

ESTTA Tracking number: **ESTTA659558**

Filing date: **03/05/2015**

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

Proceeding	91214713
Party	Plaintiff AlexanderLitz
Correspondence Address	JEFFREY M FURR FURR LAW FIRM 2622 DEBOLT ROAD UTICA, OH 43080 UNITED STATES jeffmfurr@furrlawfirm.com
Submission	Motion to Compel Discovery
Filer's Name	Jeffrey M. Furr, Esq.
Filer's e-mail	jeffmfurr@furrlawfirm.com
Signature	/jmf/
Date	03/05/2015
Attachments	motioncompeltechguru.pdf(1346191 bytes )

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

In the Matter of Serial Number 85837345  
For the mark TECH GURU  
Date filed: January 31, 2013

ALEXANDER LITZ  
555 Kappock Street  
Suite 4J  
Bronx, New York 10463

Opposer/Petitioner,

vs.

Opposition No. 91214713/  
Cancellation No. 92058585

TECH GURU, LLC  
13<sup>th</sup> Ave NE Suite 208  
Minneapolis, Minnesota 55413

Applicant/Registrant

**OPPOSER’S MOTION TO COMPEL, TO SUSPEND THE  
PROCEEDINGS AND TO RESET THE TRIAL DATES**

The Opposer, Alexander Litz, (hereinafter “Litz” or or “Opposer” or "Petitioner"), through its undersigned counsel, moves for an Order from the Trademark Trial and Appeal Board (the “Board”) compelling and admonishing Applicant immediately to serve responses to Opposers’s interrogatories and document requests and to produce documents. Additionally, Opposer requests that the Board suspends these proceedings and reset the discovery and trial dates upon lifting the suspension.

Despite the service of Opposer's written discovery on October 10, 2014, Applicant ("Applicant" or "Registrant") has failed to serve responses to Opposer's written discovery, even after Opposer's counsel wrote to Petitioner's counsel several times to inquire as to same. In further support of this Motion, Registrant states as follows:

#### I. Introduction and Background

Opposer served its written discovery on October 10, 2014 via electronic mail (by agreement of the parties) to Sean Ploen, Attorney for the Applicant. See Exhibit A.

The Parties mutually agreed to a 30 day extension on November 9, 2014, again on December 8, 2014, and one last time on January 7, 2015. On February 9, 2015, Opposer sent Applicant their admissions and asked if their discovery answers were ready. After not receiving a reply, on February 13, 2014 the Opposer sent their response to the Applicant's written discovery and asked to have the Applicant's responses by the next Wednesday, February 18, 2015. See Exhibit B.

To date, Opposer has not received any response to its discovery requests. It is now almost one month from the due date for the Discovery to be provided.

Accordingly, Registrant respectfully requests the Board to grant Opposer's Motion to Compel, as set forth more fully below.

## II. Argument

Opposer served its written discovery on Sean Ploen via electronic mail (by agreement of the parties). Specifically, Opposer served Opposer's First Set of Interrogatories and Opposer's First Set of Requests for Production of Documents on Applicant's counsel as well as Petitioner's First Set of Interrogatories and Petitioner's First Set of Requests for Production of Documents as this was pre-consolidation. Responses to these discovery requests were due to be served thirty (30) days later, or by November 9th, 2014. *See* 37 C.F.R. §§2.119(c) and 2.120(a); and TBMP §§113.05 and 403.03. Three thirty days extensions were agreed to which brought the due date to February 9, 2015. To date, Applicant has failed to serve written responses to Opposer's discovery requests, has not asked for an extension and has not responded to Opposer. See Exhibit B.

As noted above, Opposer's counsel has twice written to Applicant's counsel in an effort to obtain Applicant's discovery responses. Applicant has not asked for an extension to respond, has not objected to the requests, and has not even stated if Applicant will respond. In short, Applicant has not in any way responded to Opposer's discovery requests or given any dates when Opposer could expect Applicant's Responses.

The responses to Opposer's interrogatories and document requests should be made without the privilege of interposing any objections. A "party which fails to respond to a request for discovery during the time allowed therefor, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding

party, to have forfeited its right to object to the discovery request on its merits.” TBMP § 403.03 and §527.03. *See also Envirotech Corp. v. Compagnie Des Lampes*, 219 USPQ 448 (TTAB 1979) (“a party who fails to respond to a request for discovery during the time allowed therefore is deemed to have forfeited his right to object to the request on its merits unless he can show that failure to timely respond was the result of excusable neglect”); *MacMillan Bloedel Ltd. v. Arrow- M Corp.*, 203 USPQ 952 (TTAB 1979) (same); and *Crane Co. v. Shimano Industrial Co.*, 184 USPQ 691 (TTAB 1975) (same).

Accordingly, Opposer respectfully requests that the Board enter an Order compelling Applicant to serve its responses to Opposer’s interrogatories and document requests without the privilege of interposing any objections; and to serve Opposer’s documents by mail on Opposer’s counsel.

### III. Rule 2.120(e) Statement

Pursuant to Rule 2.120(e) of the Trademark Rules of Practice, Opposer’s counsel states that it has made a good faith effort by conference and correspondence to resolve with the other party or the attorney therefor the issues presented in the motion, and has been unable to reach agreement.

### IV. Request for Suspension

Opposer understands that this proceeding will be suspended based on the filing of this Motion to Compel, pursuant to Trademark Rule 2.120(e) (*When a party files a motion for an order to compel discovery, the case will be suspended by the Trademark Trial and Appeal Board. . . .*)

(Emphasis supplied). Nevertheless, Opposer requests that the proceeding be suspended to allow the Board to consider the present Motion (and any responsive filings), to issue an Order and to allow Applicant time to comply with that Order.

## V. Conclusion

For all the foregoing reasons, Opposer respectfully requests that the Board GRANT Opposer's Motion to Compel; and issue an Order to: 1) compel Applicant to immediately serve answers to interrogatories and responses to document requests, *without* the privilege of interposing any objections; 2) compel Applicant to serve its document production by E-mail on counsel for Registrant at Applicant's expense, 3) admonish Applicant that the failure to timely serve responses and documents in accordance therewith subjects the Applicant to judgment by default; 4) apply any sanctions to Applicant that the Board see fit; 5) suspend these proceedings; and 6) reset the trial dates upon lifting the suspension.

