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

Proceeding	91222920
Party	Plaintiff Standard Tools and Equipment Co.
Correspondence Address	BLAKE P HURT TUGGLE DUGGINS PA 100 N GREENE STREET, SUITE 600 GREENSBORO, NC 27401 UNITED STATES bhurt@tuggleduggins.com
Submission	Other Motions/Papers
Filer's Name	Blake Hurt
Filer's e-mail	BHurt@tuggleduggins.com
Signature	/blakehurt/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STANDARD TOOLS AND EQUIPMENT CO.)	Opposition No.: 91222920
)	
Opposer,)	Serial No.: 86377838
v.)	Filing Date: 26 August 2014
)	
DROPSHIP, LLC d/b/a TOOL USA, LLC)	Published: 07 July 2015
)	
Applicant.)	Mark: TOOL USA.COM
)	

**OPPOSER’S FIRST SET OF INTERROGATORIES AND REQUESTS FOR
DOCUMENT PRODUCTION TO APPLICANT**

Standard Tools and Equipment Co., (“Opposer”) by and through undersigned counsel, serves the following Interrogatories and Requests for Document Production to Dropship, LLC d/b/a Tool USA, LLC, (“Applicant”). The Applicant is commanded to serve its responses to these requests upon the undersigned counsel for Opposer within 30 days after service of these requests in accordance with the applicable rule of civil procedure and the Trademark Trial and Appeal Board Manual of Procedure (“TBMP”).

DEFINITIONS AND INSTRUCTIONS

- A. The terms “You,” “Your,” and “Applicant” mean Dropship, LLC d/b/a Tool USA, LLC including any and all subsidiary, parent and affiliate companies foreign or domestic.

- B. “Document” means any printed, typewritten or handwritten instrument of whatever character including information created and/or stored in electronic form and includes, without limitation, correspondence, email, memoranda, agreements, letters, hand or typewritten notes, computer printouts, computer tapes, computer discs, microfilm, microfiche, tape recordings, photographs, video tapes, motion pictures, plats, diagrams, surveys, voice tapes, recordings and

any other items of similar nature, including originals and non-identical copies.

C. “Identify” or “identity” means the following:

- 1) With respect to a natural person, the person’s full name, present employer, title, job description, business and home address and telephone numbers and his/her relationship to Applicant.
- 2) With respect to a person other than a natural person, including any business entity, identify means to include the name, address, state of formation, type of legal entity and identity of a duly authorized representative.
- 3) To identify a “document” means to state the document’s title, date, author, addressees, recipients, subject matter and or general nature, present location and custodian. Documents should be identified whether or not they are currently in the Applicant’s custody or possession.

D. “Communication” is a transmission from one person to another or in the presence of another, whether written, oral, telephonic, electronic or by any other means.

E. “Person” and “You” means the plural as well as the singular and includes without limitation any natural person as well as any firm, corporation, unincorporated association, partnership or other form of legal entity unless the context clearly indicates otherwise.

F. With regard to documents for which Applicant claims a privilege, please state the type of privilege claimed and its basis.

G. If the answer to any Interrogatory is not made from personal knowledge, identify each person from whom or each document from which Applicant obtained the information contained in the answer to the interrogatory.

H. These Interrogatories and Requests for Document Production are continuing. If

Applicant's answer to any Interrogatory or Request for Document Production changes or information or documents become available to Applicant after the time it responds to the request, Applicant is required to supplement its responses as soon as reasonably practicable.

I. If Applicant cannot answer any of the Interrogatories or Requests for Document Production in full, please answer to the extent possible, specifying the reason for Applicant's inability to answer or respond the remainder, and stating what information or knowledge Applicant has and what information and knowledge Applicant does not have.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify each officer and managing agent of Applicant, giving each officer's and managing agent's name, address, title and duties with respect to Applicant.

ANSWER:

INTERROGATORY NO. 2:

Identify each product and/or service provided by Applicant prior to August 26, 2014 and list the mark under which each product and/or service was provided, the dates during which each product and/or service was provided, annual sales for each year each product and/or service was provided, the amount spent annually on advertising each product and/or service, and the geographic area in which each product and/or service was advertised, provided and/or sold.

