovery noncompliance by withholding documents until a Protective Order was in place.

Applicant’s protestations that Opposer’s Motion to Compel should not be granted based on Opposer’s supposed failure to adequately attempt to work out Applicant’s discovery noncompliance is the height of hypocrisy. While the moving party in a Motion to Compel Discovery has an obligation to attempt to resolve any dispute in good faith, the moving party is not required to beg, cajole and badger the defaulting party into compliance.

Here, in support of Opposer's Motion to Compel, the Cathcart Dec'l. states at ¶ 16:

"On July 10, 2013, Opposer sent Applicant a letter in an attempt to resolve Applicant's blatant discovery non-compliance without motion practice. See Exhibit H hereto. Applicant has not cured its discovery non-compliance to date."

Plainly, Declarant's statement of its intent to resolve Applicant's total discovery noncompliance, conforms with the spirit of TBMP § 523.10 and 37 C.F.R. § 2.120. Instructively, in *Environtech Corporation v. Compagnie Desk Lamps*, 219 U.S.P.Q. 449, 450 (TTAB 1983) the Board stated:

aside from the fact that Rule 2.120(c)(1) does not require that the statement made under said rule must be under oath, it is clear that the purpose of the Rule 2.120(c)(1) is to save the Board the burden of ruling upon motions to compel in situations where the parties could work out their discovery differences if they made a good faith effort to do so. Where there has been a response to discovery which is unsatisfactory to the party seeking discovery, the moving party has a duty to confer with the opposing party to try to settle their disputes as to the propriety of the discovery request and/or responses thereto. Where, as here, there has been a complete failure to respond, the party seeking discovery has a duty under Rule 2.120(c)(1) to contact his opponent to ascertain why there has been no response and whether the matter can be resolved amicably. If the party seeking discovery is dissatisfied with his opponent's answer to his contact, he may then file a motion to compel supported by a statement required under Rule 2.120(c)(1).

Further, Rule 2.120(e) merely requires a written statement from the moving party that such party or the attorney therefor has "made a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion but the parties were unable to resolve their differences".

Thus, whether the Board construes Applicant's discovery noncompliance as a complete failure to respond, as urged by Opposer since Applicant has not produced one document or answered one interrogatory, Opposer has plainly satisfied its obligations.

Likewise, were the Board to construe Applicant's total discovery noncompliance nevertheless to be akin as to a situation where a party's production and responses are deficient, Opposer has still complied with the spirit of TBMP § 523.10 and 37 C.F.R. § 2.120 and made the appropriate statement in connection with this Motion to Compel.

Despite Applicant's total discovery noncompliance and attempt to renege on the modification of the Board's Standard Protective Order, Opposer nevertheless sent Applicant two (2) separate letters attempting to resolve matters by allowing Applicant to serve tardy responses to Opposer's First Set of Interrogatories and First Request for Production of Documents on a later date. Cathcart Dec'l. ¶¶ 8, 12-14. Opposer requested that such supplementation be made "on the merits" since Applicant had defaulted in responding to Opposer's discovery requests. Certainly this is reasonable.

Indeed, in *Envirotech Corporation*, the Board instructively stated "under the Board's discovery practice, a party who fails to respond to a request for discovery during the time allowed therefor is deemed to have forfeited his right to object to the requests on its merits, unless he can show that failure to timely respond was the result of excusable neglect". *Id.* at 219 U.S.P.Q. 449.

At no time did Applicant respond to Opposer's multiple requests for discovery compliance. Cathcart Dec'l. ¶ 14. To the extent that Applicant sheepishly argues that Opposer should have waited to see if the responses were "in the mail," it is noted that more than 47 days after Applicant's initial deadline to respond to discovery, Opposer has still not received one single responsive document or one answer to an Interrogatory. Thus, it is important to note that, we are not presented with a situation where Applicant has produced documents and answers to interrogatories and the Parties disagree about the propriety or completeness of Applicant's document production or responses to interrogatories.

Rather, here we are talking about Applicant's total discovery noncompliance. In such a case, there are no objective disputes and/or plausible defenses to discuss or hash out. The single, solitary issue that precipitated Opposer's filing of the instant Motion to Compel was Applicant's total discovery noncompliance.

Had Applicant produced responsive documents and/or interrogatories, this motion could have been avoided. In fact, had Applicant simply stated that it intended to comply within the extended time period offered by Opposer, the Parties could have avoided this Motion to Compel.

APPLICANT'S COUNSEL'S BAD FAITH DISCOVERY PRACTICE

Applicant is willing to go to any length to avoid the Board's grant of Opposer's Motion to Compel. In particular, Applicant's counsel falsely states, "during the Discovery Conference, Opposer's counsel never mentioned that both counsel and the Parties would be required to sign the Protective Order". Applicant's Opposition Brief to Opposer's Motion to Compel at page 3. This is simply not true. (Cathcart Dec'l. ¶¶ 16-26.)

In fact, Opposer's and Applicant's counsel specifically discussed Opposer's request that both the Parties and their respective counsel sign the Protective Order at length. Cathcart Dec'l. ¶¶ 17-19. A memorandum prepared by Opposer's counsel following the January 17, 2013 mandatory Discovery/Settlement Conference shows that the Parties discussed this issue and the Parties seemingly agreed thereto. Cathcart Dec'l. ¶19, Exh. F.

Further, on March 25, 2013, in a discussion with Applicant's attorney, Alison Naidech Carlson, Opposer's counsel again raised the issue of the Protective Order and the Parties agreement reached during the Discovery/Settlement Conference requiring that both the Parties and their counsel be signatories thereto. Cathcart Dec'l. ¶ 20, Exh. G.

Written correspondence between the Parties also supports Opposer's position that the Parties had agreed to a modified Standard Protective Order and at no time did Applicant's counsel object or take a contrary position until after it served its sham discovery responses. Cathcart Dec'l. ¶¶ 6, 7, 21-26, Exhs. A, B and H.

Given the circumstances, Opposer had seemingly reached an agreement with Applicant's counsel concerning the modification of the Standard Protective Order. Cathcart Dec'l. ¶¶ 16-26. At the very least, Applicant cannot honestly state that the issue was not discussed on numerous occasions. Cathcart Dec'l. ¶¶ 16-20. The internal memos prepared by Opposer's counsel and correspondence with Applicant show that the Parties were proceeding under the assumption that there would be a "Modified Standard Protective Order" requiring both the Parties and their respective counsel's signature. *Id.* If Applicant had not agreed to its counsel being a signatory to the Standard Protective Order, why did Applicant not raise this issue before, or when it first received the amended Standard Protective Order on May 16, 2013 along with Opposer's First Set of Interrogatories and Document Requests?

Would it not follow that Applicant would have raised the issue during the preparation of its discovery responses if Applicant were at all inclined to reasonably comport with its discovery requirements?

Opposer reminds Applicant's counsel of the ethical rules and counsel's obligation to be truthful. Applicant's opposition to Opposer's Motion to Compel contains a certification and therefore all statements made by counsel must be truthful. Applicant has at every turn sought to thwart the discovery process. Now, when Opposer moves to compel discovery compliance, Applicant complains that Opposer is guilty of sharp practice. Applicant has neither the legal nor the

moral standing to make such a far-fetched claim and the Board should grant Opposer's Motion to Compel in its entirety.

For all of the above reasons, Opposer's Motion to Compel should be granted in all respects.

Respectfully submitted,

LADAS & PARRY LLP

Attorneys for Opposer
EMANUEL UNGARO ITALIA S.R.L.

