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

Proceeding	91225850
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

DEXAS INTERNATIONAL, LTD.,

Opposer,

v.

IDEAVILLAGE PRODUCTS CORP.,

Applicant.

Opposition No.: 91225850

Application Ser. No. 86/472355
[SNACKEEZ DUO]

APPLICANT’S TRIAL BRIEF

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I. STATEMENT OF THE ISSUES

1. Does Opposer Dexas International Inc. (“Opposer” or “Dexas”) own an enforceable trademark for the Snack DuO Mark (defined below) that pre-dates Applicant Ideavillage Product Corp.’s (“Ideavillage” or “Applicant”) Priority Date (defined below), given the highly descriptive, if not generic, nature of said alleged trademark?
2. Does Opposer have priority over Applicant, by analogous or technical trademark use?
3. In the event that Opposer proves enforceable trademark rights (issue 1) and priority (issue 2), is there a likelihood of confusion between Opposer’s Snack DuO Mark and Applicant’s Snackeez DUO Mark (defined below)?

II. DESCRIPTION OF THE RECORD

Applicant’s evidence of record includes the Testimony Declaration of LoriAnn Lombardo, an officer of Applicant, dated September 15, 2017, at 24 TTABVUE (“*Lombardo Dec.*”),¹ and transcripts of cross-examination depositions taken on August 21, 2017 of Opposer’s witnesses Nick Musteen (“*Musteen Tr.*”) (29 TTABVUE, redacted; 28 TTABVUE, confidential), Jeff Dennis (“*Dennis Tr.*”) (26 TTABVUE, redacted; 25 TTABVUE, confidential) and Jeff Logan (“*Logan Tr.*”) (27 TTABVUE), as well as the corresponding Exhibits 1-7 to such transcripts.²

Applicant cites to the Testimony Declaration of Doug Poindexter (“*Poindexter Dec.*”), and the exhibits thereto (14 TTABVE 9-15), as well as the evidence submitted during Opposer’s

¹ Opposer had the opportunity to cross examine Ms. Lombardo, but chose not to.

² Exhibit 1 is the Notice of Deposition Upon Oral Cross-Examination of Declarant Jeff Dennis (26 TTABVUE 50), Exhibit 2 is the Testimony Declaration of Jeff Dennis (26 TTABVUE 52), Exhibit 3, excerpts from an exhibit to the Testimony Declaration of Nick Musteen, is confidential, and was submitted as such via ESTTA (25 TTABVUE 59), Exhibit 4 is the Notice of Deposition Upon Oral Cross-Examination of Declarant Jeff Logan (27 TTABVUE 49), Exhibit 5 is the Declaration of Jeff Logan (27 TTABVUE 51), Exhibit 6 is the Notice of Deposition Upon Oral Cross-Examination of Declarant Nick Musteen (29 TTABVUE 74), and Exhibit 7, excerpts from an exhibit to the Testimony Declaration of Nick Musteen, is Confidential – Attorneys’ Eyes Only (28 TTABVUE 79), and was

testimony period pursuant to its First Notice of Reliance, filed on June 15, 2017 at 13 TTABVUE, and specifically, Applicant's Response to Opposer's First Requests for Admission and Interrogatories ("Applicant's First Interrogatory Responses") (submitted in redacted form at 13 TTABVUE, Ex. 9). In light of Opposer's redaction of Applicant's relevant responses, despite there being no issue regarding confidentiality, attached hereto as **Exhibit A** is a completely unredacted copy of Applicant's First Interrogatory Responses.

III. STATEMENT OF FACTS

Applicant is a leading developer, producer, marketer, and distributor of quality, innovative consumer products. Ideavillage promotes and sells its products through national direct response television advertising, commonly called "As Seen On TV" ("ASOTV"). Ideavillage also promotes and sells its ASOTV products at well-known mass retail outlets, including, without limitation: Walmart, Target, Bed Bath & Beyond, Toys R Us, Rite-Aid, CVS and Walgreens; through catalog companies; online, through its own website and its retail customers' websites; as well as through a network of international distributors, among other channels of trade. *Lombardo Dec.*, ¶ 3, 24 TTABVUE 1. One of Ideavillage's more recent successful products is an all-in-one, go anywhere, combination travel cup and snack holder, which is marketed and sold under the distinctive Snackeez Mark (defined below) ("Snackeez Product(s)"). *Lombardo Dec.*, ¶ 4, 24 TTABVUE 2.

While Ideavillage has gained significant common law trademark and other rights in its Snackeez Product through extensive use, advertising and promotion of the same, Ideavillage has also protected its valuable rights by filing for and obtaining federal trademark registrations. *Lombardo Dec.*, ¶ 5, 24 TTABVUE 2. For example, Ideavillage is the owner of U.S. Trademark

Registration No. 4,534,742 for the word mark “SNACKEEZ” for a wide variety of goods in Class 21 (the “Snackeez Mark”). *Lombardo Dec.*, ¶ 6, 24 TTABVUE 2, Ex. A.

Ideavillage’s Snackeez Mark is currently in use in commerce, is suggestive as applied to the goods with which it is associated, and has acquired distinctiveness from being prominently used in connection with the Snackeez Products, which have achieved worldwide recognition and fame. The Snackeez Mark has a constructive date of first use of at least as early as September 1, 2013. *Lombardo Dec.*, ¶ 7, 24 TTABVUE 2. The success of the Snackeez Products is due in part to Ideavillage’s marketing and promotional efforts, which include advertising and promotion through Ideavillage’s websites, television publicity, print, other internet-based advertising, dozens of authorized major retail outlets domestically and abroad, and its participation in trade shows, among other efforts. *Lombardo Dec.*, ¶ 8, 24 TTABVUE 3. Ideavillage’s marketing campaign for the Snackeez Product has encompassed movie theater advertising, television spots, social media, and sponsorships such as the Teen Choice Awards and celebrity giveaways. *Lombardo Dec.*, ¶ 9, 24 TTABVUE 3, Ex. B.

Ideavillage spent \$1,332,659.02 between September 30, 2013 through June 29, 2014 in television media costs in connection with the advertisement and promotion of the Snackeez Product in the United States alone. *Lombardo Dec.*, ¶ 10, 24 TTABVUE 3. There have been a number of television shows that have featured the Snackeez Product, including, but not limited to, The View, NBC’s Today Show, FOX 17, and News Channel 3. *Lombardo Dec.*, ¶ 11, 24 TTABVUE 3, Ex. C. There have also been a number of highly favorable reviews of the Snackeez Product. *Lombardo Dec.*, ¶ 12, 24 TTABVUE 3, Ex. D.

Ideavillage owes a substantial amount of the success of the Snackeez Products to its consumers, and the word-of-mouth buzz that its consumers have generated. In fact, based on a

survey of 40,000 U.S. shoppers, the Snackeez Product was voted the Product of the Year in 2015 by The Product of the Year USA Team. *Lombardo Dec.*, ¶ 13, 24 TTABVUE 3, Ex. E. In light of Ideavillage's efforts, the Snackeez Products have generated sales through June 2014 of almost two million (2,000,000) units, generating sales in excess of ten million dollars (\$10,000,000). *Lombardo Dec.*, ¶ 15, 24 TTABVUE 4.

Ideavillage's efforts, the quality of Ideavillage's products in general, its marketing and promotional efforts, and the word-of-mouth buzz generated by its consumers, have prominently placed the Snackeez Mark and Snackeez Products in the minds of the public. Retailers, retail buyers, consumers, and the members of the public have become familiar with Snackeez Products, and associate them exclusively with Ideavillage. *Lombardo Dec.*, ¶ 16, 24 TTABVUE 4.

As part of Ideavillage's expansion efforts for the Snackeez Products, on December 5, 2014 ("Applicant's Priority Date"), Ideavillage filed an Intent to Use application to register the trademark SNACKEEZ DUO, Ser. No. 86/472,355, for "Beverageware; Household containers for foods; Thermal insulated containers for food or beverages; Bottles, sold empty for beverages; Cups for beverages; insulating sleeve holder for beverage cups; Portable beverage and food container holder", which is the subject of the instant Opposition ("Snackeez DUO Mark" and "Snackeez DUO Application", respectively). *Lombardo Dec.*, ¶ 17, 24 TTABVUE 4.