Respectfully submitted,

March 5, 2015

Date

/jmf/

Jeffrey M. Furr

Attorney for Opposer/Petitioner

2622 Debolt Road

Utica, Ohio 43080

JeffMFurr@FurrLawFirm.com

740-892-2118 (telephone)

740-892-3860 (fax)

CERTIFICATE OF FILING

I hereby certify that this paper is being filed electronically with the Trademark Trial and Appeal Board on the 5th day of March, 2015.

\_\_\_\_\_  
/jmf/

Jeffrey M. Furr, Esquire

**Certificate of Service**

The undersigned hereby certifies that he has this day served a true and correct copy of these requests for admissions, along with any exhibits thereto, upon Petitioner's counsel, as listed below, by mailing the same via electronic mail (by agreement of the parties) to the following addresses:

[sploen@ploen.com](mailto:sploen@ploen.com)

Dated: March 5, 2015

\_\_\_\_\_  
/Jeffrey M. Furr/  
Jeffrey M. Furr, Esq

# EXHIBIT A



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

ALEXANDER LITZ,

Opposer

OPPOSITION NO. 91214713

vs.

TECH GURU, LLC,

Applicant

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

Opposer, ALEXANDER LITZ, requests that Applicant, answer separately and fully in writing, under oath, within 30 days, pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, the following interrogatories.

**INSTRUCTIONS**

If any one or more of these interrogatories is or are objected to on the ground of privilege, overbreadth, vagueness or similar ground, Applicant is instructed for each such interrogatory to answer the interrogatory within the 30-day period as narrowed to conform with the objection. Where Applicant lacks knowledge of exact information responsive to an interrogatory, Applicant is instructed to say so and to answer the

interrogatory to the best of its present knowledge, to supply the best available estimate of the requested information, and to explain the basis of the estimate.

These interrogatories are continuing and Applicant is instructed to supplement its responses immediately whenever it acquires additional information pertinent thereto.

Any document asserted to be confidential or subject to a claim of privilege or attorney work product should be identified by a description of the document, the date, the authors, the addresses, those receiving copies and the subject matter discussed in the document.

If Applicant contends that any information requested by these interrogatories is confidential, Applicant is instructed to so indicate and supply a proposed protective order to apply to such confidential information in this litigation. Applicant will stipulate to a reasonable protective order.

## **DEFINITIONS**

The following definitions are applicable to terms employed in these Interrogatories, in the Instructions accompanying these Interrogatories and in these Definitions.

- A. The term “person” refers to natural persons, organizations, associations, partnerships, joint ventures, corporations (including Applicant) and other legal entities, and the actions taken by a person include the actions of directors, officers, owners, members, partners, joint venturers, employees, agents or attorneys acting on the person’s behalf.

- B. The singular includes the plural and vice versa; the words “and” and “or” shall be construed in both the conjunctive and disjunctive; the word “all” means “any and all”; the word “any” means “any and all”.
- C. The terms “relates” and “refers” mean directly or indirectly mentioning, discussing, describing, pertaining to or connected with, a stated subject matter.
- D. The term “document” is used in its customary broad sense and encompasses, without limitation, all handwritten, typed, printed or otherwise visually or aurally reproduced materials, whether copies, drafts or originals, and irrespective of whether they are privileged against discovery on any ground, or within the possession, custody or control of Applicant, or its directors, officers, employees, agents, attorneys, consultants, independent contractors or representative, including but not limited to: letters, correspondence, cables, wires, facsimiles, telegrams, notes, memoranda, diaries, e-mails and other electronic messages, notes or records of telephone conversations, notes or records of personal conversations or interviews, interoffice and intraoffice communications of all types, drawings, plans, sketches, charts, notebooks, data, operating and maintenance manuals, operating and product specifications, photographs, movies and recordings, books, catalogs, labels, packaging, containers, tags, advertisements, promotional materials, storyboards, press releases, reports, studies, questionnaires, assignments, agreements and other official papers and legal instruments, annual reports, management reports, project

reports, reports to shareholders and minutes and reports of meetings (including meetings of directors, officers, executive boards and committees), lists of persons attending meetings, bills, invoices, orders, books, records, files, published material of any kind, and microfilms of documents that may have been destroyed.

Any original or copy of a document containing or having attached to it any alterations, notes, comments or other material not included in the first document shall be deemed a separate document.

- E. “Identify”, as used with respect to a document, means to state, irrespective of whether it is privileged or within the possession, custody or control of Applicant, (1) a brief description of the document and the subject matter discussed in the document; (2) the name of each author, maker or sender of the document; (3) the name of each addressee or recipient of the document and, if the document is an agreement, the names of the parties to the agreement; (4) the date the document bears, or if undated, the date the document was prepared; (5) the number of pages comprising the document; (6) the present location of the document; and (7) the name, job title, employer and address of the custodian of the document. A copy of the document may be furnished in lieu of stating the substance of its contents and any other information that would be evident from the document itself. If any document that is responsive to any of these interrogatories has been destroyed, Applicant should provide the date,

author, recipient, as much text as can be recalled, and the date of and reason for the destruction of each destroyed document.

- F. “Identify” as used with respect to a person, means to state: (1) the full name of the person; (2) the present or last known business or home address of that person; (3) the present or former relationship, if any, of that person to the Applicant; (4) if a natural person, the present or last known occupation and employer, if any, of that person; and (5) if an organization, association, partnership, joint venture, corporation or other legal entity, the identity and business titles of the individuals associated with such entity who have knowledge of the matter inquired about.
- G. “Identify” as used with respect to an institution or business entity (including without limitation any government body, corporation or partnership) means to state its name, its principal business, the principal place at which it conducted its activities at the time of the events referred to in the interrogatory and at present, and to “identify” the persons at the institution or business entity having knowledge of the matters inquired about.
- H. “Identify” as used with respect to an oral communication, means to state all participants in and recipients of the communication, and to state its date, location, subject matter and method of communication.
- I. “Identify” as used with respect to an agreement or offer to enter into an agreement, means to state its title and the parties involved and to

summarize the terms or the proposed terms and to “identify” all documents constituting the agreement or offer.