Dated: August 7, 2013

By: _____



Ralph H. Cathcart
1040 Avenue of the Americas
New York, NY 10023
(212) 708-1920
(Our Ref: C12644254)

CERTIFICATE OF TRANSMISSION

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **OPPOSER'S REPLY IN SUPPORT OF MOTION TO COMPEL DISCOVERY RESPONSES, SANCTIONS, ENTRY OF PROTECTIVE ORDER AND STAY** is being electronically transmitted to the United States Patent and Trademark Office on the date indicated:

Dated: August 7, 2013


Reinaldo M. Roa

CERTIFICATE OF SERVICE

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **OPPOSER'S REPLY IN SUPPORT OF MOTION TO COMPEL DISCOVERY RESPONSES, SANCTIONS, ENTRY OF PROTECTIVE ORDER AND STAY** was served via First Class Mail, postage prepaid, on the date indicated below, to the following:

Alison Naidech Carlson, Esq.
Lora A. Moffatt, Esq.
SALANS LLP
Rockefeller Center
620 Fifth Avenue
New York, NY 10020

Dated: August 7, 2013


Reinaldo M. Roa

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

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EMANUEL UNGARO ITALIA S.R.L.	:	
	:	
Opposer,	:	Opposition No. 91/207,983
	:	Application No. 85/500,670
v.	:	
	:	
ADDED EXTRAS LLC,	:	
	:	
Applicant.	:	
-----X		

REPLY DECLARATION OF RALPH H. CATHCART, ESQ.

I, Ralph H. Cathcart, declare that the following is true and correct pursuant to 28 U.S.C. § 1746:

1. I am a partner at Ladas & Parry LLP, attorneys for Opposer Emanuel Ungaro Italia S.r.l. and submit this reply declaration in further support of Opposer's Motion to Compel.

BACKGROUND

2. Applicant's Answers to Opposer's First Set of Document Requests were due on June 20, 2013.

3. Applicant requested and Opposer agreed to a one week extension of Applicant's deadline to respond to Opposer's First Set of Interrogatories, up-to-and-including June 27, 2013.

4. As of this date, Applicant has failed to produce even one single page of responsive documents or to answer one single Interrogatory.

5. Applicant has provided no justifiable reason excusing its discovery default.

6. On June 25, 2013, Applicant's counsel for the first time requested that Opposer send counsel a Word version of the Revised Standard Protective Order in order to revise same. A copy of the letter is attached hereto as Exhibit A.

OPPOSER ATTEMPTED IN GOOD FAITH TO RESOLVE APPLICANT'S
DISCOVERY NONCOMPLIANCE

7. By letter dated June 26, 2013, Declarant noted its surprise that Applicant sought to revise the modified Standard Protective Order. Declarant also noted that Opposer assumed that Applicant's production was made pursuant to the terms of the modified Protective Order discussed during the Settlement/Discovery Conference". A copy is attached hereto as Exhibit B.

8. On July 2, 2013, having still received no responsive documents to Opposer's First Set of Document Requests or responses to Opposer's First Set of Interrogatories, Opposer sent a letter to Applicant's counsel stating "the likelihood that we would have to resolve discovery issues" and sought Applicant's consent to a 90-day extension of discovery and trial deadlines, since discovery was set to close on July 22, 2013. A copy is attached as Exhibit C.

9. Declarant sought the extension of discovery and trial deadlines in order to avoid unnecessary motion practice and because counsel was concerned that Applicant was not acting in good faith and would not answer the interrogatories or produce documents prior to the close of discovery.

10. On July 3, 2013, Opposer's counsel received Applicant's sham Response to Opposer's First Set of Interrogatories.

11. As stated previously, Applicant repeatedly objected to the interrogatories with boilerplate objections and then refused to answer a single interrogatory.

12. On July 10, 2013, having still received no supplementation, Declarant sent Applicant's counsel a second letter noting Applicant's wrongful discovery noncompliance and

attempted in good faith as per the Board's rules (37 C.F.R. § 2.120 and TBMP § 523.02) to resolve Applicant's discovery noncompliance by agreeing to accept tardy discovery responses provided that Applicant respond "on the merits" on or before July 15, 2013. A copy is attached as Exhibit D.

13. The July 10, 2013 letter sent to Applicant's counsel stated in relevant part "as per the applicable rules, prior to filing a Motion to Compel, we hereby demand that your client supplement its responses, without any objection, "on the merits" and also produce responsive documents on or before July 15, 2013".

14. Applicant never responded to Opposer's July 2, 2013 letter concerning its discovery noncompliance nor to Opposer's second letter (July 10, 2013) concerning its discovery noncompliance. Instead, on July 12, 2013, Applicant sent Declarant a letter proposing a Protective Order that sought to strike the very revisions the Parties had agreed to, namely, that both the Parties and their respective counsel execute the Protective Order. A copy is attached as Exhibit E.

15. On July 16, 2013, Opposer filed the instant Motion to Compel.

APPLICANT'S COUNSEL'S MISREPRESENTATIONS

16. On January 17, 2013, the Parties conducted the mandatory Settlement/Discovery Conference.

17. During the conference, Declarant advised Applicant's counsel that Opposer proposed agreeing to the Standard Protective Order, provided it was revised to require that both the Parties and their respective counsel sign the Protective Order.

18. During such Settlement/Discovery Conference, Applicant's Attorney Claudia Cantarella was the lead and her associate Tanya D. Hicks was in attendance as well.

19. It was left that Opposer's proposed Protective Order seemed fine, but that Ms. Cantarella would get back to us if her client disagreed. A redacted copy of Declarant's memorandum summarizing the Discovery/Settlement Conference (that was drafted immediately thereafter) is attached hereto as Exhibit F.

20. Thereafter, on or about March 25, 2013, Declarant spoke with Attorney Naidech Carlson concerning the possibility of settlement. During the discussion, Declarant also inquired about a copy of the revised proposed Standard Protective Order that was to be

“revised so that both Parties and their attorneys would have to sign and limiting disclosures to this proceeding and any appeal thereof” and 2), [Declarant] pointed out that we had requested that Applicant strike its first four Affirmative Defenses. [Declarant] stated that Ms. Cantarella had promised to revert to us but we had not heard anything further”.

A redacted copy is attached as Exhibit G.

21. On or about May 16, 2013, Opposer served Applicant with Opposer's First Set of Interrogatories and First Request for Production of Documents and included with such discovery requests a cover letter again referencing the agreed upon Protective Order noting “we are enclosing . . . the Protective Order that the respective counsel agreed to on January [17], 2013 during the Settlement/Discovery Conference with your predecessor Claudia Cantarella, Esq.” A redacted copy of the May 16, 2013 letter is attached as Exhibit H.

22. At no time did Applicant ever object to the Protective Order until after serving its sham responses to Opposer's First Set of Interrogatories.

23. On or about June 27, 2013, Applicant allegedly served its sham responses to Opposer's First Set of Interrogatories, which were received by our office on July 3, 2013.

24. Applicant served Opposer with Interrogatories and Document Requests on or about June 27, 2013

25. On or about June 25, 2013, Applicant for the first time advised Opposer that it sought a WORD version of the proposed revised Protective Order in order to propose revisions thereto.

26. Applicant's papers filed in Opposition to Opposer's Motion to Compel falsely claim that Opposer and Applicant never discussed the agreed upon changes to the Standard Protective Order, notwithstanding Attorney Tanya D. Hicks attendance at such Discovery/Settlement Conference and subsequent telephonic discussion with Attorney Naidech Carlson.