Like the original Snackeez Product, the Snackeez DUO product holds any drink in the cup while the snack bowl nests into the cup's rim and snaps in place for a tight seal ("Snackeez DUO Product(s)"). A true and correct photograph of the Snackeez DUO Product in its packaging appears directly below.



Lombardo Dec., ¶ 18, 24 TTABVUE 4.

The Snackeez DUO Product is designed to be disposable and portable. Snackeez DUO Products are sold in a convenient 10-pack (as shown above). *Lombardo Dec.*, ¶¶ 19 -20, 24 TTABVUE 4-5, Ex. F.

Opposer is the owner of a dual chamber product, “one for liquid and one for food”, called Snack DuO (“Snack DuO Product”). *Opposer’s Trial Brief (“Opposer TB”)*, 31 TTABVUE 24. Opposer does not own any registration for its alleged mark, Snack DuO (the “Snack DuO Mark”) in the Patent and Trademark Office (“PTO”)—either on the Principal or Supplemental Register.

Opposer introduced its Snack DuO Product in July 2014 at a Las Vegas trade show (“2014 SuperZoo Trade Show”). The Snack DuO Product was exhibited in Opposer’s main show booth and in the “New Product Showcase” at the 2014 SuperZoo Trade Show (collectively, “2014 SuperZoo Snack DuO Display”). 31 TTABVUE 15.

In 2014, Opposer’s promotional activity for the Snack DuO Product prior to Applicant’s filing date was directed to the following:

22,987 people at the 2014 SuperZoo Trade Show

25,010 *Pet Business* subscribers as of July 2014

25,010 *Pet Business* subscribers as of September 2014

12,025 *HomeWorld Business* subscribers as of September 15, 2014

31 TTABVUE 8.

Despite acknowledging that it is Opposer's company objective to pursue sales at trade shows (*Dennis Tr.*: 22:17-19; *Musteen Tr.*: 19:10-20:9), Opposer's employees could not recall a single sale that resulted during or after the 2014 SuperZoo Trade Show from Opposer's promotion of the Snack DuO Products at the 2014 SuperZoo Trade Show. *Dennis Tr.*: 22:23-25; 30:5-8; 33:4-9; *Logan Tr.*: 34:15-22; *Musteen Tr.*: 22:19-22; 40:15-41:21.

An employee for Opposer testified that if there was a sale during the 2014 SuperZoo Trade Show, a purchase order would have typically been issued within thirty (30) days. *Musteen Tr.*: 21:21-22:18. Opposer's sales records confirm that no sales of the Snack DuO Product occurred. *Musteen Tr.*: 44:15-48:6, 28 TTABVUE, Ex. 7. In fact, Opposer was not ready to ship Snack DuO Products at the 2014 SuperZoo Trade Show, as the goods displayed were non-functioning prototypes (as late as October 21, 2014, Opposer still did not have final production products) and Opposer did not ship its first Snack DuO Product until nearly six (6) months following the 2014 SuperZoo Trade Show. 28 TTABVUE, Ex. 7.

Employees for Opposer further testified that there were no traditional or social media promotional efforts surrounding the release of the Snack DuO Product (either the adult or pet version) prior to Applicant's Priority Date. *Logan Tr.*: 21:17-25; 34:7-14. Opposer's employees could not point to any unsolicited publicity about the Snack DuO Products as a result of the 2014 SuperZoo Trade Show and there were no giveaways, samples or other specific promotional materials for the Snack DuO Products distributed during the 2014 SuperZoo Trade Show, at the booth or otherwise. *Logan Tr.*: 21:17-24:18; 25:6-14.

According to Opposer's employees, Opposer often followed a pattern of releasing new products via trade show advertisements and/or demonstrations. *Logan Tr.*: 15:7. Specifically,

Opposer would place an advertisement directed to the pet trade for a new pet product in *Pet Business*—a publication in which Opposer routinely advertise—to generate interest leading up to an upcoming trade show such as in this case, the 2014 SuperZoo Trade Show. *Logan Tr.: 15:7-16;18: 25; 28:3-16; 33:9-33:21*. Employees for Opposer testified that they were not aware of the 2014 *Pet Business* advertisement leading to any actual interest or sales at the 2014 SuperZoo Trade Show itself. *Logan Tr.: 15:7-16:18; Dennis: 30:13-33:9, 25 TTABVUE, Exs. 3-4*. In addition, there is absolutely no evidence of any interest drawn from the other two (2) advertisements—either the September 2014 advertisement in *Pet Business* or *HomeWorld Business*. *Dennis Tr.: 30:13-33:9, 25 TTABVUE, Exs. 3-4*.

As for the *HomeWorld Business* advertisement, it promoted the Snack DuO Product for adults for the first time and employees from Opposer testified that this version of the Snack DuO Product was not as successful as the original Snack DuO Product, which was for pets only. *Dennis Tr.: 27:11-13; Musteen Tr.: 51:10-16*.

Moreover, in a communication between one of Opposer’s employees and one of Camping World’s buyers on or about October 21, 2014, Opposer, admittedly, did not yet have possession of a “final label” nor a final product, noting that “if the Lids we received yesterday are officially approved today, I can send you a *final production sample* this week.” (emphasis added). Opposer was still testing “final production samples.” 28 TTABVUE, Ex. 7, *see* October 21, 2014 e-mail, DEX00019. Opposer shipped a “final production sample” on or about November 19, 2014 to Camping World. 28 TTABVUE, Ex. 7, *see* DEX00027. Camping World did not issue an actual purchase order for Snack DuO Products until December 18, 2014 for shipping in February, 2015, which Opposer’s employee testified was the first order for the Snack DuO Products, which in the employee’s opinion, was smaller and took longer than expected. *Musteen*

Tr.: 32:5-22; 43:5-14.

As noted by several of Opposer's employees, the Snackeez DUO Product and Snack DuO Products are not similar or competitive. *Dennis Tr.: 18:22-19:12; Logan Tr.: 31:20-32:6; Musteen Tr.: 35:2-18; 52:19-24.* First, Applicant's Snackeez DUO Product is designed for use by children, and marketed and promoted as such, whereas, on the other hand, Opposer's Snack DuO Products are for pets and adults. *Lombardo Dec., ¶ 3, 24 TTABVUE 1; Logan Tr.: 31:20-32:6; Musteen Tr.: 52:19-24; 53:3.* Second, Applicant primarily sells its products via television (hence the name "ASOTV"), and two of Opposer's employees even testified that they saw Applicant's Snackeez/Snackeez Duo Products offered for sale via the same. *Musteen Tr.: 52:22-53:3; Logan Tr.: 31:20-32:6; Lombardo Dec., ¶ 3, 24 TTABVUE 1.* Third, Opposer's employees also testified on cross-examination that the respective products are sold to different retail buyers (*Musteen Tr.: 25:14-26:2; Logan Tr.: 28:17-23; 30:11-18; Dennis Tr.: 36:11-14*) and sold to different end consumers (Snack DuO Product for adults/pets vs. Snackeez DUO Product for children) (*Musteen Tr.: 33:19-43:4; 52:19-24; Logan Tr.: 31:20-32:6*). Finally, in light of such dissimilarities, Opposer's employees indicated that they have not heard of any confusion by retailers, consumers or distributors in the marketplace (*Dennis Tr.: 33:10-21; Logan Tr.: 31:13-19; Musteen Tr.: 35:21-24*) and do not believe that Opposer's retail customers believe that there is any confusion (*Musteen Tr.: 35:19-24; Dennis Tr.: 33:10-21*).