- J. “Identify” as used with respect to goods or services, means to describe the goods or services briefly and the types of purchases to whom they are marketed and sold and the intended use for the goods or services.
- K. " Applicant " refers to TECH GURU, LLC itself, it’s Parent Companies and subsidiaries and as represented by any partners, directors, officers, employees, agents, attorneys, consultants, independent contractors and representatives, and includes all parents, divisions, subsidiaries, affiliates and joint ventures and other legal entities which are own TECH GURU, LLC or wholly or partly owned or controlled by TECH GURU, LLC either directly or indirectly, all predecessors and successors in interest, and the directors, officers, employees, agents, attorneys, consultants, independent contractors and representatives of these legal divisions, subsidiaries, affiliates, joint ventures, predecessors, successors and other legal entities. Where use of a mark is concerned, "Applicant" also means all of Applicant's past and present licensees and all others who use or have used such mark with Applicant's consent or under Applicant’s control or authority.
- L. “Mark” means all forms of trademarks and trade names, including without limitation service marks, fictitious names, corporate and business names, logos, designs, trade dress and devices.

M. “Use in commerce” means the definition given in Section 45 of the Trademark Act of 1946 (15 U.S.C.1127).

## **INTERROGATORIES**

**Interrogatory No. 1:** Identify each location in the United States at which Applicant now maintains a place of business.

**Interrogatory No. 2:** Identify the current and former officers, directors, employees and/or agents of Applicant who are and/or were responsible for Applicant’s marketing and/or promotion of goods and/or services under the TECH GURU marks from the creation of the marks through the present.

**Interrogatory No. 3:** Identify all TECH GURU marks which Applicant, as defined in paragraph K of the Definitions section, has ever used or intends to use in the United States, and identify, pursuant to paragraph J of the Definitions section, the specific goods shipped or sold or the specific services offered or provided in connection with each such mark. For each such mark, good and service:

- (a) state the date and place each mark was first used in the United States on or in connection with each good or service; and
- (b) state the date and place of first use in commerce for each mark on or in connection with each good or service; and

- (c) state whether each such use has been continuous to the present; and
- (d) identify the circumstances of each such first use, including the identity of the person (or, if an individual cannot be identified, the class of persons) to whom the goods were first shipped or sold or to whom the services were first offered or provided; and
- (e) state the channels by which each such good or service has been or is intended to be offered or sold to purchasers; and
- (f) state the current suggested retail prices for each such good or service; and
- (g) state the annual revenues, in dollars, generated from the sales of each such good or the provision of such service; and
- (h) state the amount of money expended per year for advertising and promotion for each such good or service since its introduction; and
- (i) state the reasons for the selection, approval and adoption of each Mark; and
- (j) list the states or metropolitan areas in which such goods or services have been offered or sold in the United States; and
- (k) list the states or metropolitan areas in which such goods or services are intended to be offered or sold in the United States; and
- (l) identify with specificity any additional goods or services which Applicant intends to offer for sale or to provide in the United States in connection with the TECH GURU marks.



**Interrogatory No. 4:** Identify all forms of advertising media in which Applicant has advertised or intends to advertise goods or services in connection with any TECH GURU (i.e. the name of each newspaper, periodical and other publication in which such advertisements have appeared, the name and URL of each Internet site on which advertisements have been displayed, the name of each broadcast network, cable network, broadcast station and cable system on which such advertisements have been carried, the geographic areas in which any direct mail and outdoor advertising has appeared, and each other medium in which such advertisements have appeared), and the date when the mark first appeared in an advertisement by Applicant in each type of medium in the United States.

**Interrogatory No. 5:** Identify any marketing reports, plans, studies, memoranda, research, tests or other marketing documents which concern or relate to each TECH GURU mark.

**Interrogatory No. 6:** Identify and provide copies of all logos which have been used, are presently being used, or are intended to be used by Applicant in association with, or incorporating, the term TECH GURU or a variation thereof. Identify the products or services which have been, or are intended to be, offered in the United States in connection with each such logo and, where appropriate, the dates of use.

**Interrogatory No. 7:** If a Mark identified in response to Interrogatory 3 has ever been used, owned or registered by any person other than Applicant, or if any rights in such mark have ever been granted or licenses by or to any person other than Applicant:

- (a) identify each such other person; and
- (b) state the relationship, if any, of Applicant to such other person; and
- (c) state the dates of such use, ownership, registration, grant, or license;  
and
- (d) state the nature of such use, ownership, registration, grant or license.

**Interrogatory No. 8:** If Applicant, as defined in paragraph K of the Definitions section, acquired any rights in any Mark containing the term TECH GURU or any variation thereof, from any other person:

- (a) identify the person or persons from whom rights were acquired and  
state the relationship of Applicant to each such person;
- (b) state the date of each acquisition; and
- (c) state the extent and nature of each interest acquired; and
- (d) state the monetary and non-monetary consideration for each  
acquisition; and
- (e) identify the other tangible and intangible assets which were acquired  
or transferred in connection with each.

**Interrogatory No. 9:** If Applicant, as defined in paragraph K of the Definitions section, has made any claim, demand or objection against any person, or has had any claim, demand or objection made against it, or has been engaged in any litigation or any ex parte or inter partes administrative proceeding (including any contested proceeding in the U.S. patent and Trademark Office), involving any mark containing the term TECH GURU or any variation of either, for each such claim, demand, objection, litigation or proceeding (other than the instant proceeding):

- (a) state the nature of the claim, demand, objection, litigation or proceeding and the party or parties thereto; and
- (b) state the date when such claim, demand or objection was first made or when such litigation or proceeding commenced; and
- (c) state the present status of the claim, demand, objection, litigation or proceeding and, where applicable, its disposition.

**Interrogatory No. 10:** State whether Applicant and/or any persons employed by or connected with Applicant has received any inquiries as to whether any goods or services furnished by the Applicant are associated with, sponsored by, or in any manner connected with the Opposer. If the answer to this interrogatory is other than an unqualified negative, set forth all facts relating to each inquiry including the identity of the parties or persons involved.