ANSWER:

INTERROGATORY NO. 3:

Identify and describe each product and/or service sold and/or distributed by Applicant under the designation TOOL USA.COM.

ANSWER:

INTERROGATORY NO. 4:

State the exact date(s) on which Applicant will rely as to when its use of the term TOOL USA.COM commenced in connection with the sale or distribution of each product and/or service specified in answer to above Interrogatory No. 3.

ANSWER:

INTERROGATORY NO. 5:

Identify all documents, purchase orders, invoices, labels, flyers, brochures, other advertising or any writing whatsoever which Applicant will rely upon to establish the date(s) specified in answer to above Interrogatory No. 4.

ANSWER:

INTERROGATORY NO. 6:

With respect to the first use(s) of TOOL USA.COM in connection with the sale of each product and/or service identified in above Interrogatory No. 3, state:

- (a) Each manner in which the term TOOL USA.COM was used, e.g. by affixing to containers, labels, or in newspaper advertising or fliers;

ANSWER:

- (b) If the designation TOOL USA.COM was printed on containers for the product or on labels, the name and address of the person(s) or organization(s) which printed them;

ANSWER:

- (c) If the designation TOOL USA.COM was used in brochures or fliers, the name and address of the person(s) or organization(s) which printed them;

ANSWER:

- (d) If the designation was used in media advertising, the name and address of the person(s) or organization(s) which advertised them;

ANSWER:

- (e) Whether the product and/or service was sold;

ANSWER:

- (f) Whether the product and/or service was offered free of charge;

ANSWER:

- (g) The name and address of the person(s) or organization(s) to whom the product and/or service was sold;

ANSWER:

- (h) Whether Applicant itself manufactured each of the product(s) sold and/or distributed under the designation TOOL USA.COM.

ANSWER:

- (i) Whether Applicant itself provided the service(s) sold under the designation TOOL USA.COM.

ANSWER:

- (j) Whether the sale of each product or service under the designation TOOL USA.COM has been continuous from each date specified in above Interrogatory No. 4 to the present;

ANSWER:

- (k) If the answer to Interrogatory 6, including any portion thereof, is in the affirmative, state whether the circumstances that are described in answer to Interrogatory 6 prevailed throughout the period beginning on the date identified in above Interrogatory 4;

ANSWER:

- (l) If the circumstances described in the answer to Interrogatory 6, including any portion thereof, did not prevail throughout the period(s) beginning on the date identified in above Interrogatory 4, state in detail how they changed, providing specific dates and names wherever requested; and

ANSWER:

- (m) If the answer to Interrogatory 6(j) is in the negative, state the periods of time during which the term TOOL USA.COM was not used by Applicant in connection with the sale of each product and/or service.

ANSWER:

INTERROGATORY NO. 7:

State why Applicant selected the term TOOL USA.COM as a trademark for each product and/or service specified in Class (or Classes) 8 of Serial No. 86/377,838.

ANSWER:

INTERROGATORY NO. 8:

Identify each person who was primarily responsible for selecting the term TOOL USA.COM as a product and/or service mark.

ANSWER:

INTERROGATORY NO. 9:

Identify each person involved in the decision to use the mark TOOL USA.COM for the products and/or services identified in Class (or Classes) 8 in Serial No. 86/377,838.

ANSWER:

INTERROGATORY NO. 10:

Identify all documents in the possession, custody or control of Applicant including but not limited to search reports, market surveys, interoffice memoranda, etc., referring or relating to the adoption of the term TOOL USA.COM as a mark for each product and/or service specified in Class (or Classes) 8 of application Serial No. 86/377,838.

ANSWER:

INTERROGATORY NO. 11:

Identify and describe the channels of trade in the United States of each product and/or service specified in Class (or Classes) 8 of application Serial No. 86/377,838 marketed under the designation TOOL USA.COM.

ANSWER:

INTERROGATORY NO. 12:

Identify all purchasers by class (e.g., retailers, general public) of each product and/or service specified in Class (or Classes) 8 of application Serial No. 86/377,838 marketed under the designation TOOL USA.COM.