OPPOSER REQUESTED A STAY OF PENDING DISCOVERY

27. As stated in Opposer's Motion to Compel filed on July 16, 2013, Opposer's responses to Applicant's First Set of Interrogatories and Document Requests were due on July 31, 2013.

28. Opposer sought a stay of proceedings, including the pending discovery served on Opposer, pending the Board's determination, given the outstanding issue of the revised Standard Protective Order, to avoid duplicative production or motion practice, given the instant Motion to Compel and also because the parties knowledgeable about Opposer and needed to respond to Applicant's discovery requests in Italy and France are not available.

29. Further evidencing these parties' unavailability is instructing counsel Angelica Torrigiani Malaspina's of the Italian law firm Societa Italiana Brevetti S.p.a. declaration dated August 6, 2013. A true and correct copy is attached hereto as Exhibit I.

30. Opposer has timely sought a stay of Opposer's outstanding discovery obligations and provided good cause therefor.

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

Executed on August 7, 2013 in New York, New York.



Ralph H. Cathcart

CERTIFICATE OF TRANSMISSION

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **REPLY DECLARATION OF RALPH H. CATHCART, ESQ.** is being electronically transmitted to the United States Patent and Trademark Office on the date indicated:

Dated: August 7, 2009


Reinaldo M. Roa

CERTIFICATE OF SERVICE

I, Reinaldo M. Roa, hereby certify that a copy of the foregoing **REPLY DECLARATION OF RALPH H. CATHCART, ESQ.** was served via First Class Mail, postage prepaid, on the date indicated below, to the following:

Alison Naidech Carlson, Esq.
Lora A. Moffatt, Esq.
SALANS LLP
Rockefeller Center
620 Fifth Avenue
New York, NY 10020-2457

Dated: August 7, 2009


Reinaldo M. Roa

EXHIBIT A

Cathcart, Ralph

From: Alison Naidech Carlson [alison.carlson@dentons.com]
Sent: Tuesday, June 25, 2013 1:43 PM
To: Cathcart, Ralph; Roa, Reinaldo
Cc: Tanya D. Hicks
Subject: RE: Emanuel Ungaro Italia S.r.l. v. KVZ International Ltd. (by Assignment from Added Extras LLC) - Opposition No. 91/207,983 (Your Ref: 0208586.0080; Our Ref: C12644254)

Dear Mr. Cathcart:

Our client has some changes to the Protective Order. Can you please forward a Word version of the document so that we may make changes?

Thank you.



Alison Naidech Carlson
Counsel

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EXHIBIT B

LADAS & PARRY LLP
INTELLECTUAL PROPERTY LAW

Ralph H. Cathcart



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June 26, 2013

VIA E-MAIL

Alison Naidech Carlson, Esq.
SALANS LLP
Rockefeller Center
620 Fifth Avenue
New York, NY 10020

E-mail: ACarlson@salans.com

Re: Emanuel Ungaro Italia S.r.l. v. KVZ International Ltd. (by Assignment from
Added Extras LLC) – Opposition No. 91/207,983 (Your Ref: 0208586.0080; Our
Ref: C12644254)

Dear Ms. Naidech Carlson:

Thank you for your e-mail dated June 25, 2013.

We understood that we had agreed upon the terms of the Protective Order with your predecessor counsel and were awaiting receipt of the signed copy along with your client's answers to our client's First Set of Interrogatories.

Since we have yet to review Applicant's Responses to Opposer's First Request for Production of Documents, we had also assumed that your client's production was made pursuant to the terms of the Protective Order discussed during the Settlement/Discovery Conference.

In any event, attached hereto is a Word version of the Protective Order as requested. Please send us a redlined version of your client's proposed changes. We shall obviously have to run this by our client. If everything is in order, we will arrange for countersignature with you and file with the Board.

We look forward to receiving your client's proposed revisions.

Very truly yours,

A handwritten signature in dark ink, appearing to read 'Ralph H. Cathcart', written over a horizontal line.

Ralph H. Cathcart

RHC:rmr
Enclosure

cc: **VIA E-MAIL**
Tanya D. Hicks, Esq.

E-mail: Thicks@salans.com

EXHIBIT C

LADAS & PARRY LLP
INTELLECTUAL PROPERTY LAW

Ralph H. Cathcart



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July 2, 2013

VIA E-MAIL

Alison Naidech Carlson, Esq.
SALANS LLP
Rockefeller Center
620 Fifth Avenue
New York, NY 10020

E-mail: ACarlson@salans.com

Re: Emanuel Ungaro Italia S.r.l. v. KVZ International Ltd. (by Assignment from
Added Extras LLC) – Opposition No. 91/207,983 (Your Ref: 0208586.0080; Our
Ref: C12644254)

Dear Ms. Naidech Carlson:

As you know, the current deadline for the close of discovery is July 22, 2013.

As you will appreciate, we have yet to receive any documents from you responsive to our First Set of Document Requests, other than objections nor have we received the Interrogatories or an executed Order of Protection.

Given the holiday schedule later this week and the likelihood that we will have to resolve discovery issues and complete follow-up discovery, we respectfully request your consent to a 90 day extension of all discovery and trial deadlines.

Kindly confirm today so that we may file a Stipulated Consent.

Thank you in advance for your anticipated cooperation herein.

Very truly yours,

Ralph H. Cathcart

RHC:rmr

cc: **VIA E-MAIL**
Tanya D. Hicks, Esq.

E-mail: Thicks@salans.com

EXHIBIT D

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July 10, 2013

VIA E-MAIL and FEDEX

Alison Naidech Carlson, Esq.
SALANS LLP
Rockefeller Center
620 Fifth Avenue
New York, NY 10020

E-mail: ACarlson@salans.com

Re: Emanuel Ungaro Italia S.r.l. v. KVZ International Ltd. (by Assignment from
Added Extras LLC) – Opposition No. 91/207,983 (Your Ref: 0208586.0080; Our
Ref: C12644254)

Dear Ms. Naidech Carlson:

As stated in our letter of July 2, 2013, we have yet to receive any documents from your client responsive to Opposer's First Set of Document Requests, notwithstanding production was due on June 20, 2013. We had agreed to the Standard Protective Order with slight modifications and sent execution copies to your firm on May 10, 2013 along with our discovery requests. After receiving your client's woefully deficient response to Opposer's First Set of Document Requests, for the first time we received word from your firm about possible "changes" to the Protective Order.

Further, we just received your client's putative Objections to Opposer's First Set of Interrogatories. The latter does not respond to one single Interrogatory and falsely claims that Opposer has exceeded the applicable number of Interrogatories.

Accordingly, given your client's total discovery noncompliance, your client is in default with its discovery obligations.

As per the applicable rules, prior to filing a Motion to Compel, we hereby demand that your client supplement its responses, without any objections "on the merits" and also produce responsive documents on or before July 15, 2013, failing which our client shall move to compel your client's compliance.

DEFICIENT RESPONSES TO OPPOSER'S FIRST SET OF DOCUMENT REQUESTS

The numerous baseless objections filed by Applicant in connection with Opposer's First Set of Document Requests are too numerous to go through individually.