**Interrogatory No. 11:** Identify when Applicant learned of Opposer's Mark.

**Interrogatory No. 12:** Identify all communication between the Opposer and Applicant about Applicant's Mark and the dates those communications were sent.

**Interrogatory No. 13:** Identify each witness who Applicant may call to testify on this proceeding.

**Interrogatory No. 14:** Identify each person who supplied information in answering the foregoing interrogatories and, for each such person, identify the interrogatory response(s) in which information supplied by that person was used.

Respectfully submitted,

October 10, 2014  
Date

/jmf/

Jeffrey M. Furr  
Attorney for Opposer  
2622 Debolt Road  
Utica, Ohio 43080  
JeffMFurr@FurrLawFirm.com  
740-892-2118 (telephone)  
740-892-3860 (fax)

#### CERTIFICATE OF SERVICE

I hereby certify that this paper is being deposited on the 10th day of October, 2014 with the United States Postal Service in an envelope addressed to:

Sean Ploen, Ploen Law Firm PC, 100 S 5<sup>th</sup> Street, Suite 1900, Minneapolis, Minnesota  
55402

/jmf/  
Jeffrey M. Furr, Esquire

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

ALEXANDER LITZ,

Petitioner

CANCELLATION No. 92058585

vs.

TECH GURU, LLC,

Registrant

**PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Petitioner, ALEXANDER LITZ, requests that Registrant, pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, produce and permit the inspection and copying of the documents described in the following Requests regardless of whether only a part of any document meets the description.

Petitioner requests that such documents be made available at the office of Jeffrey M. Furr, 2622 Debolt Road, Utica, Ohio 43080 within 30 days of the mailing of this Request.

**INSTRUCTIONS**

These Requests are intended to cover all documents in the possession of Registrant, or subject to its custody and control, or available to Registrant wherever such documents are located, including, but not limited to, any of Registrant 's offices or any other office maintained or used by Registrant, its agents, employees, joint ventures, partners, independent contractors, accountant or attorneys, or any other locations where documents are kept.

If any document covered by these Requests is withheld for any reason, on a claim of privilege, attorney work product or otherwise, please provide a listing of such withheld documents stating the form of the document withheld, the date of its preparation, the author, each addressee or recipient, the subject matter, the reason for which the document is being withheld, the basis for any claim of privilege for which a document is withheld, and the name and address of any person or persons presently having custody or control of the same or a true copy thereof.

If documents requested herein cannot be produced because they have been destroyed, cannot be located, or are otherwise thought no longer to exist, please provide a statement indicating, to the best of your ability, the form of the document, the date of its preparation, the author(s), each addressee or recipient, and the subject matter.

These Requests are continuing. Consequently, if any of the documents which were not produced or could not be produced for the reasons given above, or for any other reason, are discovered, or located, or, if additional documents formerly unknown to you are discovered, which are covered by any of these Requests, you should immediately notify Registrant's attorney, name below, and make such documents available for inspection and copying.

## **DEFINITIONS**

The following definitions are applicable to terms employed in these Requests, in the Instructions accompanying these Requests and in these Definitions.

A. The term "person" refers to natural persons, organizations, associations, partnerships, joint ventures, corporations (including Registrant) and other legal entities and the actions taken by a person include the actions of directors, officers, owners, members, partners, joint venturers, employees, agents or attorneys acting on the person's behalf.

B. The singular includes the plural and vice versa; the words "and" and "or" shall be construed in both the conjunctive and disjunctive; the word "all" means "any and all" the word "any" means "any and all".

C. The terms "relates" and "refers" mean directly or indirectly mentioning, discussing, describing, pertaining to or connected with, a stated subject matter.

D. The term "document" is used in its customary broad sense and encompasses, without limitations, all handwritten, typed, printed or otherwise visually or aurally reproduced materials, whether copies, drafts or originals, and irrespective of whether they are privileged against discovery on any ground, or within the possession, custody or control of Registrant, or its directors, officers, employees, agents or attorneys, consultants, independent contractors and representatives, including but not limited to: letter, correspondence, cables, wires, facsimiles, telegrams, notes, memoranda, diaries, e-mail and other electronic messages, notes or records of telephones conversations, notes or records of personal conversations or interviews, interoffice and intraoffice



communications of all types, drawings, plans, sketches, charts, notebooks, data, operating and maintenance manuals, operating and product specifications, photographs, movies and recordings, books, catalogs, labels, packaging, containers, tags, published material of any kind, assignments, agreements and other official papers and legal instruments, annual reports, managements reports, project reports, reports to shareholders and minutes and reports of meetings (including meetings of directors, officers, executive boards and committees), lists of persons attending meetings, advertising and promotional literature, press releases, bills, invoices, orders, books, records, files, and microfilms of documents that may have been destroyed.

Any original or copy of a document containing or having attached to it any alterations, notes, comments or other material not included in the first document that shall be deemed a separate document.

E. "Identify," as used with respect to a document, means to state, irrespective of whether it is privileged or within the possession, custody or control of Registrant, (1) a brief description of the document and the subject matter discusses in the document; (2) the name of each author, maker or sender of the document; (3) the name of each addressee or recipient of the document and, if the document is an agreement, the names of the parties to the agreement; (4) the date the document bears, or if undated, the date the document was prepared; (5) the number of pages comprising the document; (6) the present location of the document; and (7) the name, job title, employer and address of the custodian of the document. A copy of the document may be furnished in lieu of stating the substance of its contents and any other information that would be evident from the document itself. If any document that is responsive to any of these interrogatories has

been destroyed, Registrant should provide the date, author, recipient, as much text as can be recalled, and the date of and reason for destruction for each destroyed document.

F. "Registrant" refers to TECH GURU, LLC itself, its Parent Companies and subsidiaries and as represented by any partners, directors, officers, employees, agents, attorneys, consultants, independent contractors and representatives, and includes all parents, divisions, subsidiaries, affiliates and joint ventures and other legal entities which are own TECH GURU, LLC or wholly or partly owned or controlled by TECH GURU, LLC either directly or indirectly, all predecessors and successors in interest, and the directors, officers, employees, agents, attorneys, consultants, independent contractors and representatives of these legal divisions, subsidiaries, affiliates, joint ventures, predecessors, successors and other legal entities. Where use of a mark is concerned, "Registrant" and/or "Applicant" also means all of Registrant's past and present licensees and all others who use or have used such mark with Registrant's consent or under Registrant's control or authority.