IV. ARGUMENT

A. Opposer Has Not Established It Owns a Protectable Trademark

The instant opposition should be dismissed with prejudice on the ground that, upon the law and the facts of record, Opposer has not shown a right to relief. In order to successfully oppose the registration of a mark under Section 2(d) of the Lanham Act, "the opposer must prove

he [she or it] has proprietary rights in the term he [she or it] relies upon to demonstrate likelihood of confusion as to source”. *Otto Roth & Co., Inc. v. Universal Foods Corp.*, 640 F.2d 1317, 1320 (CCPA 1981); *see also Otter Prods. LLC v. Baseonelabs LLC*, 105 USPQ2d 1252 (TTAB 2012); *Herbko Int'l, Inc. v. Kappa Books, Inc.*, 308 F.3d 1156 (Fed. Cir. 2002); and *Towers v. Advent Software Inc.*, 913 F.2d 942 (Fed. Cir. 1990). In *Fluid Energy Processing & Equipment Co. v. Fluid Energy, Inc.*, 212 USPQ 28 (TTAB 1981), the Trademark Trial and Appeal Board (the “Board”), made clear that:

absent the existence of a registration and the presumptions attendant thereto under Section 7(b). . . a party claiming to be aggrieved under Section 2(d) cannot prevail where he has not proved a prior and proprietary right in the term or designation on which it relies. Confusion as to source cannot occur unless there is something which is actually recognized in the trade as identifying a particular source and, in the case of an opposition, in the opposer.

Id. at 22 (finding that the opposer’s failure to prove its ownership of a valid mark meant that opposer could not prevail on its claim under Section 2(d) of the Lanham Act). More recently, in *Solano Family Rest., LLC v. El Pollo Rico, Inc.*, 2013 TTAB LEXIS 90 (TTAB 2013) (non-precedential), the Board held that “[w]ith respect to opposers’ pleaded common law use of EL POLLO RICO [a mark that is not inherently distinctive in light of its descriptive properties], opposers must demonstrate that their alleged mark acquired distinctiveness prior to any date of use on which applicant may rely.” Likewise, in *Threshold.TV, Inc. v. Metronome Enters.*, 96 USPQ2d 1031 (TTAB 2010), the Board noted that “‘a party opposing registration of a trademark due to a likelihood of confusion with his own **unregistered term** cannot prevail unless he shows that his term is distinctive of his goods [or services], whether inherently or through the acquisition of secondary meaning or through ‘whatever other type of use may have developed a trade identity.’” *Id.* at 1036 (emphasis added) (internal citations omitted) (finding that opposer

had not demonstrated acquired distinctiveness, given that the record contained “no evidence of sales, numbers of customers, surveys or affidavits from third parties asserting source-indicating recognition.”).

Here, Opposer does not own any registration for its alleged Snack DuO Mark in the PTO—either on the Principal or Supplemental Register—and has failed to introduce *any* evidence that it has proprietary rights in the same. Opposer’s purported Snack DuO Mark is simply a combination of commonly used English words (“snack” and “duo”), which are inherently descriptive as applied to the Snack DuO Product—a dual chamber product intended to house two things. In fact, Opposer admits that “Snack DuO” is highly descriptive, if not generic, for a two (“duo”) section—“one for liquid and one for food [*i.e.*, a snack]”—product. 31 TTABVue 24. This is likely why Opposer never filed an application for the Snack DuO Mark (*i.e.*, since it is a generic or descriptive two-word designation that has not acquired any secondary meaning with respect to Opposer).

Opposer has not presented any evidence that the Snack DuO Mark is eligible for protection and/or has acquired distinctiveness through extensive advertising, sales, consumer recognition and the like; therefore, Opposer has failed to establish trademark rights in the Snack DuO Mark prior to Applicant’s Priority Date. Consequently, Opposer’s likelihood of confusion claim must be denied. *See, e.g., Threshold.TV, Inc.*, 96 U.S.P.Q.2d at 1031 (finding that because the opposer had not established that its designation had acquired distinctiveness prior to applicant’s filing date, opposer’s priority and likelihood of confusion claims should be dismissed); and *Avtex Fibers Inc. v. Gentex Corp.*, 223 USPQ 625 (TTAB 1984).

B. Applicant Has Prior Rights Through Tacking of Its Well-Known Snackeez Mark

“Tacking” is the legal doctrine whereby earlier and later versions of a mark are determined to be legal equivalents for the purpose of establishing priority of use. *Van Dyne-Crotty Inc. v. Wear-Guard Corp.*, 17 USPQ2d 1866, 1868 (Fed. Cir. 1991). That is, because the two marks are considered to be legally the same, the successful tacking proponent may tack its use of the different marks together, thereby establishing priority from said proponent’s first use of the first version of the mark. *Id.* “[T]he general rule adopted by lower courts has been that two marks may be tacked when the original and revised marks are ‘legal equivalents.’” *Hana Fin., Inc. v. Hana Bank*, 135 S. Ct. 907, 910 (2015). The term “legal equivalents” refers to two marks that “create the same, continuing commercial impression”, such that consumers “consider both as the same mark.” *Van Dyne-Crotty, Inc.*, 926 F. 2d, at 1159 (internal quotation marks omitted); *see also, e.g., George & Co., LLC v. Imagination Entertainment Ltd.*, 575 F. 3d 383, 402 (4th Cir. 2009); *Brookfield Communications, Inc. v. West Coast Entertainment Corp.*, 174 F. 3d 1036, 1047-1048 (9th Cir. 1999). “The commercial impression that a mark conveys must be viewed through the eyes of a consumer.” *DuoProSS Medi-tech Corp. v. Inviro Medical Devices, Ltd.*, 695 F. 3d 1247, 1253 (Fed. Cir. 2012); *see also 3 J. McCarthy, Trademarks and Unfair Competition*, §17:26, p. 17-71 (4th ed. 2014) (“‘Commercial impression,’ like most issues in trademark law, should be determined from the perspective of the ordinary purchaser of these kinds of goods or services”); *Ilco v. Ideal Security Hardware Corp.*, 527 F.2d 1221 (CCPA 1976); and *Baroid Drilling Fluids Inc. v. Sun Drilling Products*, 24 USPQ2d 1048 (TTAB 1992). A minor difference in the marks—such as the mere pluralization thereof or an inconsequential modification of a later mark—will not preclude application of the foregoing rule. *See In re*

Loew's Theatres, Inc., 223 USPQ 513 (TTAB 1984) *aff'd*, 769 F.2d 764 (Fed. Cir. 1985); and *In re Flex-O-Glass, Inc.*, 194 USPQ 203 (TTAB 1977).

Here, there is no question that the commercial impression of the Snackeez Product and Snackeez DUO Product, to the ordinary purchaser, is that the respective trademarks used in connection therewith (i.e., the Snackeez Mark and Snackeez DUO Mark) are legal equivalents. Ideavillage's Snackeez Mark, with a constructive date of first use of at least as early as September 1, 2013³ (*Lombardo Dec.*, ¶¶ 6-7, 24 TTABVUE 2, Ex. A), registered without PTO challenge as to distinctiveness, is currently in use in commerce, is suggestive as applied to the goods with which it is associated (i.e., the Snackeez Products), and has acquired distinctiveness from being prominently used in connection with the Snackeez Products, which have achieved worldwide recognition and fame. Upon its release in 2013, the unique Snackeez Product was incredibly successful due to and/or as evidenced by: (1) Ideavillage's marketing and promotional efforts (*Lombardo Dec.*, ¶¶ 8-9, 24 TTABVUE 3, Ex. B), including its television media spend of \$1,332,659.02 between September 30, 2013 through June 29, 2014 in the United States alone (*Lombardo Dec.*, ¶ 10, 24 TTABVUE 3); (2) the unsolicited media featuring the Snackeez Product, including, but not limited to, segments on The View, NBC's Today Show, FOX 17, and News Channel 3 (*Lombardo Dec.*, ¶ 11, 24 TTABVUE 3, Ex. C); (3) a number of highly favorable reviews of the Snackeez Product (*Lombardo Dec.*, ¶ 12, 24 TTABVUE 3, Ex. D); (4) the fact that it was voted the Product of the Year in 2015 by The Product of the Year USA Team, as a result of a survey of 40,000 U.S. shoppers (*Lombardo Dec.*, ¶ 14, 24 TTABVUE 3, Ex. E);