Notwithstanding, Applicant is required, pursuant to the Trademark Rules, to timely undertake a good faith search of the records within its custody and control and to respond to Opposer's documents requests and produce responsive documents timely. Applicant has done neither and, in fact, interposed numerous sham objections, either refusing to respond to document

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Alison Naidech Carlson, Esq.
July 10, 2013

requests in their entirety or stating "subject to and without waiving the foregoing, [Applicant] will produce non-privileged, responsive documents, if any, that are located as a result of a reasonable search." (Emphasis Added.) This response plainly demonstrates that Applicant has not even timely completed a reasonable search for responsive documents as Applicant was obliged to do.

Accordingly, Applicant's discovery responses are tardy and improper and Applicant has defaulted on its discovery compliance obligations. Opposer hereby demands that Applicant supplement its responses "on the merits" and without objections on or before July 15, 2013.

DEFICIENT RESPONSES TO OPPOSER'S FIRST SET OF INTERROGATORIES

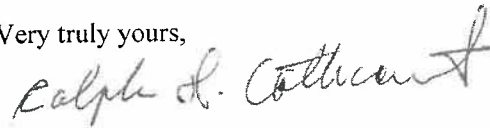
Applicant's responses to Opposer's First Set of Interrogatories were due on June 20, 2013. Applicant requested and Opposer consented to a 7-day extension of the deadline for Applicant to respond to Opposer's First Set of Interrogatories up-to-and including June 27, 2013. Notwithstanding, Applicant's responses were not received in our offices until July 3, 2013, despite the close proximity of our respective offices in New York City.

Leaving aside this delay, Applicant's responses are a sham and Applicant does not respond to one single Interrogatory and falsely claims that Opposer has exceeded the number of Interrogatories permitted.

Accordingly, Applicant has defaulted in responding to Opposer's First Set of Interrogatories as well. Applicant must supplement the sham responses "on the merits" and without objections on or before July 15, 2013.

We look forward to your anticipated discovery compliance, failing which we shall be forced to move to compel.

Very truly yours,



Ralph H. Cathcart

RHC:rmr

cc: **VIA E-MAIL**
Tanya D. Hicks, Esq.

E-mail: Thicks@salans.com

EXHIBIT E

Cathcart, Ralph

From: Alison Naidech Carlson [alison.carlson@dentons.com]
Sent: Friday, July 12, 2013 3:45 PM
To: Cathcart, Ralph
Cc: Tanya D. Hicks
Subject: DIVA COUTURE - Protective Order
Attachments: Protective Order draft from Ungaro - Protective Order draft from Ungaro.pdf;
#1603840v2_NewYork_Client_ - Protective Order draft from Ungaro.DOCX

Dear Mr. Cathcart:

I am attaching our revisions to your draft of the protective order. If it meets with your approval, we can execute the same. If not, we can discuss the changes next week.

Regards,



Alison Naidech Carlson
Counsel

D +1 212 632 5504
F +1 212 307 3344

Salans FMC SNR Denton Europe LLP
Rockefeller Center 620 Fifth Avenue
New York, NY 10020-2457
United States of America

alison.carlson@dentons.com
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

	X		
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EMANUEL UNGARO ITALIA S.R.L.,	:	:	
	:		
Opposer,	:		Opposition No. 91/207,983
	:		Serial No. 85/500,670
v.	:		
	:		
ADDED EXTRAS LLC	:		
	:		
Applicant.	:		
	:		
	X		

**PROVISIONS FOR PROTECTING CONFIDENTIALITY OF INFORMATION
REVEALED DURING BOARD PROCEEDING**

Information disclosed by any party or non-party witness during this proceeding may be considered confidential, a trade secret, or commercially sensitive by a party or witness. To preserve the confidentiality of the information so disclosed, ~~either~~ the parties ~~and~~, through their counsel, have agreed to be bound by the terms of this order, in its standard form or as modified by agreement, and by any additional provisions to which they may have agreed and attached to this order, ~~or~~ the Board has ordered that the parties ~~and~~, through their counsel, be bound by the provisions within. As used in this order, the term "information" covers both oral testimony and documentary material.

Parties may use this standard form order as the entirety of their agreement or may use it as a template from which they may fashion a modified agreement. If the Board orders that the parties abide by the terms of this order, they may subsequently agree to modifications or additions, subject to Board approval.

Agreement of the parties ~~and their respective counsel~~ is indicated by the signatures of the parties' attorneys and the parties themselves at the conclusion of the order. Imposition of the terms by the Board is indicated by signature of a Board attorney or Administrative Trademark Judge at the conclusion of the order. If the parties ~~and their respective attorneys~~ have signed the order, they have created a binding contract. The terms are binding from the date (i) the parties ~~and their respective attorneys~~ sign the order, in standard form or as modified or supplemented, and (ii) the date of imposition by a Board attorney or judge.

TERMS OF ORDER

1) Classes of Protected Information.

The Rules of Practice in Trademark Cases provide that all *inter partes* proceeding files, as well as the involved registration and application files, are open to public inspection. The terms of this order are not to be used to undermine public access to files. When appropriate, however, a party or witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations.

Confidential—Material to be shielded by the Board from public access.

Highly Confidential—Material to be shielded by the Board from public access and subject to agreed restrictions on access even as to the parties and/or their attorneys.

Trade Secret/Commercially Sensitive—Material to be shielded by the Board from public access, restricted from any access by the parties, and available for review by outside counsel for the parties and, subject to the provisions of paragraph 4 and 5, by independent experts or consultants for the parties.

Confidential, Highly Confidential and Trade Secret/Commercially Sensitive Material shall be used in this proceeding solely for the purpose of conducting this opposition/cancellation proceeding and any directly related proceedings (including appeals from this opposition/cancellation proceeding) and not for any other purpose whatsoever.

2) Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the approval of the designating party.

3) Access to Protected Information.

The provisions of this order regarding access to protected information are subject to modification by written agreement of the parties or their attorneys, or by motion filed with and approved by the Board.

Judges, attorneys, and other employees of the Board are bound to honor the parties' designations of information as protected but are not required to sign forms acknowledging the terms and existence of this order. Court reporters, stenographers, video technicians or others who may be employed by the parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the parties or their attorneys make it a condition of employment or obtain agreements from such individuals, in accordance with the provisions of paragraph 4.

- **Parties** are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.
- **Attorneys** for parties are defined as including **in-house counsel** and **outside counsel**, including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.
- **Independent experts or consultants** include individuals retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys.
- **Non-party witnesses** include any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness.

Attorneys, but not **Parties**, shall have access to information designated as **confidential** or **highly confidential**, subject to any agreed exceptions.

Outside counsel, but not **in-house counsel**, shall have access to information designated as **trade secret/commercially sensitive**.

Independent experts or consultants, **non-party witnesses**, and **any other individual** not otherwise specifically covered by the terms of this order may be afforded access to **confidential** or **highly confidential** information in accordance with the terms that follow in paragraph 4. Further, **independent experts or consultants** may have access to **trade secret/commercially sensitive** information if such access is agreed to by the parties or ordered by the Board, in accordance with the terms that follow in paragraph 4 and 5.

4) Disclosure to Any Individual.

Prior to disclosure of protected information by any party or its attorney to any individual not already provided access to such information by the terms of this order, the individual shall be informed of the existence of this order and provided with a copy to read. The individual will then be required to certify in writing that the order has been read and understood and that the terms shall be binding on the individual. No individual shall receive any protected information until the party or attorney proposing to disclose the information has received the signed certification from the individual. A form for such certification is attached to this order. The party or attorney receiving the completed form shall retain the original.

5) Disclosure to Independent Experts or Consultants.