G. "Mark" means all forms of trademarks and trade names, including without limitation service marks, fictitious names, corporate and business names, logos, designs, trade dress and devices.

H. "Use in commerce" means the definition given in Section 45 of the Trademark Act of 1946 (15 U.S.C. 1127).

### **Document Requests**

**Request No. 1:** All documents identified by Registrant in response to Petitioner's First Set of Interrogatories to Registrant and all documents whose identity is requested in Petitioner's First Set of Interrogatories to Registrant.

**Request No. 2:** Copies of Registrant 's brochures, fliers, displays, web sites and other advertising and promotional materials, (including advertising banners, ads, displays and other advertising and promotional materials displayed, published or transmitted via the Internet) used by Registrant within the last 20 years displaying a Mark containing the term "TECH GURU" or any variation thereof, and representative samples of all prior advertising and promotional materials displaying such marks and the dates each was displayed and/or used.

**Request No. 3:** All documents in Registrant's possession or control which refer or relate to Registrant or his marks (other than those directly relating to the conduct of this proceeding).

**Request No. 4:** All documents referring or relating to, or tending to show, any possible or actual confusion between any of Petitioner's marks and Registrant's cited mark.

**Request No. 5:** All licenses, consents or agreements, invoices, sales orders and purchase orders, which mention or otherwise relate to the use, registration, licensing, termination of use or restriction of use of a Mark containing the term “TECH GURU” or any variation thereof in the United States.

**Request No. 6:** All documents referring or relating to any proceeding before any Trademark Appeal Board, or any court, arbitrator or administrative body, in the United States or in any foreign country, in which Registrant has been involved concerning the “TECH GURU” mark or any variation thereof.

**Request No. 7:** All documents communication sent by Registrant to Petitioner.

**Request No. 8:** All documents and things relating or referring to, or evidencing, reflecting, or constituting, the opinions of any expert witness that Registrant intends to call at trial.

Respectfully submitted,

October 10, 2014  
Date

/jmf/  
Jeffrey M. Furr  
Attorney for Petitioner  
2622 Debolt Road  
Utica, Ohio 43080  
JeffMFurr@FurrLawFirm.com  
740-892-2118 (telephone)  
740-892-3860 (fax)

CERTIFICATE OF SERVICE

I hereby certify that this paper is being deposited on the 10th day of October, 2014 with the United States Postal Service in an envelope addressed to:

Sean Ploen, Ploen Law Firm PC, 100 S 5<sup>th</sup> Street, Suite 1900, Minneapolis, Minnesota  
55402

/jmf/

---

Jeffrey M. Furr, Esquire

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

ALEXANDER LITZ,

Opposer

OPPOSITION NO. 91214713

vs.

TECH GURU, LLC,

Applicant

**OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Opposer, ALEXANDER LITZ, requests that Applicant, pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, produce and permit the inspection and copying of the documents described in the following Requests regardless of whether only a part of any document meets the description.

Opposer requests that such documents be made available at the office of Jeffrey M. Furr, 2622 Debolt Road, Utica, Ohio 43080 within 30 days of the mailing of this Request.

**INSTRUCTIONS**

These Requests are intended to cover all documents in the possession of Applicant, or subject to its custody and control, or available to Applicant wherever such documents are located, including, but not limited to, any of Applicant 's offices or any other office maintained or used by Applicant, its agents, employees, joint ventures, partners, independent contractors, accountant or attorneys, or any other locations where documents are kept.

If any document covered by these Requests is withheld for any reason, on a claim of privilege, attorney work product or otherwise, please provide a listing of such withheld documents stating the form of the document withheld, the date of its preparation, the author, each addressee or recipient, the subject matter, the reason for which the document is being withheld, the basis for any claim of privilege for which a document is withheld, and the name and address of any person or persons presently having custody or control of the same or a true copy thereof.

If documents requested herein cannot be produced because they have been destroyed, cannot be located, or are otherwise thought no longer to exist, please provide a statement indicating, to the best of your ability, the form of the document, the date of its preparation, the author(s), each addressee or recipient, and the subject matter.

These Requests are continuing. Consequently, if any of the documents which were not produced or could not be produced for the reasons given above, or for any other reason, are discovered, or located, or, if additional documents formerly unknown to you are discovered, which are covered by any of these Requests, you should immediately notify Applicant's attorney, name below, and make such documents available for inspection and copying.

## **DEFINITIONS**

The following definitions are applicable to terms employed in these Requests, in the Instructions accompanying these Requests and in these Definitions.

A. The term "person" refers to natural persons, organizations, associations, partnerships, joint ventures, corporations (including Applicant) and other legal entities and the actions taken by a person include the actions of directors, officers, owners, members, partners, joint venturers, employees, agents or attorneys acting on the person's behalf.

B. The singular includes the plural and vice versa; the words "and" and "or" shall be construed in both the conjunctive and disjunctive; the word "all" means "any and all" the word "any" means "any and all".

C. The terms "relates" and "refers" mean directly or indirectly mentioning, discussing, describing, pertaining to or connected with, a stated subject matter.

D. The term "document" is used in its customary broad sense and encompasses, without limitations, all handwritten, typed, printed or otherwise visually or aurally reproduced materials, whether copies, drafts or originals, and irrespective of whether they are privileged against discovery on any ground, or within the possession, custody or control of Applicant, or its directors, officers, employees, agents or attorneys, consultants, independent contractors and representatives, including but not limited to: letter, correspondence, cables, wires, facsimiles, telegrams, notes, memoranda, diaries, e-mail and other electronic messages, notes or records of telephones conversations, notes or records of personal conversations or interviews, interoffice and intraoffice



communications of all types, drawings, plans, sketches, charts, notebooks, data, operating and maintenance manuals, operating and product specifications, photographs, movies and recordings, books, catalogs, labels, packaging, containers, tags, published material of any kind, assignments, agreements and other official papers and legal instruments, annual reports, managements reports, project reports, reports to shareholders and minutes and reports of meetings (including meetings of directors, officers, executive boards and committees), lists of persons attending meetings, advertising and promotional literature, press releases, bills, invoices, orders, books, records, files, and microfilms of documents that may have been destroyed.