³ In Applicant's First Interrogatory Responses (*see* Exhibit A hereto), specifically, those responding to Interrogatory Numbers 1-3, which requested details relating to the scope of Ideavillage's claim of priority, Applicant indicated its intention to rely upon the Snackeez Mark's priority date of September 2013 and Snackeez DUO Mark's priority date of December 5, 2014 (i.e., Applicant's Priority Date). Applicant also indicated its intention to rely on the Snackeez Mark's priority date of September 2013 and Snackeez DuO priority date of December 5, 2014 (i.e., Applicant's

and (5) substantial sales through June 2014 of almost two million (2,000,000) Snackeez Products, generating sales in excess of ten million dollars (\$10,000,000), online and in the following retail stores in the U.S., among others: Walmart, Target, Walgreens, Toys R Us, Bed Bath & Beyond, CVS, Macy's, Kohl's, Rite Aid, Sears, JC Penney, Meijer, Kroger, Fred Meyer, Winn Dixie, Five Below, TSC Tractor Supply Co., Stop & Shop, Belk, and Giant. *Lombardo Dec.*, ¶¶ 15-16, 24 TTABVUE 4.

As part of Ideavillage's line extension efforts, nearly two (2) years after the initial release of the Snackeez Product (*Lombardo Dec.*, ¶ 20, 24 TTABVUE 5, Ex. F), it released the Snackeez DUO Product, with the same look and feel as the Snackeez Product, which is also portable, but disposable and sold in a convenient 10-pack (as shown above). *Lombardo Dec.*, ¶ 19, 24 TTABVUE 4-5. With the Snackeez DUO Product, the consumer sees and recognizes the well-known, colorful and highly recognizable Snackeez Mark, used in exactly the same stylization, coloring and format as appears on the original Snackeez Product, with "duo" appearing in smaller distinguishable lettering below. The side-by-side depiction of the Snackeez Product and the Snackeez DUO Product, directly below, confirms that these products invariably generate the same commercial impression to the ordinary consumer:



Given all of this, Ideavillage can rely upon the early priority date of the Snackeez Mark, dating back to at least as early as September, 2013, well prior to the July 2014 date that Opposer wrongly attempts to rely upon to establish priority.

C. Opposer's Analogous and Technical Use of the Snack DuO Mark Does Not Establish Priority

Opposer attempts to overcome Ideavillage's well-established tacked priority rights in the Snackeez Mark (September, 2013, as discussed directly above) and Applicant's Priority Date (December 5, 2014) for Applicant's Snackeez DUO Mark, with insufficient evidence of tacked promotional use and what it alleges to be a single "technical" use shipment of a "final production" sample product prior to Applicant's Priority Date. The aforementioned evidence, considered separately, or even collectively, is simply not enough, and therefore, Applicant has priority and the Opposition should be dismissed with prejudice.

1. ALLEGED PROMOTIONAL ACTIVITIES ARE INSUFFICIENT TO ESTABLISH ANALOGOUS USE

Throughout the *Opposer TB*, Opposer cites to and relies upon *T.A.B. Systems v. PacTel Teletrac*, 77 F.3d 1372 (Fed. Cir. 1996), wherein the Federal Circuit summarized the test for the sufficiency of analogous use efforts: "whether it was sufficiently clear, widespread and repetitive to create the required association in the minds of the potential purchasers between the mark as an indicator of a particular source and the [product or] service to become available later." *Id.* at 1376. The totality of Opposer's promotional activity prior to Applicant's Priority Date is summarized by Opposer as follows:

Opposer, on the other hand, introduced its Snack-DuO product in July, 2014 at a Las Vegas trade show [SuperZoo] and in the July 2014 issue of the publication *Pet Business* magazine. This was four months prior to Applicant's constructive filing date in December, 2014. Opposer followed up with more advertising of the Snack-DuO in the September 2014 issue of *Pet Business* and in the September 15, 2014 issue of another magazine,

HomeWorld Business.

31 TTABVUE 4.

Opposer argues, in a conclusory fashion, that “[i]t cannot be said that the exposure was ‘insubstantial’”, as its promotional activity for the Snack DuO Product “prior to Applicant’s filing date was directed to the following numbers of persons”:

22,987 people at the 2014 SuperZoo trade show

25,010 *Pet Business* subscribers as of July 2014

25,010 *Pet Business* subscribers as of September 2014

12,025 *HomeWorld Business* subscribers as of September 15, 2014

31 TTABVUE 8.

However, as discussed in *T.A.B. Systems*, “the user must prove that the ‘**necessary association**’ was created among more than an insubstantial number of potential customers.” *T.A.B. Systems*, 77 F.3d 1372, 1378 (emphasis added). Despite Opposer’s unavailing argument to the contrary, Opposer’s purported evidence of its promotional activities is insufficient to support promotional “tacking”, since Opposer has completely failed to prove **any** association, no less, the “**necessary association**” or “significant impact” of such efforts on potential consumers.

2. 2014 SUPERZOO TRADE SHOW ACTIVITIES ARE INSUFFICIENT

Opposer relies on the testimony of two employees (*i.e.*, Jeff Dennis and Nick Musteen) and one representative from a company that hosts the 2014 SuperZoo Trade Show (*i.e.*, Doug Poindexter) to attempt to establish “where” and “when” Opposer’s alleged promotions took place, and “how many” people were exposed to the same at the 2014 SuperZoo Trade Show, as required under *T.A.B. Systems*. However, since Opposer fails to make the “necessary association” (*i.e.*, to connect the dots between these three (3) critical components or demonstrate

any consumer identification whatsoever), Opposer's evidence does not support more than an insubstantial or negligible use of and/or consumer exposure to the Snack DuO Mark, and therefore, is wholly insufficient to support its claim for analogous use.

Opposer's two employees testified as to "where" and "when" the Snack-DuO Product promotions took place: in Opposer's main show booth, and in the "New Product Showcase", with a display booth that was four panels wide and seven feet tall (defined collectively above as the "2014 SuperZoo Snack DuO Display"). 31 TTABVUE 15. Next, Opposer produced testimony of "how many" people attended the 2014 SuperZoo Trade Show from Mr. Poindexter, the president of the production company of the 2014 SuperZoo Trade Show, which authenticated the attendance record for the 2014 SuperZoo Trade Show as 22,987 people. 31 TTABVUE 16.

Opposer, however, then wrongly concludes that "[t]he [2014 SuperZoo Snack DuO Display] and numbers alone would clearly constitute more than insubstantial, and more than negligible, use and exposure of the mark Snack-DuO, as required by *T.A.B. Systems* to be analogous use." 31 TTABVUE 16. There is not one shred of evidence or testimony that anyone, no less potential purchasers, saw, commented on or otherwise expressed any interest in the Snack DuO Product or the 2014 SuperZoo Snack DuO Display during or after the 2014 SuperZoo Trade Show as a result of Opposer's apparent efforts. Despite acknowledging that it is Opposer's company objective to pursue sales at trade shows (*Dennis Tr.*:22: 17-19; *Musteen Tr.*: 19:10-20:9), Opposer's employees could not recall a single sale that resulted during or after the 2014 SuperZoo Trade Show from Opposer's promotion of the Snack DuO Products at the 2014 SuperZoo Trade Show. *Dennis Tr.*: 22:23-25; 30:5-8; 33:4-9; *Logan Tr.*: 34:15-22; *Musteen Tr.*: 22:19-22; 40:15-41:21. Opposer's sales records confirm that no sales of Snack DuO Products occurred. *Musteen Tr.*: 44:15-48:6, 28 TTABVUE, Ex. 7, see DEX00135 to

DEX00150.⁴ An employee for Opposer testified that if there was a sale during the 2014 SuperZoo Trade Show, a purchase order would have typically been issued within thirty (30) days. *Musteen Tr.: 21:21-22:18*. In fact, Opposer was not ready to ship Snack DuO Products at the 2014 SuperZoo Trade Show, as the goods displayed were non-functioning prototypes (as late as October 21, 2014, Opposer still did not have final production products) and Opposer did not ship its first Snack DuO Product until nearly six (6) months following the 2014 SuperZoo Trade Show. 28 TTABVUE, Ex. 7, *see* DEX00135 to DEX00150.