ANSWER:

INTERROGATORY NO. 13:

Identify each item of sales literature, including, but not limited to, brochures and fliers produced by or for Applicant for distribution in the United States to advertise each product and/or service specified in Class (or Classes) 8 of Serial No. 86/377,838 marketed under the designation TOOL USA.COM.

ANSWER:

INTERROGATORY NO. 14:

List all geographical areas (by city and state) in which Applicant sells each product and/or service specified in Class (or Classes) 8 of application Serial No. 86/377,838 under the designation TOOL USA.COM.

ANSWER:

INTERROGATORY NO. 15:

List all newspapers in the United States in which Applicant has advertised each product and/or service specified in Class (or Classes) 8 of application Serial No. 86/377,838 under the designation TOOL USA.COM and the dates thereof.

ANSWER:

INTERROGATORY NO. 16:

List all trade journals in the United States in which Applicant has advertised each product and/or service specified in Class (or Classes) 8 of application Serial No. 86/377,838 and the dates thereof.

ANSWER:

INTERROGATORY NO. 17:

List all radio and/or TV stations in the United States where Applicant has advertised each product and/or service specified in Class (or Classes) 8 of application Serial No. 86/377,838 under the designation TOOL USA.COM and the dates thereof.

ANSWER:

INTERROGATORY NO. 18:

List all other media, whether print or electronic including website related media and advertising, not already identified in above Interrogatories 15, 16, and 17 where Applicant has advertised each product and/or service specified in Class (or Classes) 8 of application Serial No. 86/377,838 under the designation TOOL USA.COM and the dates thereof.

ANSWER:

INTERROGATORY NO. 19:

For each calendar year since commencement of use of the designation TOOL USA.COM in connection with the marketing of each product and/or service specified in Class (or Classes) 8 of application Serial No. 86/377,838, state the amount expended by Applicant in the United States in the advertisement of each product and/or service.

ANSWER:

INTERROGATORY NO. 20:

For each calendar year since commencement of use of the designation TOOL USA.COM in connection with the sale of each product and/or service specified in Class (or Classes) 8 of application Serial No. 86/377,838, state the amount of sales by Applicant in the United States of each product and/or service.

ANSWER:

INTERROGATORY NO. 21:

Describe in detail all instances of actual confusion known to Applicant between the source of Opposer's products and/or services and each product and/or service specified in Class (or Classes) 8 of application Serial No. 86/377,838 and identify all documents in the possession, custody or control of Applicant relating to each such instances of confusion.

ANSWER:

INTERROGATORY NO. 22:

Identify by name and address all person(s) or organization(s) who have been responsible for advertising each service specified in Class (or Classes) 8 of application Serial No. 86/377,838, under the designation TOOL USA.COM.

ANSWER:

INTERROGATORY NO. 23:

Has Applicant requested or received or does Applicant have knowledge of any opinions, legal or otherwise, of any type regarding the right to use the mark TOOL USA.COM? If the answer to this interrogatory is other than a categorical unqualified negative, identify the person or persons requesting each such opinion; identify each such opinion; and identify the person rendering each such opinion.

ANSWER:

INTERROGATORY NO. 24:

Has Applicant or any of its officers or managing agents identified in the answer to above Interrogatory No. 1 ever considered or attempted to initiate or ever been party to a lawsuit, Trademark Office opposition or cancellation proceeding (other than the present proceeding) in the United States involving or relating to the use or registration of the mark TOOL USA.COM?

ANSWER:

INTERROGATORY NO. 25:

If the answer to above Interrogatory 24 is yes, set forth the following concerning each such litigation or proceeding: identify each actual or potential adversary and the trademarks involved; state its case docket number and filing date and identify the tribunal involved; state its outcome; identify all documents referring or relating to such litigation or proceeding and ensuing negotiations, if any; and state the name(s) and address(es) and telephone number(s) of all counsel representing any adverse party in such litigation or proceeding.

ANSWER:

INTERROGATORY NO. 26:

Identify the Applicant's predecessors-in-interest, and all of its subsidiaries and affiliated companies, and the officers, directors, employees, agents and representatives thereof.