In addition to meeting the requirements of paragraph 4, any party or attorney proposing to share disclosed information with an independent expert or consultant must also notify the party which designated the information as protected. Notification must be personally served or forwarded by certified mail, return receipt requested, and shall provide notice of the name, address, occupation and professional background of the expert or independent consultant.

The party or its attorney receiving the notice shall have ten (10) business days to object to disclosure to the expert or independent consultant. If objection is made, then the parties must negotiate the issue before raising the issue before the Board. If the parties are unable to settle their dispute, then it shall be the obligation of the party or attorney proposing disclosure to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the parties have made to settle their dispute. The party objecting to disclosure will be expected to respond with its arguments against disclosure or its objections will be deemed waived.

6) Responses to Written Discovery.

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

7) Production of Documents.

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If the responding party makes documents available for inspection and copying by the

inquiring party, all documents shall be considered protected during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

8) Depositions.

Protected documents produced during a discovery deposition, or offered into evidence during a testimony deposition shall be orally noted as such by the producing or offering party at the outset of any discussion of the document or information contained in the document. In addition, the documents must be prominently stamped or marked with the appropriate designation.

During discussion of any non-documentary protected information, the interested party shall make oral note of the protected nature of the information.

The transcript of any deposition and all exhibits or attachments shall be considered protected for 30 days following the date of service of the transcript by the party that took the deposition. During that 30-day period, either party may designate the portions of the transcript, and any specific exhibits or attachments that are to be treated as protected, by electing the appropriate designation from paragraph 1. Appropriate stampings or markings should be made during this time. If no such designations are made, then the entire transcript and exhibits will be considered unprotected.

9) Filing Notices of Reliance.

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the information, so as to maintain the protected status of the information.

10) Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss protected information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 12 of this order.

11) Handling of Protected Information.

Disclosure of information protected under the terms of this order is intended only to facilitate the prosecution or defense of this case or any appeal thereof. The recipient of any protected information disclosed in accordance with the terms of this order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

12) Redaction; Filing Material With the Board.

When a party or attorney must file protected information with the Board, or a brief that discusses such information, the protected information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small numbers of pages contain such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. **Occasions when a whole document or brief must be submitted under seal should be very rare.**

Protected information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

13) Acceptance of Information; Inadvertent Disclosure.

Acceptance by a party or its attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to designate as protected shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

14) Challenges to Designations of Information as Protected.

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made the challenge at an earlier time.

The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

15) Board's Jurisdiction; Handling of Materials After Termination.

The Board's jurisdiction over the parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

~~Within~~ The parties may agree that archival copies of evidence and briefs may be retained, subject to compliance with agreed safeguards. Otherwise, within 30 days after the final termination of this proceeding, the parties and their attorneys shall return to each disclosing party the protected information disclosed during the proceeding, and shall include any briefs, memoranda, summaries, and the like, which discuss or in any way refer to such information. In the alternative, the disclosing party or its attorney may make a written request that such materials be destroyed rather than returned. All Confidential and Trade Secret/Commercially Sensitive documents filed with the Board under appropriate designation shall be destroyed by the Board or returned to the disclosing parties within one hundred and eighty (180) days of the termination (as defined by this order) of proceedings.

16) Other Rights of the Parties and Attorneys.

This order shall not preclude the parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the order preclude the filing of any motion with

the Board for relief from a particular provision of this order or for additional protections not provided by this order.

~~EMANUEL UNGARO ITALIA S.R.L.~~

~~KVZ INTERNATIONAL LIMITED~~

By Agreement of the Following, effective:

[Date]

Signature

Signature

Name

Name

Title

Title

Date

Date

LADAS & PARRY LLP

~~SALANS LLP~~

SALANS EMC SNR DENTON EUROPE
LLP

By:

~~By:-~~

Ralph H. Cathcart ~~Alison~~

~~Naidech Carlson, Esq.~~

1040 Avenue of the Americas

~~620 Fifth Avenue~~

New York, NY 10018-3738

~~New York, NY 10020~~

Tel: (212) 708-1920

E-mail: RCathcart@ladas.com

Attorneys for EMANUEL UNGARO
ITALIA S.R.L.

By:

Alison Naidech Carlson, Esq.

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New York, NY 10020

Tel: (212) 632-5500

E-mail: ~~RCathcart@ladas.com~~

~~E-mail:-~~

~~ACarlson@salans~~ alison.carlson@dentons.co

~~m~~

~~Date~~

~~Date~~

Attorneys for ADDED EXTRAS

LLC

By Order of the Board, effective _____.

Name

Title

Document comparison by Workshare Compare on Thursday, July 11, 2013
2:42:47 PM

Input:	
Document 1 ID	interwovenSite://NY-DM1/NewYork_Client/1603840/1
Description	#1603840v1<NewYork_Client> - Protective Order draft from Ungaro
Document 2 ID	interwovenSite://NY-DM1/NewYork_Client/1603840/2
Description	#1603840v2<NewYork_Client> - Protective Order draft from Ungaro
Rendering set	Standard

Legend:	
<u>Insertion</u>	
Deletion	
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Style change	
Format change	
Moved deletion	
Inserted cell	
Deleted cell	
Moved cell	
Split/Merged cell	
Padding cell	

Statistics:	
	Count
Insertions	25
Deletions	27
Moved from	2
Moved to	2
Style change	0
Format changed	0
Total changes	56

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

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EMANUEL UNGARO ITALIA S.R.L.,	:	
	:	
Opposer,	:	Opposition No. 91/207,983
	:	Serial No. 85/500,670
v.	:	
	:	
ADDED EXTRAS LLC	:	
	:	
Applicant.	:	
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	X	

**PROVISIONS FOR PROTECTING CONFIDENTIALITY OF INFORMATION
REVEALED DURING BOARD PROCEEDING**

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TERMS OF ORDER

1) Classes of Protected Information.

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2) Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the approval of the designating party.

3) Access to Protected Information.

The provisions of this order regarding access to protected information are subject to modification by written agreement of the parties or their attorneys, or by motion filed with and approved by the Board.

Judges, attorneys, and other employees of the Board are bound to honor the parties' designations of information as protected but are not required to sign forms acknowledging the terms and existence of this order. Court reporters, stenographers, video technicians or others who may be employed by the parties or their attorneys to perform services incidental to this proceeding will be bound only to the extent that the parties or their attorneys make it a condition of employment or obtain agreements from such individuals, in accordance with the provisions of paragraph 4.

- **Parties** are defined as including individuals, officers of corporations, partners of partnerships, and management employees of any type of business organization.
- **Attorneys** for parties are defined as including **in-house counsel** and **outside counsel**, including support staff operating under counsel's direction, such as paralegals or legal assistants, secretaries, and any other employees or independent contractors operating under counsel's instruction.
- **Independent experts or consultants** include individuals retained by a party for purposes related to prosecution or defense of the proceeding but who are not otherwise employees of either the party or its attorneys.
- **Non-party witnesses** include any individuals to be deposed during discovery or trial, whether willingly or under subpoena issued by a court of competent jurisdiction over the witness.

Attorneys, but not **Parties**, shall have access to information designated as **confidential** or highly confidential, subject to any agreed exceptions.

Outside counsel, but not in-house counsel, shall have access to information designated as **trade secret/commercially sensitive**.

Independent experts or consultants, non-party witnesses, and any other individual not otherwise specifically covered by the terms of this order may be afforded access to **confidential** or highly confidential information in accordance with the terms that follow in paragraph 4. Further, **independent experts or consultants** may have access to **trade secret/commercially sensitive** information if such access is agreed to by the parties or ordered by the Board, in accordance with the terms that follow in paragraph 4 and 5.