Further, Opposer's employees could not point to any unsolicited publicity about the Snack DuO Products as a result of the 2014 SuperZoo Trade Show and there were no giveaways, samples or other specific promotional materials for the Snack DuO Products distributed during the 2014 SuperZoo Trade Show, at the booth or otherwise.⁵ *Logan Tr.: 21:17-24:18; 25:6-14*. Likewise, Mr. Poindexter did not mention anything about Opposer at all, no less any specific details of Opposer's alleged presence at the 2014 SuperZoo Trade Show, including, any discussion about the size, location or foot traffic associated with the Snack DuO Product and/or the 2014 SuperZoo Snack DuO Display. *See generally Poindexter Dec.* The record is simply devoid of the impact, if any, of Opposer's alleged promotional efforts on any consumers. *See Blast Blow Dry Bar LLC v. Blown Away LLC*, 2014 TTAB LEXIS 1, *21-23 (TTAB 2014) ("As for opposer's distribution of business cards and promotional materials, there is no evidence regarding how many customers or potential customers were reached via these efforts, and applicant's promotional efforts at the tennis program's small holiday party did not reach a

⁴Exhibit 7, specifically, DEX00135 to DEX00150, shows all purchase orders for the Snack DuO Product and where the purchase order was taken (*i.e.*, if it was taken at a trade show or not). For instance, DEXAS 000104-DEXAS 000105 show sales at 2015 SuperZoo trade show. Notably there are no references to any purchase orders taken at the 2014 SuperZoo Trade Show.

⁵ These materials were requested by Applicant during discovery, but Opposer did not produce the same.

sufficient number of people. As for opposer's banner, while it may very well have had the requisite impact on the purchasing public, we are not able to determine that from the record.”).

Given all of this, Opposer's reliance on *Jimlar v. Army and Airforce Exchange Service*, 24 USPQ2d 1216 (TTAB 1992), where Opposer argues that “the Board found sufficient analogous use in the display of a sample at one trade show with the attendees being prospective trade buyers” is entirely misguided (31 TTABVUE 14-15). In *Jimlar*, the Board specifically noted that its justification for permitting analogous use was “especially in light of the fact that orders for the goods followed relatively shortly thereafter”. *Jimlar*, 24 USPQ2d at 1221.

Here, unlike in *Jimlar*, any evidence of sales or prospective sales as a result of the 2014 SuperZoo Trade Show is clearly lacking. There is simply no proof that even one of the alleged 22,987 attendees of the 2014 SuperZoo Trade Show saw the 2014 SuperZoo Snack DuO Display and/or the Snack DuO Products, and then made any inquiry whatsoever, no less placed an order for the Snack DuO Product, during or after the 2014 SuperZoo Trade Show; therefore, Opposer has unquestionably failed to make the necessary minimum association required by *T.A.B Systems*.

3. OPPOSER'S ADVERTISING ACTIVITIES AS A WHOLE ARE INSUFFICIENT TO ESTABLISH ANALOGOUS USE

“Although use analogous to trademark use is sufficient to create a proprietary right in the user for purposes of a likelihood of confusion claim, analogous use must be more than mere advertising.” *Paul's Repair Shop, Inc. v. Coalfield Servs.*, 2016 TTAB LEXIS 354, *21 (TTAB 2016). The analogous trademark use also must be shown to have a *substantial* impact on the purchasing public. *Westrex Corp. v. New Sensor Corp.*, 83 USPQ2d at 1218. In *Westrex*, the opposer in that proceeding spent approximately \$50,000-\$60,000 in advertising expenditures promoting its intended brand of electron tubes, received inquiries from potential customers, and

took one order for the tubes, although the order was cancelled. *Id.* The Board found that this failed to constitute “clear, widespread, and repetitive activities sufficient to have established prior analogous trademark use on the part of opposer. For purposes of establishing priority via analogous trademark use, the critical factor is the actual number of prospective customers reached.” *Id.* at 1218-19.

As purported evidence of analogous use, Opposer can point to only three (3) advertising-focused activities surrounding the release of the Snack DuO Product prior to Applicant’s Priority Date, in two (2) different publications with the following subscriber-base:

25,010 *Pet Business* subscribers as of July 2014

25,010 *Pet Business* subscribers as of September 2014

12,025 *HomeWorld Business* subscribers as of September 15, 2014.

Employees for Opposer testified that Opposer often followed a pattern of releasing new products via trade show advertisements and/or demonstrations. *Logan Tr.: 15:7.* For example, Opposer would place an advertisement directed to the pet trade for a new pet product in *Pet Business*—a publication in which Opposer habitually advertised—to generate interest leading up to an upcoming trade show such as in this case, the 2014 SuperZoo Trade Show. *Logan Tr.: 15:7-16; 28:3-16; 33:9-33:21.*

Despite Opposer’s purported, and limited, efforts, Opposer’s employees testified that they were not aware of the 2014 *Pet Business* advertisement leading to any actual interest or sales at the 2014 SuperZoo Trade Show itself. *Logan Tr.: 15:7-16:18; Dennis Tr.: 30:13-33:9, 25 TTABVUE, Exs. 3-4.* Further, while there is some speculative evidence of interest from five (5) potential purchasers alleged to be drawn directly from the July 2014 *Pet Business* advertisement, employees for Opposer could not recall any specific details about any follow-up and there is not a

scintilla of evidence that anyone from Opposer followed up regarding any alleged inquiry. In fact, the sales records show that no sales were consummated with any of the five (5) potential inquirers from *Pet Business* magazine. *Id.*; 28 TTABVUE, Ex. 7, *see* DEX00135 to DEX00150. In any event, potential interest of five (5) consumers out of a pool of 25,010 potential readers is clearly insubstantial. *Westrex Corp.*, 83 U.S.P.Q.2d at 1218-1219 (“Based on the paucity of e-mail inquiries from prospective consumers (presumably prompted by advertising of the product launch on opposer's web site), it is clear that opposer’s efforts to solicit business have neither had any significant impact on the purchasing public as a whole nor ‘involve more than an insubstantial number of potential customers.’”); *Walt Disney Co. v. Rd. Scholar, Inc.*, 2000 TTAB LEXIS 471, *10-14 (TTAB 2000) (“Although declining to set any fixed percentages of customers who must have made the prior public identification, the court did require that analogous use “of sufficient clarity and repetition to create the required identification must have reached a substantial portion of the public that might be expected to purchase the service [or goods].”).

In addition, there is absolutely no evidence of any interest drawn from the other two (2) advertisements—either the September 2014 advertisement in *Pet Business* or *HomeWorld Business*. *Dennis Tr.*: 30:13-33:9, 25 TTABVUE, Exs. 3-4. As for the *HomeWorld* advertisement, it promoted the Snack DuO Product for adults for the first time and employees from Opposer testified that this version of the Snack DuO Product (as opposed to Snack DuO Product for pets) was not as successful as Snack DuO Product for pets. *Dennis Tr.*: 27:11-13; *Musteen Tr.*: 51:10-16. It is not even clear when the first sale of the Snack DuO Product for adults took place, but it was well after the March 2015 Housewares Show. Moreover, there is no indication that there were any inquiries or sales resulting from the September 2014 *HomeWorld*

Business advertisement. Dennis Tr.: 30:13-33:9, 25 TTABVUE, Exs. 3-4.