Any original or copy of a document containing or having attached to it any alterations, notes, comments or other material not included in the first document that shall be deemed a separate document.

E. "Identify," as used with respect to a document, means to state, irrespective of whether it is privileged or within the possession, custody or control of Applicant, (1) a brief description of the document and the subject matter discusses in the document; (2) the name of each author, maker or sender of the document; (3) the name of each addressee or recipient of the document and, if the document is an agreement, the names of the parties to the agreement; (4) the date the document bears, or if undated, the date the document was prepared; (5) the number of pages comprising the document; (6) the present location of the document; and (7) the name, job title, employer and address of the custodian of the document. A copy of the document may be furnished in lieu of stating the substance of its contents and any other information that would be evident from the document itself. If any document that is responsive to any of these interrogatories has

been destroyed, Applicant should provide the date, author, recipient, as much text as can be recalled, and the date of and reason for destruction for each destroyed document.

F. "Applicant" refers to TECH GURU, LLC itself, its Parent Companies and subsidiaries and as represented by any partners, directors, officers, employees, agents, attorneys, consultants, independent contractors and representatives, and includes all parents, divisions, subsidiaries, affiliates and joint ventures and other legal entities which are own TECH GURU, LLC or wholly or partly owned or controlled by TECH GURU, LLC either directly or indirectly, all predecessors and successors in interest, and the directors, officers, employees, agents, attorneys, consultants, independent contractors and representatives of these legal divisions, subsidiaries, affiliates, joint ventures, predecessors, successors and other legal entities. Where use of a mark is concerned, "Applicant" and/or "Applicant" also means all of Applicant's past and present licensees and all others who use or have used such mark with Applicant's consent or under Applicant's control or authority.

G. "Mark" means all forms of trademarks and trade names, including without limitation service marks, fictitious names, corporate and business names, logos, designs, trade dress and devices.

H. "Use in commerce" means the definition given in Section 45 of the Trademark Act of 1946 (15 U.S.C. 1127).

### **Document Requests**

**Request No. 1:** All documents identified by Applicant in response to Opposer's First Set of Interrogatories to Applicant and all documents whose identity is requested in Opposer's First Set of Interrogatories to Applicant.

**Request No. 2:** Copies of Applicant's brochures, fliers, displays, web sites and other advertising and promotional materials, (including advertising banners, ads, displays and other advertising and promotional materials displayed, published or transmitted via the Internet) used by Applicant within the last 20 years displaying a Mark containing the term "TECH GURU" or any variation thereof, and representative samples of all prior advertising and promotional materials displaying such marks and the dates each was displayed and/or used.

**Request No. 3:** All documents in Applicant's possession or control which refer or relate to Applicant or his marks (other than those directly relating to the conduct of this proceeding).

**Request No. 4:** All documents referring or relating to, or tending to show, any possible or actual confusion between any of Opposer's marks and Applicant's cited mark.

**Request No. 5:** All licenses, consents or agreements, invoices, sales orders and purchase orders, which mention or otherwise relate to the use, registration, licensing, termination of use or restriction of use of a Mark containing the term “TECH GURU” or any variation thereof in the United States.

**Request No. 6:** All documents referring or relating to any proceeding before any Trademark Appeal Board, or any court, arbitrator or administrative body, in the United States or in any foreign country, in which Applicant has been involved concerning the “TECH GURU” mark or any variation thereof.

**Request No. 7:** All documents communication sent by Applicant to Opposer.

**Request No. 8:** All documents and things relating or referring to, or evidencing, reflecting, or constituting, the opinions of any expert witness that Applicant intends to call at trial.

Respectfully submitted,

October 10, 2014  
Date

/jmf/  
Jeffrey M. Furr  
Attorney for Opposer  
2622 Debolt Road  
Utica, Ohio 43080  
JeffMFurr@FurrLawFirm.com  
740-892-2118 (telephone)



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

ALEXANDER LITZ,

Petitioner

CANCELLATION No. 92058585

vs.

TECH GURU, LLC,

Registrant

**PETITIONER'S FIRST SET OF INTERROGATORIES TO REGISTRANT**

Petitioner, ALEXANDER LITZ, requests that Registrant, answer separately and fully in writing, under oath, within 30 days, pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, the following interrogatories.

**INSTRUCTIONS**

If any one or more of these interrogatories is or are objected to on the ground of privilege, overbreadth, vagueness or similar ground, Registrant is instructed for each such interrogatory to answer the interrogatory within the 30-day period as narrowed to conform with the objection. Where Registrant lacks knowledge of exact information responsive to an interrogatory, Registrant is instructed to say so and to answer the

interrogatory to the best of its present knowledge, to supply the best available estimate of the requested information, and to explain the basis of the estimate.

These interrogatories are continuing and Registrant is instructed to supplement its responses immediately whenever it acquires additional information pertinent thereto.

Any document asserted to be confidential or subject to a claim of privilege or attorney work product should be identified by a description of the document, the date, the authors, the addresses, those receiving copies and the subject matter discussed in the document.

If Registrant contends that any information requested by these interrogatories is confidential, Registrant is instructed to so indicate and supply a proposed protective order to apply to such confidential information in this litigation. Registrant will stipulate to a reasonable protective order.

## **DEFINITIONS**

The following definitions are applicable to terms employed in these Interrogatories, in the Instructions accompanying these Interrogatories and in these Definitions.

- A. The term “person” refers to natural persons, organizations, associations, partnerships, joint ventures, corporations (including Registrant) and other legal entities, and the actions taken by a person include the actions of directors, officers, owners, members, partners, joint venturers, employees, agents or attorneys acting on the person’s behalf.