4) Disclosure to Any Individual.

Prior to disclosure of protected information by any party or its attorney to any individual not already provided access to such information by the terms of this order, the individual shall be informed of the existence of this order and provided with a copy to read. The individual will then be required to certify in writing that the order has been read and understood and that the terms shall be binding on the individual. No individual shall receive any protected information until the party or attorney proposing to disclose the information has received the signed certification from the individual. A form for such certification is attached to this order. The party or attorney receiving the completed form shall retain the original.

5) Disclosure to Independent Experts or Consultants.

In addition to meeting the requirements of paragraph 4, any party or attorney proposing to share disclosed information with an independent expert or consultant must also notify the party which designated the information as protected. Notification must be personally served or forwarded by certified mail, return receipt requested, and shall provide notice of the name, address, occupation and professional background of the expert or independent consultant.

The party or its attorney receiving the notice shall have ten (10) business days to object to disclosure to the expert or independent consultant. If objection is made, then the parties must negotiate the issue before raising the issue before the Board. If the parties are unable to settle their dispute, then it shall be the obligation of the party or attorney proposing disclosure to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the parties have made to settle their dispute. The party objecting to disclosure will be expected to respond with its arguments against disclosure or its objections will be deemed waived.

6) Responses to Written Discovery.

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

7) Production of Documents.

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If

the responding party makes documents available for inspection and copying by the inquiring party, all documents shall be considered protected during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

8) Depositions.

Protected documents produced during a discovery deposition, or offered into evidence during a testimony deposition shall be orally noted as such by the producing or offering party at the outset of any discussion of the document or information contained in the document. In addition, the documents must be prominently stamped or marked with the appropriate designation.

During discussion of any non-documentary protected information, the interested party shall make oral note of the protected nature of the information.

The transcript of any deposition and all exhibits or attachments shall be considered protected for 30 days following the date of service of the transcript by the party that took the deposition. During that 30-day period, either party may designate the portions of the transcript, and any specific exhibits or attachments that are to be treated as protected, by electing the appropriate designation from paragraph 1. Appropriate stampings or markings should be made during this time. If no such designations are made, then the entire transcript and exhibits will be considered unprotected.

9) Filing Notices of Reliance.

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the information, so as to maintain the protected status of the information.

10) Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss protected information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 12 of this order.

11) Handling of Protected Information.

Disclosure of information protected under the terms of this order is intended only to facilitate the prosecution or defense of this case or any appeal thereof. The recipient of any protected information disclosed in accordance with the terms of this order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

12) Redaction; Filing Material With the Board.

When a party or attorney must file protected information with the Board, or a brief that discusses such information, the protected information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small numbers of pages contain such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. **Occasions when a whole document or brief must be submitted under seal should be very rare.**

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This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

13) Acceptance of Information; Inadvertent Disclosure.

Acceptance by a party or its attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to

designate as protected shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

14) Challenges to Designations of Information as Protected.

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made the challenge at an earlier time.

The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

15) Board's Jurisdiction; Handling of Materials After Termination.

The Board's jurisdiction over the parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

The parties may agree that archival copies of evidence and briefs may be retained, subject to compliance with agreed safeguards. Otherwise, within 30 days after the final termination of this proceeding, the parties and their attorneys shall return to each disclosing party the protected information disclosed during the proceeding, and shall include any briefs, memoranda, summaries, and the like, which discuss or in any way refer to such information. In the alternative, the disclosing party or its attorney may make a written request that such materials be destroyed rather than returned. All Confidential and Trade Secret/Commercially Sensitive documents filed with the Board under appropriate designation shall be destroyed by the Board or returned to the disclosing parties within one hundred and eighty (180) days of the termination (as defined by this order) of proceedings.

16) Other Rights of the Parties and Attorneys.

This order shall not preclude the parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the order preclude the filing of any motion with

the Board for relief from a particular provision of this order or for additional protections not provided by this order.

By Agreement of the Following, effective:

[Date]

LADAS & PARRY LLP

By:

Ralph H. Cathcart
1040 Avenue of the Americas
New York, NY 10018-3738
Tel: (212) 708-1920
E-mail: RCathcart@ladas.com

Attorneys for EMANUEL UNGARO
ITALIA S.R.L.

SALANS FMC SNR DENTON EUROPE
LLP

By :

Alison Naidech Carlson, Esq.
620 Fifth Avenue
New York, NY 10020
Tel: (212) 632-5500
E-mail: alison.carlson@dentons.com

Attorneys for ADDED EXTRAS LLC

By Order of the Board, effective _____.


Name

Title

EXHIBIT F

MEMORANDUM

TO: Added Extras LLC (Our Ref: C12644254)

FROM: RHC 

DATE: January 17, 2013

RE: Settlement/Discovery Conference with Claudia Cantarella, Esq., Tanya D. Hicks, Esq. and RHC [Tel: (212) 632-5500]

RHC spoke with Claudia Cantarella, Esq. (partner) and Tanya D. Hicks, Esq. (associate) in connection with the above-referenced matter.

The conference can be summarized as follows:

1. Nature and basis for respective claims and defenses: RHC stated that our opposition is based primarily on Sections 2(d) and 2(a) of the Lanham Act. RHC then pointed out that several of the Affirmative Defenses in Applicant's Answer were groundless. To begin with, the First Affirmative Defense states "Opposer fails to state a claim upon which relief can be granted". RHC noted that the Board does not favor such garden variety skeletal defenses without a detailed factual predicate supporting same.

Further, regarding Applicant's Second Affirmative Defense, namely, that its applied-for mark is not confusingly similar to Opposer's pleaded marks, RHC pointed out that such is not an affirmative defense but merely an amplification of its denials of Opposer's assertions to the contrary.

Insofar as the Third Affirmative Defense states that the only similarities are between the DIVA portion of Opposer's mark "which is not distinctive", RHC pointed out that the DIVA marks are incontestable and therefore cannot be challenged on the basis of lacking acquired distinctiveness or not being distinctive.

As to the Fourth Affirmative Defense, RHC pointed out that the trademark bullying defense seemed spurious, since this opposition is not unreasonable and, in fact, seeks to oppose an identical mark covering identical and related goods.




2. Settlement or narrowing of scope of claims or defenses: RHC then asked whether her client would voluntarily amend its Answer to strike the Affirmative Defenses. Ms. Cantarella started to stutter and stated that she would ask her client.

EXHIBIT G

MEMORANDUM

TO: Added Extras LLC (Our Ref: C12644254)

FROM: RHC 

DATE: March 25, 2013

RE: Tel/Con between Alison Naidech Carlson, Esq. and RHC [Tel: (212) 632-5504]

Ms. Carlson stated that she did not have anything in her file indicating what the settlement terms we were discussing might be. RHC stated that there were several letters communicating offers and counteroffers and also that Tanya Hicks, the associate, was present during the Settlement Conference on January 17, 2013.

[REDACTED] In addition, RHC noted that there were some housekeeping issues hanging around since the Settlement Conference, namely, 1) the Standard Order of Protection – RHC that we had proposed the Standard Protective Order be revised so that both parties and their attorneys would have to sign and limiting disclosures to this proceeding and any appeal thereof; and 2) RHC pointed out that we had requested that Applicant strike its first four Affirmative Defenses. RHC stated that Ms. Cantarella had promised to revert to us but we had no heard anything further. Ms. Carlson stated that this was very informative and that she would hopefully get back to us soon.