Nor can there be any doubt that purchaser perception must involve more than an insubstantial number of potential customers. For example, if the potential market for a given service were 10,000 persons, then advertising shown to have reached only 20 or 30 people as a matter of law could not suffice. However close the linkage between the mark and the future service, analogous use could not be shown on such facts because the actual number of potential customers reached, not the strength of the linkage for some "reasonable potential customer, " is the focal point of the analogous use inquiry. *Id.* at 1883. Opposer has failed to submit any evidence to create a genuine issue of material fact that more than a negligible segment of the marketplace was impacted by its online pre-sale activities.

T.A.B. Systems, 77 F.3d at 1377.

Finally, employees for Opposer testified that there were no traditional or social media promotional efforts surrounding the release of the Snack DuO Product (either the adult or pet version) prior to Applicant's Priority Date. *Logan Tr.: 21:17-25; 34:7-14.* In light of the foregoing, there is simply no evidence of a direct nexus between the advertisements and any prospective, no less any actual, sales resulting from any Snack DuO Product advertisements.⁶ In *Walt Disney Co.*, 2000 TTAB LEXIS 471, *10-14, the Board found that "the only evidence of record consists of six magazine articles describing opposer's display at a trade show of its COASTER computer game" and that:

even if the articles are construed as evidence of public exposure to, or awareness of, opposer's use of the term COASTER in connection with opposer's computer game prior to the release date of the software, we have no evidence of the extent of this public exposure or the portion of the purchasing public reached by these articles. We have no means of determining whether a substantial impact was made upon the purchasing public and cannot make any inference to this effect. Accordingly, opposer has failed to establish prior use on the basis of either actual trademark use or use analogous to trademark use. Opposer's opposition to the registration of applicant's mark in both Classes 9 and 28 on the ground of likelihood of

⁶ While Opposer alleges that the initial Camping World sale originated from the 2014 *Pet Business* advertisement, it is simply not clear from the produced e-mail chain, and there is no direct evidence of the same. Opposer's employee testified that Camping World did not attend the 2014 SuperZoo Trade Show. *Musteen Tr.: 27:21-23.*

confusion and priority must fall.

Similarly, in *Wyckoff v. Briggs*, 1998 TTAB LEXIS 56, *27 (TTAB 1998), the Board determined that, “while registrant’s efforts at advertising appear to be considerably more extensive, it still seems problematic at best to infer that, as of April 15, 1989 (or even as late as May 20, 1989), the distribution of fliers inside packages sent to BGC customers constituted anything more than a negligible portion of the relevant market for computer consulting services or that the consuming public had come to identify the “RENT-A-NERD” and design mark with the provision of such services by registrant.”

4. OPPOSER’S ALLEGED EVIDENCE OF ANALOGOUS USE IS COLLECTIVELY INSUFFICIENT

In sum, Opposer would like the Board to consider its evidence of the 2014 SuperZoo Snack DuO Display in combination with three (3) advertisements collectively as satisfactory evidence of analogous use. Opposer points to *L & J.G. Stickley, Inc. v. Cosser*, 81 USPQ2d 1956 (TTAB 2007) in support of its argument, specifically that “[s]tickley’s evidence of analogous use was modest, namely, that the mark appeared in a showroom display and in its 1977 catalog.” 31 TTABVUE 14. Yet, Opposer fails to properly consider that the facts in *L & J.G. Stickley* do not in fact support Opposer’s position that the 2014 SuperZoo Snack DuO Display and related promotional activities support analogous use. Specifically, the Board in *L & J.G. Stickley* gave no credence to “a display that included marks in its showroom *for many years prior to 1978*.” (emphasis added). *L & J.G. Stickley*, 81 USPQ2d at 1968. Instead, the Board found analogous use only in:

“1977 [when] petitioner’s catalog included the term ALS IK KAN prominently identified as one of its trademarks. . . [and] [s]imilar uses of the phrase ALS IK KAN also appeared in the 1980 and 1983 catalogs where the “catalogs show petitioner’s prominent use of the phrase ALS IK KAN in a

manner that associates the term with petitioner's furniture and furniture polish. This use reinforces the association that members of the public would have drawn between petitioner and the phrase ALS IK KAN. Thus, we find that petitioner has established by a preponderance of the evidence that it made use analogous to trademark use of the phrase ALS IK KAN and the woodworker's compass in association with its furniture and furniture polish and that this use was established at least by the end of 1977 when its 1977 catalog was issued”

Id. at 1968.

As discussed above, the lack of evidence supporting a claim of recognition by the relevant public during or after the 2014 SuperZoo Snack DuO Display and Opposer’s three advertisements, and any sales as a direct result of the same, is no different from the display in *L & J.G. Stickley* and does not justify an earlier priority date. Under the standards discussed *supra*, and based on the record herein, Opposer may not rely on use analogous to trademark use because the evidence of record regarding its earlier activities, considered as a whole, does not establish that those activities had a substantial impact on the purchasing public, as required by *T.A.B. Systems*. See *T.A.B. Systems*, 77 F.3d. at 1378 (“Nor can there be any doubt that purchaser perception must involve more than an insubstantial number of potential customers. For example, if the potential market for a given service were 10,000 persons, then advertising shown to have reached only 20 or 30 people as a matter of law could not suffice.”); and *Westrex Corp.*, 83 USPQ2d at 1219.

5. OPPOSER IS UNABLE TO ARGUE, AND HAS FAILED TO PROVE, TECHNICAL USE

Now, in the *Opposer TB*, is the first time that Opposer has identified “technical use” as a potential ground for priority. There is no mention of “technical use” whatsoever in the First Amended Notice of Opposition. Accordingly, Applicant is prejudiced by not having adequate pleading notice of this claim and it should be disregarded. See, e.g., *Syngenta Crop Prot., Inc. v.*

Bio-Chek, LLC, 2009 TTAB LEXIS 70, FN. 3 USPQ2d 1112 (TTAB 2009) (refusing to consider ground for relief that was not pleaded in the notice of opposition); *Micro Motion, Inc. v. Danfoss A/S*, 49 USPQ2d 1628 (TTAB 1998) (finding that applicant was not fairly apprised that the evidence regarding an unpleaded issue was going to be introduced and could not properly be considered under Federal Rule of Civil Procedure 15(b)(2)); and TBMP § 314 (“[a] plaintiff may not rely on an unpleaded claim”).

In any event, even if considered, there is no basis for claiming priority here based on the “technical use” shipment relied upon by Opposer. Opposer argues that “all the requisites for a finding of technical trademark use under *Hydro-Dynamics, [Inc. v. George Putnam & Co., Inc., 811 F.2d 1470 (Fed. Cir. 2002)]* have been established”. 31 TTABVUE 22. In support, Opposer avers that “[t]he use began at least as early as November 19, 2014, when the second sample was shipped, which establishes priority over Applicant (priority date December 5, 2014).” 31 TTABVUE 22. The facts that Opposer relies upon in support of its claim of “technical use” are as follows:

[o]ne of the potential retailers, Camping World stores, received preliminary and final samples, each with a hang tag bearing the Snack-DuO mark (16 TTABVUE 4-5), in September and November of 2014. *Id.* The samples were shipped from Texas to Kentucky, i.e., in interstate commerce. *Id.* The nature of the samples as including the hang tags, and the shipping dates, are confirmed in contemporaneous emails between Mr. Musteen, Opposer’s sales director, and Ms. Grimes, Camping Worlds’ buyer. Again, the interstate shipping of these samples bearing the mark occurred prior to Applicant’s priority date of December 5, 2014.