- B. The singular includes the plural and vice versa; the words “and” and “or” shall be construed in both the conjunctive and disjunctive; the word “all” means “any and all”; the word “any” means “any and all”.
- C. The terms “relates” and “refers” mean directly or indirectly mentioning, discussing, describing, pertaining to or connected with, a stated subject matter.
- D. The term “document” is used in its customary broad sense and encompasses, without limitation, all handwritten, typed, printed or otherwise visually or aurally reproduced materials, whether copies, drafts or originals, and irrespective of whether they are privileged against discovery on any ground, or within the possession, custody or control of Registrant, or its directors, officers, employees, agents, attorneys, consultants, independent contractors or representative, including but not limited to: letters, correspondence, cables, wires, facsimiles, telegrams, notes, memoranda, diaries, e-mails and other electronic messages, notes or records of telephone conversations, notes or records of personal conversations or interviews, interoffice and intraoffice communications of all types, drawings, plans, sketches, charts, notebooks, data, operating and maintenance manuals, operating and product specifications, photographs, movies and recordings, books, catalogs, labels, packaging, containers, tags, advertisements, promotional materials, storyboards, press releases, reports, studies, questionnaires, assignments, agreements and other official papers and legal instruments, annual reports, management reports, project



reports, reports to shareholders and minutes and reports of meetings (including meetings of directors, officers, executive boards and committees), lists of persons attending meetings, bills, invoices, orders, books, records, files, published material of any kind, and microfilms of documents that may have been destroyed.

Any original or copy of a document containing or having attached to it any alterations, notes, comments or other material not included in the first document shall be deemed a separate document.

- E. “Identify”, as used with respect to a document, means to state, irrespective of whether it is privileged or within the possession, custody or control of Registrant, (1) a brief description of the document and the subject matter discussed in the document; (2) the name of each author, maker or sender of the document; (3) the name of each addressee or recipient of the document and, if the document is an agreement, the names of the parties to the agreement; (4) the date the document bears, or if undated, the date the document was prepared; (5) the number of pages comprising the document; (6) the present location of the document; and (7) the name, job title, employer and address of the custodian of the document. A copy of the document may be furnished in lieu of stating the substance of its contents and any other information that would be evident from the document itself. If any document that is responsive to any of these interrogatories has been destroyed, Registrant should provide the date,

author, recipient, as much text as can be recalled, and the date of and reason for the destruction of each destroyed document.

- F. “Identify” as used with respect to a person, means to state: (1) the full name of the person; (2) the present or last known business or home address of that person; (3) the present or former relationship, if any, of that person to the Registrant; (4) if a natural person, the present or last known occupation and employer, if any, of that person; and (5) if an organization, association, partnership, joint venture, corporation or other legal entity, the identity and business titles of the individuals associated with such entity who have knowledge of the matter inquired about.
- G. “Identify” as used with respect to an institution or business entity (including without limitation any government body, corporation or partnership) means to state its name, its principal business, the principal place at which it conducted its activities at the time of the events referred to in the interrogatory and at present, and to “identify” the persons at the institution or business entity having knowledge of the matters inquired about.
- H. “Identify” as used with respect to an oral communication, means to state all participants in and recipients of the communication, and to state its date, location, subject matter and method of communication.
- I. “Identify” as used with respect to an agreement or offer to enter into an agreement, means to state its title and the parties involved and to

summarize the terms or the proposed terms and to “identify” all documents constituting the agreement or offer.

- J. “Identify” as used with respect to goods or services, means to describe the goods or services briefly and the types of purchases to whom they are marketed and sold and the intended use for the goods or services.
- K. " Registrant " refers to TECH GURU, LLC itself, it’s Parent Companies and subsidiaries and as represented by any partners, directors, officers, employees, agents, attorneys, consultants, independent contractors and representatives, and includes all parents, divisions, subsidiaries, affiliates and joint ventures and other legal entities which are own TECH GURU, LLC or wholly or partly owned or controlled by TECH GURU, LLC either directly or indirectly, all predecessors and successors in interest, and the directors, officers, employees, agents, attorneys, consultants, independent contractors and representatives of these legal divisions, subsidiaries, affiliates, joint ventures, predecessors, successors and other legal entities. Where use of a mark is concerned, "Registrant" also means all of Registrant's past and present licensees and all others who use or have used such mark with Registrant's consent or under Registrant’s control or authority.
- L. “Mark” means all forms of trademarks and trade names, including without limitation service marks, fictitious names, corporate and business names, logos, designs, trade dress and devices.

M. “Use in commerce” means the definition given in Section 45 of the Trademark Act of 1946 (15 U.S.C.1127).

## **INTERROGATORIES**

**Interrogatory No. 1:** Identify each location in the United States at which Registrant now maintains a place of business.

**Interrogatory No. 2:** Identify the current and former officers, directors, employees and/or agents of Registrant who are and/or were responsible for Registrant’s marketing and/or promotion of goods and/or services under the TECH GURU marks from the creation of the marks through the present.

**Interrogatory No. 3:** Identify all TECH GURU marks which Registrant, as defined in paragraph K of the Definitions section, has ever used or intends to use in the United States, and identify, pursuant to paragraph J of the Definitions section, the specific goods shipped or sold or the specific services offered or provided in connection with each such mark. For each such mark, good and service:

- (a) state the date and place each mark was first used in the United States on or in connection with each good or service; and
- (b) state the date and place of first use in commerce for each mark on or in connection with each good or service; and

- (c) state whether each such use has been continuous to the present; and
- (d) identify the circumstances of each such first use, including the identity of the person (or, if an individual cannot be identified, the class of persons) to whom the goods were first shipped or sold or to whom the services were first offered or provided; and
- (e) state the channels by which each such good or service has been or is intended to be offered or sold to purchasers; and
- (f) state the current suggested retail prices for each such good or service; and
- (g) state the annual revenues, in dollars, generated from the sales of each such good or the provision of such service; and
- (h) state the amount of money expended per year for advertising and promotion for each such good or service since its introduction; and
- (i) state the reasons for the selection, approval and adoption of each Mark; and
- (j) list the states or metropolitan areas in which such goods or services have been offered or sold in the United States; and
- (k) list the states or metropolitan areas in which such goods or services are intended to be offered or sold in the United States; and
- (l) identify with specificity any additional goods or services which Registrant intends to offer for sale or to provide in the United States in connection with the TECH GURU marks.