RHC/rmr

EXHIBIT H

LADAS & PARRY LLP
INTERNATIONAL PROTECTIVE LAW

Ralph H. Cathcart

rcathcart@ladas.com

212.708.1900

1040 Avenue of the Americas • New York, New York 10019-3738
P 212.708.1900 • F 212.246.8959 • F 212.246.8925 • nymail@ladas.com • www.ladas.com

May 16, 2013

**For Settlement Purposes
Only – Without Prejudice**

CONFIRMATION COPY

**VIA E-MAIL and
FIRST CLASS MAIL**

Alison Naidech Carlson, Esq.
SALANS LLP
Rockefeller Center
620 Fifth Avenue
New York, NY 10020

E-mail: ACarlson@salans.com

Re: Emanuel Ungaro Italia S.r.l. v. KVZ International Ltd. (by Assignment
from Added Extras LLC) – Opposition No. 91/207,983 (Your Ref:
0208586.0080; Our Ref: C12644254)

Dear Ms. Naidech Carlson:

We have now communicated with our client regarding the proposed
settlement/coexistence terms under consideration.

While our client appreciates your client's stated desire for an amicable resolution,
your client's refusal to phase-out its use of DIVA in connection with the identical
overlapping goods is unacceptable to our client.

[REDACTED]

Alison Naidech Carlson, Esq.
May 16, 2013

Page 2

[REDACTED]

Please execute the Protective Order as soon as possible and return to us for countersignature.

Lastly, as discussed during the Discovery/Settlement conference and during our telephone call more recently, please advise whether your client has agreed to strike its Affirmative Defenses for the reasons previously discussed.

We look forward to hearing from you. Please note that the caption of the proceedings has not been changed by the Board. We have prepared the Protective Order for signature by KVZ International Limited, the alleged assignee of Added Extras, LLC.

Of course, should your client reconsider its position and/or wish to propose some other basis for a resolution, we would be happy to forward that information along to our client.

Very truly yours,

Ralph H. Cathcart
Dictated, Not Read

RHC:rmr
Enclosures (via First Class Mail)

cc: **VIA E-MAIL**
Tanya D. Hicks, Esq.

E-mail: Thicks@salans.com

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

	X	
	:	
EMANUEL UNGARO ITALIA S.R.L.,	:	
	:	
Opposer,	:	Opposition No. 91/207,983
	:	Serial No. 85/500,670
v,	:	
	:	
ADDED EXTRAS LLC	:	
	:	
Applicant.	:	
	:	
	X	

**PROVISIONS FOR PROTECTING CONFIDENTIALITY OF INFORMATION
REVEALED DURING BOARD PROCEEDING**

Information disclosed by any party or non-party witness during this proceeding may be considered confidential, a trade secret, or commercially sensitive by a party or witness. To preserve the confidentiality of the information so disclosed, **either** the parties and their counsel have agreed to be bound by the terms of this order, in its standard form or as modified by agreement, and by any additional provisions to which they may have agreed and attached to this order, **or** the Board has ordered that the parties and their counsel be bound by the provisions within. As used in this order, the term "information" covers both oral testimony and documentary material.

Parties may use this standard form order as the entirety of their agreement or may use it as a template from which they may fashion a modified agreement. If the Board orders that the parties abide by the terms of this order, they may subsequently agree to modifications or additions, subject to Board approval.

Agreement of the parties and their respective counsel is indicated by the signatures of the parties' attorneys and the parties themselves at the conclusion of the order. Imposition of the terms by the Board is indicated by signature of a Board attorney or Administrative Trademark Judge at the conclusion of the order. If the parties and their respective attorneys have signed the order, they have created a binding contract. The terms are binding from the date (i) the parties and their respective attorneys sign the order, in standard form or as modified or supplemented, and (ii) the date of imposition by a Board attorney or judge.

TERMS OF ORDER

1) Classes of Protected Information.

The Rules of Practice in Trademark Cases provide that all *inter partes* proceeding files, as well as the involved registration and application files, are open to public inspection. The terms of this order are not to be used to undermine public access to files. When appropriate, however, a party or witness, on its own or through its attorney, may seek to protect the confidentiality of information by employing one of the following designations.

Confidential—Material to be shielded by the Board from public access.

Highly Confidential—Material to be shielded by the Board from public access and subject to agreed restrictions on access even as to the parties and/or their attorneys.

Trade Secret/Commercially Sensitive—Material to be shielded by the Board from public access, restricted from any access by the parties, and available for review by outside counsel for the parties.

Confidential, Highly Confidential and Trade Secret/Commercially Sensitive Material shall be used in this proceeding solely for the purpose of conducting this opposition/cancellation proceeding and any directly related proceedings (including appeals from this opposition/cancellation proceeding) and not for any other purpose whatsoever.

2) Information Not to Be Designated as Protected.

Information may not be designated as subject to any form of protection if it (a) is, or becomes, public knowledge, as shown by publicly available writings, other than through violation of the terms of this document; (b) is acquired by a non-designating party or non-party witness from a third party lawfully possessing such information and having no obligation to the owner of the information; (c) was lawfully possessed by a non-designating party or non-party witness prior to the opening of discovery in this proceeding, and for which there is written evidence of the lawful possession; (d) is disclosed by a non-designating party or non-party witness legally compelled to disclose the information; or (e) is disclosed by a non-designating party with the approval of the designating party.

4) Disclosure to Any Individual.

Prior to disclosure of protected information by any party or its attorney to any individual not already provided access to such information by the terms of this order, the individual shall be informed of the existence of this order and provided with a copy to read. The individual will then be required to certify in writing that the order has been read and understood and that the terms shall be binding on the individual. No individual shall receive any protected information until the party or attorney proposing to disclose the information has received the signed certification from the individual. A form for such certification is attached to this order. The party or attorney receiving the completed form shall retain the original.

5) Disclosure to Independent Experts or Consultants.

In addition to meeting the requirements of paragraph 4, any party or attorney proposing to share disclosed information with an independent expert or consultant must also notify the party which designated the information as protected. Notification must be personally served or forwarded by certified mail, return receipt requested, and shall provide notice of the name, address, occupation and professional background of the expert or independent consultant.

The party or its attorney receiving the notice shall have ten (10) business days to object to disclosure to the expert or independent consultant. If objection is made, then the parties must negotiate the issue before raising the issue before the Board. If the parties are unable to settle their dispute, then it shall be the obligation of the party or attorney proposing disclosure to bring the matter before the Board with an explanation of the need for disclosure and a report on the efforts the parties have made to settle their dispute. The party objecting to disclosure will be expected to respond with its arguments against disclosure or its objections will be deemed waived.

6) Responses to Written Discovery.

Responses to interrogatories under Federal Rule 33 and requests for admissions under Federal Rule 36, and which the responding party reasonably believes to contain protected information shall be prominently stamped or marked with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

7) Production of Documents.

If a party responds to requests for production under Federal Rule 34 by making copies and forwarding the copies to the inquiring party, then the copies shall be prominently stamped or marked, as necessary, with the appropriate designation from paragraph 1. If

the responding party makes documents available for inspection and copying by the inquiring party, all documents shall be considered protected during the course of inspection. After the inquiring party informs the responding party what documents are to be copied, the responding party will be responsible for prominently stamping or marking the copies with the appropriate designation from paragraph 1. Any inadvertent disclosure without appropriate designation shall be remedied as soon as the disclosing party learns of its error, by informing all adverse parties, in writing, of the error. The parties should inform the Board only if necessary because of the filing of protected information not in accordance with the provisions of paragraph 12.

