ESTTA Tracking number: **ESTTA676886**

Filing date: **06/08/2015**

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

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|---|---|
| Proceeding | 91220307 |
| Party | Plaintiff<br>Iron Horse Originals, LLC |
| Correspondence Address | VANESSA L LANCASTER<br>THE NOBLITT GROUP PLLC<br>8800 NORTH GAINEY CENTER DR, STE 279<br>SCOTTSDALE, AZ 85258<br>UNITED STATES<br>syan@ngtechlaw.com, dnoblitt@ngtechlaw.com, vlancaster@ngtechlaw.com |
| Submission | Motion to Compel Discovery |
| Filer's Name | Gary W. Newson |
| Filer's e-mail | gnewson@ngtechlaw.com |
| Signature | /gary newson/ |
| Date | 06/08/2015 |
| Attachments | 10465.0600Opp_2015-06-08_Opposers motion to compel.pdf(834966 bytes ) |

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

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|---|---|
| IRONHORSE ORIGINALS, LLC,<br><br>Opposer,<br><br>v.<br><br>MARK WENTURA<br><br>Applicant. | Trademark Application<br>Serial No. 86/208,174<br><br>Mark: THE IRON HORSE<br>CLOTHING COMPANY<br><br>Filed: February 28, 2014<br>Published on: September 23, 2014<br>Opposition No. 91/220,307 |

**OPPOSER'S MOTION TO COMPEL APPLICANT TO PROVIDE INITIAL DISCLOSURES**

Ironhorse Originals, LLC, ("Opposer"), by and through undersigned counsel, respectfully moves the Trademark Trial and Appeal Board (the "Board") to compel Mark Wentura ("Applicant") to provide initial disclosures in accordance with 37 C.F.R. § 2.120(a) of the Trademark Rules of Practice and Rule 26(a) of the Federal Rules of Civil Procedure, and in support thereof states as follows:

1. Opposer received a letter from Applicant dated February 9, 2015 expressing a desire to reach a mutual arrangement.
2. On April 13, 2015, Opposer's Counsel provided a settlement proposal in response to Applicant's letter dated February 9, 2015 via mail, and via electronic mail on April 14, 2015.

3. On April 24, 2015, Opposer's Counsel sent a follow-up letter via electronic mail to Applicant regarding the prior communication to which Applicant had not responded.
4. On April 28, 2015, Opposer's Counsel sent another follow-up letter via electronic mail to Applicant regarding the multiple communications, including emails and multiple telephone messages (on April 27, 2015 at 3:30 pm and April 28, 2015 at 2:30 pm), sent in an attempt to discuss the settlement agreement and hold the mandatory discovery conference, to which Applicant had not responded.
5. On April 28, 2015 Applicant responded, via electronic mail, indicating his receipt of the settlement proposal and intent to contact Opposer's Counsel on April 30, 2015.
6. On May 1, 2015, having not received any correspondence from Applicant as expected, Opposer's Counsel sent Applicant another letter via electronic mail inquiring as to the status of the settlement proposal.
7. On May 1, 2015, Opposer provided its initial disclosures to Applicant via mail and electronic mail, in accordance with the Trademark Rules of Practice, Federal Rules of Civil Procedure.
8. After having not received Applicant's Rule 26(a) initial disclosures, Counsel for Opposer contacted Applicant by electronic mail on May 26, 2015 inquiring as to the status of the disclosures and reminder of the deadline.
9. Counsel for Opposer contacted Applicant by electronic mail on June 4, 2015 inquiring as to the status of the disclosures and to again remind Applicant of the missed deadline.

10. Counsel for Opposer contacted Applicant by electronic mail on June 4, 2015 inquiring as to the status of the disclosures and to again remind Applicant of the missed deadline.
11. Applicant has yet to respond in any manner to any correspondence issued by Opposer's Counsel regarding Applicant's failure to provide its Rule 26(a) initial disclosures.
12. On the basis of its efforts to contact Applicant by correspondence regarding Applicant's failure to submit its Rule 26(a) initial disclosures, the Opposer in this case has in good faith attempted to resolve the present issue.
13. Despite Opposer's efforts to resolve the issue as to Applicant's failure to provide initial disclosures, the Opposer has been unable to resolve this dispute (in part due to Applicant's lack of response) and, as such, this matter requires the Board's intervention.

WHEREFORE, by its undersigned attorneys, Opposer respectfully prays that the Board enter an Order compelling Applicant to provide its initial disclosures in accordance with the Trademark Rules of Practice and the Federal Rules of Civil Procedure.

Dated: June 8, 2015

Respectfully submitted,

Gary W. Newson
The Noblitt Group, PLLC
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Facsimile (480) 994-9025
Attorney for Opposer
Ironhorse Originals, LLC

## CERTIFICATE OF ELECTRONIC FILING

I hereby certify that the attached MOTION TO COMPEL INITIAL DISCLOSURE was filed electronically with the Trademark Trial and Appeal Board on June 8, 2015.

Gary Newson

## CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing document was served by First Class mail on June 8, 2015, postage prepaid, to Applicant:

Mark Wentura
2239 Black Canyon Road SPC 97
Ramona, California 92065-5570

Dated: 08 June 2015

Gary Newson