ANSWER:

INTERROGATORY NO. 27:

Identify any and all documents responsive to the foregoing interrogatories which are lost or unavailable and identify the date(s) the loss or unavailability was first discovered, the person(s) who first discovered the loss or unavailability and the person(s) most knowledgeable about the contents of such lost or unavailable documents.

ANSWER:

INTERROGATORY NO. 28:

Identify all persons who participated in any way in the preparation of the answers or responses to these interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person (excluding only Applicant's lawyers or their representatives).

ANSWER:

INTERROGATORY NO. 29:

Identify the person within Applicant who has the greatest knowledge as to the information requested, as to each of the above interrogatories.

ANSWER:

INTERROGATORY NO. 30:

Identify any study, research, focus group, testing or similar validation procedure employed by Applicant or any person or entity at Applicant's request or on behalf of Applicant to determine the presence and/or absence of any confusion between Opposer's product and/or services and the products and/or services specified in Class (or Classes) 8 of application Serial No. 86/377,838.

ANSWER:

INTERROGATORY NO. 31:

Identify all persons affiliated with Applicant or agents of Applicant who assisted with the development of or the regular maintenance of the website located at www.toolusa.com.

ANSWER:

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

Please produce the following:

REQUEST FOR PRODUCTION NO. 1:

All Documents in the possession, custody or control of Applicant which refer to or relate to Applicant's knowledge of Opposer's adoption, use or registration of the TOOLS USA mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2:

All Documents in the possession, custody or control of Applicant which refer to or relate to any trademark or service mark, registration or application to register a trademark or service mark which includes the TOOL USA.COM mark ever granted to, considered, applied for, sought or acquired by Applicant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3:

All Documents in the possession, custody or control of Applicant which refer or relate to any plans of Applicant to expand, including but not limited to expansion of marketing lines, services, customer base or geographical areas served.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4:

All Documents in the possession, custody or control of Applicant which refer or relate to any authorization, license, franchise, assignment or grant from Applicant to another person giving the other person the right to use the TOOL USA.COM mark and to sell products and/or services under the TOOL USA.COM mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5:

All Documents in the possession, custody or control of Applicant which refer or relate to Opposer or to the use by Opposer of its TOOLS USA mark.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6:

All Documents requested to be identified in Interrogatory 5 of Opposer's First Interrogatories to Applicant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7:

All Documents requested to be identified in Interrogatory 10 of Opposer's First Interrogatories to Applicant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8:

All Documents requested to be identified in Interrogatory 13 of Opposer's First Interrogatories to Applicant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9:

All Documents requested to be identified in Interrogatory 21 of Opposer's First Interrogatories to Applicant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10:

All Documents requested to be identified in Interrogatory 25 of Opposer's First Interrogatories to Applicant.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11:

All Documents requested to be identified in Interrogatory 30 of Opposer's First Interrogatories to Applicant.

RESPONSE:


REQUEST FOR PRODUCTION NO. 12:

All Documents in the possession custody or control of Applicant reflecting marketing budgets for each calendar year since commencement of use of the designation TOOL USA.COM in connection with the marketing of each product and/or service specified in Class (or Classes) 8 of application Serial No. 86/377,838.

RESPONSE:

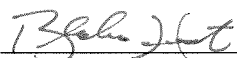
Respectfully submitted,

Standard Tools and Equipment Co.

By: 
Blake P. Hurt
Registration No. 67,181
Attorney for Opposer
Tuggle Duggins P.A.
100 N. Greene Street, Suite 600
Greensboro, North Carolina 27401
Telephone: 336-271-5229
Facsimile: 336-274-6590
Email: bhurt@tuggleduggins.com

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing document was sent by ordinary U.S. mail, email and/or facsimile to J. Curtis Edmondson, Attorney for Applicant, Law Offices of J. Curtis Edmondson, Venture Commerce Center, 3699 NW John Olsen Place, Hillsboro, OR 97124, email: jcedmondson@edmolaw.com, fax: 503-482-7418 on the 3rd day of February, 2016.

By: 
Blake P. Hurt
Registration No. 67,181
Attorney for Opposer