8) Depositions.

Protected documents produced during a discovery deposition, or offered into evidence during a testimony deposition shall be orally noted as such by the producing or offering party at the outset of any discussion of the document or information contained in the document. In addition, the documents must be prominently stamped or marked with the appropriate designation.

During discussion of any non-documentary protected information, the interested party shall make oral note of the protected nature of the information.

The transcript of any deposition and all exhibits or attachments shall be considered protected for 30 days following the date of service of the transcript by the party that took the deposition. During that 30-day period, either party may designate the portions of the transcript, and any specific exhibits or attachments that are to be treated as protected, by electing the appropriate designation from paragraph 1. Appropriate stampings or markings should be made during this time. If no such designations are made, then the entire transcript and exhibits will be considered unprotected.

9) Filing Notices of Reliance.

When a party or its attorney files a notice of reliance during the party's testimony period, the party or attorney is bound to honor designations made by the adverse party or attorney, or non-party witness, who disclosed the information, so as to maintain the protected status of the information.

10) Briefs.

When filing briefs, memoranda, or declarations in support of a motion, or briefs at final hearing, the portions of these filings that discuss protected information, whether information of the filing party, or any adverse party, or any non-party witness, should be redacted. The rule of reasonableness for redaction is discussed in paragraph 12 of this order.

11) Handling of Protected Information.

Disclosure of information protected under the terms of this order is intended only to facilitate the prosecution or defense of this case or any appeal thereof. The recipient of any protected information disclosed in accordance with the terms of this order is obligated to maintain the confidentiality of the information and shall exercise reasonable care in handling, storing, using or disseminating the information.

12) Redaction; Filing Material With the Board.

When a party or attorney must file protected information with the Board, or a brief that discusses such information, the protected information or portion of the brief discussing the same should be redacted from the remainder. A rule of reasonableness should dictate how redaction is effected.

Redaction can entail merely covering a portion of a page of material when it is copied in anticipation of filing but can also entail the more extreme measure of simply filing the entire page under seal as one that contains primarily confidential material. If only a sentence or short paragraph of a page of material is confidential, covering that material when the page is copied would be appropriate. In contrast, if most of the material on the page is confidential, then filing the entire page under seal would be more reasonable, even if some small quantity of non-confidential material is then withheld from the public record. Likewise, when a multi-page document is in issue, reasonableness would dictate that redaction of the portions or pages containing confidential material be effected when only some small numbers of pages contain such material. In contrast, if almost every page of the document contains some confidential material, it may be more reasonable to simply submit the entire document under seal. **Occasions when a whole document or brief must be submitted under seal should be very rare.**

Protected information, and pleadings, briefs or memoranda that reproduce, discuss or paraphrase such information, shall be filed with the Board under seal. The envelopes or containers shall be prominently stamped or marked with a legend in substantially the following form:

CONFIDENTIAL

This envelope contains documents or information that are subject to a protective order or agreement. The confidentiality of the material is to be maintained and the envelope is not to be opened, or the contents revealed to any individual, except by order of the Board.

13) Acceptance of Information; Inadvertent Disclosure.

Acceptance by a party or its attorney of information disclosed under designation as protected shall not constitute an admission that the information is, in fact, entitled to protection. Inadvertent disclosure of information which the disclosing party intended to

designate as protected shall not constitute waiver of any right to claim the information as protected upon discovery of the error.

14) Challenges to Designations of Information as Protected.

If the parties or their attorneys disagree as to whether certain information should be protected, they are obligated to negotiate in good faith regarding the designation by the disclosing party. If the parties are unable to resolve their differences, the party challenging the designation may make a motion before the Board seeking a determination of the status of the information.

A challenge to the designation of information as protected must be made substantially contemporaneous with the designation, or as soon as practicable after the basis for challenge is known. When a challenge is made long after a designation of information as protected, the challenging party will be expected to show why it could not have made the challenge at an earlier time.

The party designating information as protected will, when its designation is timely challenged, bear the ultimate burden of proving that the information should be protected.

15) Board's Jurisdiction; Handling of Materials After Termination.

The Board's jurisdiction over the parties and their attorneys ends when this proceeding is terminated. A proceeding is terminated only after a final order is entered and either all appellate proceedings have been resolved or the time for filing an appeal has passed without filing of any appeal.

Within 30 days after the final termination of this proceeding, the parties and their attorneys shall return to each disclosing party the protected information disclosed during the proceeding, and shall include any briefs, memoranda, summaries, and the like, which discuss or in any way refer to such information. In the alternative, the disclosing party or its attorney may make a written request that such materials be destroyed rather than returned. All Confidential and Trade Secret/Commercially Sensitive documents filed with the Board under appropriate designation shall be destroyed by the Board or returned to the disclosing parties within one hundred and eighty (180) days of the termination (as defined by this order) of proceedings.

16) Other Rights of the Parties and Attorneys.

This order shall not preclude the parties or their attorneys from making any applicable claims of privilege during discovery or at trial. Nor shall the order preclude the filing of any motion with

the Board for relief from a particular provision of this order or for additional protections not provided by this order.

EMANUEL UNGARO ITALIA S.R.L.

KVZ INTERNATIONAL LIMITED

Signature

Signature

Name

Name

Title

Title

Date

Date

LADAS & PARRY LLP

SALANS LLP

By: _____

Ralph H. Cathcart
1040 Avenue of the Americas
New York, NY 10018-3738
Tel: (212) 708-1920
E-mail: RCathcart@ladas.com

By: _____

Alison Naidech Carlson, Esq.
620 Fifth Avenue
New York, NY 10020
Tel: (212) 632-5500
E-mail: ACarlson@salans.com

Date

Date

By Order of the Board, effective _____.

Name

Title

EXHIBIT I

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

	X	
	:	
EMANUEL UNGARO ITALIA S.R.L.	:	
	:	
Opposer,	:	Opposition No. 91/207,983
	:	Application No. 85/500,670
v.	:	
	:	
ADDED EXTRAS LLC,	:	
	:	
Applicant.	:	
	:	
	X	

DECLARATION OF ANGELICA TORRIGIANI MALASPINA, ESQ.

I, Angelica Torrigiani Malaspina, declare that the following is true and correct pursuant to 28 U.S.C. § 1746:

1. I am a partner at the Italian law firm Societa Italiana Brevetti S.p.A.
2. Our law firm instructs Ladas & Parry LLP in connection with intellectual property matters concerning Emanuel Ungaro Italia S.r.l. in the United States and elsewhere.
3. We understand that Applicant has totally failed to respond to our client's First Set of Interrogatories or to provide any responsive documents to Opposer's First Request for Production of Documents.
4. Ladas & Parry LLP has timely filed a Motion to Compel Applicant's discovery compliance.
5. On or about June 27, 2013, Ladas & Parry LLP received Applicant's discovery requests seeking voluminous information which relates to decades of use by Emanuel Ungaro Italia S.r.l.

6. The parties most knowledgeable and/or able to respond on behalf of Emanuel Ungaro Italia S.r.l. are currently not available to respond to Applicant's discovery requests, as previously stated in Opposer's Motion to Compel filed on July 16, 2013.

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

Executed on August 6, 2013 in Florence, ITALY.

A handwritten signature in dark ink, appearing to read "Angelica Torrigiani Malaspina". The signature is fluid and cursive, with the first name being the most prominent.

Angelica Torrigiani Malaspina