**Interrogatory No. 4:** Identify all forms of advertising media in which Registrant has advertised or intends to advertise goods or services in connection with any TECH GURU (i.e. the name of each newspaper, periodical and other publication in which such advertisements have appeared, the name and URL of each Internet site on which advertisements have been displayed, the name of each broadcast network, cable network, broadcast station and cable system on which such advertisements have been carried, the geographic areas in which any direct mail and outdoor advertising has appeared, and each other medium in which such advertisements have appeared), and the date when the mark first appeared in an advertisement by Registrant in each type of medium in the United States.

**Interrogatory No. 5:** Identify any marketing reports, plans, studies, memoranda, research, tests or other marketing documents which concern or relate to each TECH GURU mark.

**Interrogatory No. 6:** Identify and provide copies of all logos which have been used, are presently being used, or are intended to be used by Registrant in association with, or incorporating, the term TECH GURU or a variation thereof. Identify the products or services which have been, or are intended to be, offered in the United States in connection with each such logo and, where appropriate, the dates of use.

**Interrogatory No. 7:** If a Mark identified in response to Interrogatory 3 has ever been used, owned or registered by any person other than Registrant, or if any rights in such mark have ever been granted or licenses by or to any person other than Registrant:

- (a) identify each such other person; and
- (b) state the relationship, if any, of Registrant to such other person; and
- (c) state the dates of such use, ownership, registration, grant, or license;  
and
- (d) state the nature of such use, ownership, registration, grant or license.

**Interrogatory No. 8:** If Registrant, as defined in paragraph K of the Definitions section, acquired any rights in any Mark containing the term TECH GURU or any variation thereof, from any other person:

- (a) identify the person or persons from whom rights were acquired and  
state the relationship of Registrant to each such person;
- (b) state the date of each acquisition; and
- (c) state the extent and nature of each interest acquired; and
- (d) state the monetary and non-monetary consideration for each  
acquisition; and
- (e) identify the other tangible and intangible assets which were acquired  
or transferred in connection with each.

**Interrogatory No. 9:** If Registrant, as defined in paragraph K of the Definitions section, has made any claim, demand or objection against any person, or has had any claim, demand or objection made against it, or has been engaged in any litigation or any ex parte or inter partes administrative proceeding (including any contested proceeding in the U.S. patent and Trademark Office), involving any mark containing the term TECH GURU or any variation of either, for each such claim, demand, objection, litigation or proceeding (other than the instant proceeding):

- (a) state the nature of the claim, demand, objection, litigation or proceeding and the party or parties thereto; and
- (b) state the date when such claim, demand or objection was first made or when such litigation or proceeding commenced; and
- (c) state the present status of the claim, demand, objection, litigation or proceeding and, where applicable, its disposition.

**Interrogatory No. 10:** State whether Registrant and/or any persons employed by or connected with Registrant has received any inquiries as to whether any goods or services furnished by the Registrant are associated with, sponsored by, or in any manner connected with the Petitioner. If the answer to this interrogatory is other than an unqualified negative, set forth all facts relating to each inquiry including the identity of the parties or persons involved.



**Interrogatory No. 11:** Identify when Registrant learned of Petitioner's Mark.

**Interrogatory No. 12:** Identify all communication between the Petitioner and Registrant about Registrant's Mark and the dates those communications were sent.

**Interrogatory No. 13:** Identify each witness who Registrant may call to testify on this proceeding.

**Interrogatory No. 14:** Identify each person who supplied information in answering the foregoing interrogatories and, for each such person, identify the interrogatory response(s) in which information supplied by that person was used.

Respectfully submitted,

October 10, 2014  
Date

/jmf/

Jeffrey M. Furr  
Attorney for Petitioner  
2622 Debolt Road  
Utica, Ohio 43080  
JeffMFurr@FurrLawFirm.com  
740-892-2118 (telephone)  
740-892-3860 (fax)

#### CERTIFICATE OF SERVICE

I hereby certify that this paper is being deposited on the 10th day of October, 2014 with the United States Postal Service in an envelope addressed to:

Sean Ploen, Ploen Law Firm PC, 100 S 5<sup>th</sup> Street, Suite 1900, Minneapolis, Minnesota  
55402

/jmf/  
Jeffrey M. Furr, Esquire

# EXHIBIT B

Subj: **Re: Tech Guru Discovery**  
Date: 2/13/2015 10:45:10 P.M. Eastern Standard Time  
From: [JeffMFurr@aol.com](mailto:JeffMFurr@aol.com)  
To: [JeffMFurr@aol.com](mailto:JeffMFurr@aol.com), [sploen@ploen.com](mailto:sploen@ploen.com)

Sean,

Attached is our client's response to your Interrogatories and Document Requests.

We still have not received your clients or any date at which we can expect it. I ask that we have them by next Wednesday.

Thank you,

Jeff

2622 Debolt Road  
Utica, Ohio 43080  
740-892-2118  
740-892-3860 fax

---

PRIVILEGED AND CONFIDENTIAL COMMUNICATION

This electronic transmission, and any documents attached hereto, may contain confidential and/or legally privileged information. The information is intended only for use by the recipient named above. If you have received this electronic message in error, please notify the sender and delete the electronic message. Any disclosure, copying, distribution, or use of the contents of information received in error is strictly prohibited.

In a message dated 2/9/2015 10:20:49 P.M. Eastern Standard Time, [JeffMFurr@aol.com](mailto:JeffMFurr@aol.com) writes:

Sean,

Attached is the answers to Admissions. We have the rest of the discovery ready to be sent but wanted to check to see if you client's discovery answers are ready before sending it out.

Thank you,

Jeff

2622 Debolt Road  
Utica, Ohio 43080  
740-892-2118  
740-892-3860 fax

---

PRIVILEGED AND CONFIDENTIAL COMMUNICATION

This electronic transmission, and any documents attached hereto, may contain confidential and/or legally privileged information. The information is intended only for use by the recipient named above. If you have received this electronic message in error, please notify the sender and delete the electronic message. Any disclosure, copying, distribution, or use of the contents of information received in error is strictly prohibited.