31 TTABVUE 22.

There are a number of problems with Opposer’s argument. First, reliance on *Hydro-Dynamics*, is misplaced. In *Hydro-Dynamics*, the Federal Circuit noted that “Hydro-Dynamics argues that a single shipment in interstate commerce is sufficient to support *registration*, and

indeed this is the case, provided that the mark was adopted and used as a trademark.” *Hydro-Dynamics*, 811 F.2d at 1474 (citation omitted and emphasis added). However, since the issue of registration is not a matter properly before the Board, in light of the fact that this is instead an *inter partes* proceeding, a higher standard is required:

it is settled that a token sale or single shipment in commerce can be sufficient to support an application to register the mark in the Patent and Trademark Office providing that the sale or shipment is the result of a bona fide commercial transaction in that the goods so marked and shipped were intended to reach directly or indirectly purchasers and prospective purchasers of such goods. *A higher commercial use standard than that required for the purpose of laying a foundation for registration has been held to be necessary where, as here, two competing parties claim a right of ownership in the same or a similar mark for like goods.* (emphasis added).

Brinkmann Corp. v. Optronics, Inc., 1981 TTAB LEXIS 16 (TTAB 1981).

Second, in *Hydro-Dynamics*, where a lesser standard was applied, the Federal Circuit confirmed that “[t]he Board correctly held that Hydro-Dynamics failed to establish, by clear and convincing evidence, adoption and use prior to Putnam’s date of November 19, 1980.” *Hydro-Dynamics*, 811 F.2d at 1474. While *Hydro-Dynamics* involved a “shipment”, there was no “sale” and, similar to the scenario here, “[t]he Board found that the September 1980 shipment was solely for obtaining an opinion of the mark prior to its adoption, and that Hydro-Dynamics did not adopt the mark until after the distributor’s favorable reaction. On the record before us, there is no clear error in this finding.” *Id.*

In a communication between one of Opposer’s employees and one of Camping World’s buyers on or about October 21, 2014, Opposer, admittedly, did not yet have possession of a “final label” nor a final product, noting that “if the Lids we received yesterday are officially approved today, I can send you a *final production sample* this week.” (emphasis added). 28 TTABVue, Ex. 7, *see* October 21, 2014 e-mail, DEX00019. Clearly, Opposer was still testing “final

production samples”, which are defined by the Fashion-Incubator, a specialty encyclopedia for manufacturers, as “*the final approved version of a style produced by whomever is doing production. Often a production test run is done and the output is gauged for quality and the samples ideally used for marketing, promotion, pre-sales and perhaps trunk sales.*”⁷ Opposer shipped a “final production sample” on or about November 19, 2014 to Camping World. 28 TTABVUE, Ex. 7, *see* DEX00027. The physical body of the Snack DuO Product does not bear the Snack DuO Mark at all and as such, the Snack DuO Mark would not appear on any “final production sample”. *Dennis Tr.*: 25:3-5. It is alleged that Opposer applied a hang tag bearing the Snack DuO Mark to the “final production sample”, but this is not clear from any documented evidence other than testimony by Mr. Musteen that this actually occurred. 28 TTABVUE, Ex. 7, *see* Testimony Declaration of Nick Musteen, ¶ 7. Further, the final production sample sent to Camping World was not paid for by Camping World and Camping World did not issue a purchase order for Snack DuO Products until December 18, 2014 (after Applicant’s Priority Date, which is December 5, 2014) for shipping in February, 2015. An employee for Opposer testified that Camping World was the first order for the Snack DuO Products and in his opinion, the order was smaller and took longer than expected.⁸ *Musteen Tr.*: 32:5-22; 43:5-14.

Clearly, this was not “technical use” as that term is defined by relevant case law:

Petitioner argues, however, that because its solicitation letters included product samples, the mailing of such items constituted shipments of its goods in commerce. The record reveals that such “shipments” involved only preliminary versions or prototypes of its “ZIPWRAP” gift wrapping materials and not a finished product ready for commercial sale. In particular, we observe that, notwithstanding its June 29, 1991 sale of “ZIPWRAP” gift

⁷ See <https://fashion-incubator.com/the-13-different-kinds-of-samples/>. As Opposer notes in the *Opposer TB*, (31 TTABVUE 24), the Board can take judicial notice of commonly used definitions, including dictionary definitions, and online dictionaries, pursuant to TBMP § 1208.04.

⁸ Allegedly Camping World first became aware of the Snack DuO Product in July 2014, issued a purchase order in December 18, 2014 and received the goods in February, 2015. *Musteen Tr.*: 32:8-15.

wrapping to Jerry Ruzicka and Associates, petitioner's ideas or concepts for its gift wrapping materials were still not commercially available as of the fall of 1991 10 and that, as late as both the summer and fall of 1992, petitioner still did not have a product available for sale or shipment in commercially significant amounts.

Universal Technologies, Inc. v. Jillson & Roberts, Inc., 1997 TTAB LEXIS 163 (TTAB 1997); see also *Cottee Dairy Products Pty Limited v. U.S. Foods & Pharmaceuticals, Inc.*, 2003 TTAB LEXIS 422 (TTAB 2003) (the Board expressed skepticism that a commercial transaction occurred where “[t]he parties to which samples of respondent’s product were shipped usually paid only for the shipping expenses, but even when they may have paid for the product itself, the transaction was not in the ordinary course of commerce for these products, to be used by the purchaser or resold to the ultimate user, but rather the shipment was only a sample for evaluation purposes.”); and *Paramount Pictures Corp. v. White*, 31 USPQ2d 1768, 1774 (TTAB 1994) (finding that a mere token sale or shipment of the goods does not constitute “use” under the Trademark Act). Based on the foregoing, Opposer’s technical use argument must fail on its face.

D. Opposer’s Claim Regarding Any Likelihood of Confusion Must Fail

Given that Opposer has failed to prove valid trademark rights and priority, its claim for likelihood of confusion must likewise fail. In the unlikely event that the Board finds Opposer has valid rights and priority, Applicant hereby addresses the relevant factors set forth in *In re E.I. DuPont DeNemours & Co.*, 177 USPQ. 563, 567 (CCPA 1973) (the *DuPont* factors) below, as applied to the facts in the present case.

Opposer’s likelihood of confusion claim is built almost exclusively upon a statement made by Applicant’s undersigned attorney in a warning letter to Opposer following Applicant’s discovery of the Snack DuO Product for adults (not pets) in March 2015 at the Houseware Show in Chicago (“Warning Letter”). Given the fame and notoriety of the original Snackeez Product

dating back to 2013, it was not unreasonable for Applicant to send the Warning Letter. Without any case support, however, Opposer groundlessly argues that the Warning Letter “is strong evidence of likelihood of confusion under *DuPont* factor (13), which covers “any other established fact probative of the effect of use”, a *DuPont* factor almost never given credence. 31 TTABVUE 24. The Warning Letter did not unequivocally state that there was a likelihood of confusion, only that the Snack DuO Product “infringes upon” Ideavillage’s intellectual property rights and, as such the Warning Letter is by no means conclusive evidence of any likelihood of confusion. *Karma Ath., Ltd. v. Kallmann*, 2015 TTAB LEXIS 562 (TTAB 2015) (non-precedential) (“Petitioner also argues that Respondent’s cease and desist letter sent prior to the institution of this proceeding must be taken by the Board as an admission by Respondent that the parties’ marks are confusingly similar and the products are in direct competition. . . While an **unequivocal letter** may resolve doubts as to likelihood of confusion, such a letter is not conclusive evidence on the issue, and in this case the letter is at least equivocal.”) (emphasis added); and *Computer Geeks, Inc. v. Compgeeks.com*, 2010 TTAB LEXIS 303 (TTAB 2010) (non-precedential) (finding that cease and desist letters were not controlling on the question of likelihood of confusion, statements therein did not constitute admissions, and that all of the *DuPont* factors must be analyzed with all of the facts in evidence to determine likelihood of confusion).

Other than the Warning Letter, Opposer fails to point to **any** evidence or testimony in support of **any** *DuPont* factor. Opposer nakedly attempts to argue, without evidence and with limited case support, that approximately half of the *DuPont* factors favor Opposer and the remainder are not relevant/neutral. In making its argument, Opposer conveniently overlooks and/or ignores the cross-examination testimony from three (3) of Opposer’s employees, which

undoubtedly supports the clear conclusion that there is no likelihood of confusion.

1. THE MARKS ARE DISTINGUISHABLE

Applicant and Opposer agree that this *DuPont* factor takes into consideration a comparison of the marks for similarities in sound, appearance and meaning or connotation. Opposer argues that “the only significant difference between the marks is the insertion of ‘eez’ in the middle of Applicant’s mark.” 31 TTABVUE 24. As discussed in Section IV (A) *supra*, this is actually a *significant* factor since the Snackeez Mark, registered without PTO challenge as to distinctiveness, is currently in use in commerce, is suggestive as applied to the goods with which it is associated, and has acquired distinctiveness from being prominently used in connection with the Snackeez Products, which have achieved worldwide recognition and fame. 24 TTABVUE 2, Ex. A.

Visually, as evidenced by the below side-by-side depictions, the respective marks are clearly distinguishable.

SNACK DuO



SNACKEEZ DUO



Further, the sound and meaning of Applicant's Snackeez DUO Mark and Opposer's Snack DuO Mark are entirely different. The Snackeez DUO Mark contains the unique "Snackeez" Mark that can be extended as long as the speaker would like to extend the "eeeeeeez" sound. Applicant wanted a mark with more distinction in sound and appearance than the simple word "snack" and to reflect the "ease" of carrying a drink and snack for a child, which resulted in a trademark with a different appearance and sound, when combined with the descriptive "duo" term.

On the other hand, and as discussed in Section IV (A) *supra*, Opposer's Snack DuO Mark is not even a valid trademark, as it is simply a combination of commonly used English words ("snack" and "duo"), which are inherently descriptive as applied to Opposer's goods (the Snack DuO Product). Opposer admits that Snack DuO is highly descriptive, if not generic, for a two ("duo") section product, "one for liquid and one for food [*i.e.*, a snack]". 31 TTABVUE 24. This is likely why Opposer never filed an application for the Snack DuO Mark (*i.e.*, since it is a generic or descriptive two-word designation that has not acquired any secondary meaning with respect to Opposer). The "duo" portion of Opposer's Snack DuO Mark also has another meaning to consumers since it is a play on Opposer's earlier released two chambered drinking product marketed under the name HDuO (a name meant to look and sound like H₂O). *Dennis Tr.*: 16:11-16; 17:22-18:2.

Additionally, the significance of a mark is not determined in the abstract, but in connection with the goods to which the mark is applied and the context in which it is used because that is how purchasers encounter the mark. *Presto Products v. Nick-Pak Products*, 9 USPQ2d 1895, 1897 (TTAB 1988).

The appearance, sound, sight and commercial impression of VARGA GIRL derive significant contribution from the component "girl". By stressing the portion "varga" and diminishing the portion "girl", the Board inappropriately changed the mark. Although the weight given to the respective words is not entirely free of subjectivity, we believe that the Board erred in its diminution of the contribution of the word "girl". When GIRL is given fair weight, along with VARGA, confusion with VARGAS becomes less likely.

In re Hearst Corp., 982 F.2d 493 (Fed. Cir. 1992); *see also Interstate Brands Corp. v. Celestial Seasonings, Inc.*, 198 USPQ 151, 153 (CCPA 1978) (“[T]he presence of the word 'RED' in applicant's mark cannot be dismissed as an identification factor. Thus whether we consider applicant's mark to be 'THE RED ZINGER' or 'RED ZINGER', it is distinguishable from 'ZINGERS', *per se.*"); *King Candy Co. v. Eunice King's Kitchen, Inc.*, 182 USPQ 108 (CCPA 1974) (MISS KING'S not confusingly similar to KINGS); *In re August Storck*, 218 U.S.P.Q. 823 (TTAB 1983) (JUICY 2 not confusingly similar to JUICY BLEND II); *Jacobs v. International Multifoods Corp.*, 212 USPQ 641 (CCPA 1982) (no likelihood of confusion between BOSTON SEA PARTY for restaurant services and BOSTON TEA PARTY for tea).

Considering the marks themselves, and in connection with the goods to which the marks are applied (*i.e.*, the Snackeez DUO Mark for the Snackeez DUO Product, geared towards children, and the Snack DuO Mark for the Snack DuO Product, geared towards adults or pets), it is clear that Applicant's Snackeez DUO Mark is distinguishable from Opposer's Snack DuO Mark. Therefore, this critically important factor favors Applicant.

2. THE PRODUCTS ARE DISSIMILAR

As noted by several of Opposer's employees, the Snackeez DUO Product and Snack DuO Product are not similar or competitive. *Dennis Tr.*: 18:22-19:12; *Logan Tr.*: 31:20-32:6; *Musteen Tr.*: 52:19-24. Applicant's Snackeez DUO Product is designed for use by children, and marketed and promoted as such. 24 TTABVUE 2; *Logan Tr.*: 31:20-32:6; *Musteen Tr.*: 52:19 -

53:3. On the other hand, Opposer's Snack DuO Products are for pets and adults. *Musteen Tr.*: 52:19-24. Thus, this factor favors Applicant.

3. THE PRODUCTS HAVE DIFFERENT CHANNELS OF TRADE

Opposer simply argues that the channels of trade are the same because there is no such restriction in Applicant's Snackeez DUO Application and therefore, it must be assumed that the respective products move through the same channels of trade. However, there is no evidence of an overlap in trade channels. In fact, the markets to whom and through which the respective parties offer their goods are entirely different. Opposer's employees testified that they admittedly saw Applicant's Snackeez/Snackeez DUO Products offered for sale on television, the primary means of sales of products by Applicant. 24 TTABVue 2; *Musteen Tr.*: 52:22-53:3; *Logan Tr.*: 31:20-32:6. Opposer's employees also testified on cross-examination that the respective products are sold to different retail buyers (*Musteen Tr.*: 25:14-26:2; *Logan Tr.*: 28:17-23; 30:11-18; *Dennis Tr.*: 36:11-14) and sold to different end consumers (Snack DuO Product for adults/pets vs. Snackeez DUO Product for children) (*Musteen Tr.*: 33:19-43:4; 52:19-24; *Logan Tr.*: 31:20-32:6). This factor likewise favors Applicant.

4. THE SNACK DUO MARK IS NOT FAMOUS

The fifth *Du Pont* factor requires consideration of evidence of the fame of Opposer's Snack DuO Mark. As discussed above in Section IV (A), Opposer has not proven that it has any valid trademark rights so it is clear that Opposer's Snack DuO Mark is not famous. This factor also favors Applicant.

5. THERE IS NO ACTUAL CONFUSION

Finally, there is absolutely no evidence of actual confusion. In fact, employees of Opposer testified on cross-examination that they were aware of Ideavillage's Snackeez/Snackeez

DUO Products and: (1) do not believe that the Snackeez DUO Product/ Snack DuO Products are similar or competitive (*Dennis Tr.: 18:22-19:12; Logan Tr.: 31:20-32:6; Musteen Tr.: 35:2-18*); (2) have not heard of any confusion by retailers, consumers or distributors in the marketplace (*Dennis Tr.: 33:10-21; Logan Tr.: 31:13-19; Musteen Tr.: 35:21-24*); and (3) do not believe that Opposer's retail customers believe that there is confusion (*Musteen Tr.: 35:19-24; Dennis Tr.: 33:10-21*). Ergo, this factor favors Applicant.

V. CONCLUSION

The instant opposition should be dismissed with prejudice on the ground that, upon the law and the facts of record, Opposer has not shown a right to relief, given that Opposer has failed to prove valid trademark rights, priority and likelihood of confusion.

Dated: January 29, 2018

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing document was emailed on January 29, 2018 to Opposer's attorney of record:

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BY: /s/ Kerry B. Brownlee
Kerry B. Brownlee

EXHIBIT A

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

DEXAS INTERNATIONAL, LTD.,

Opposer,

v.

IDEAVILLAGE PRODUCTS CORP.,

Applicant.

Opposition No.: 91225850

**Application Ser. No. 86/472355
[SNACKEEZ DUO]**

**APPLICANT'S RESPONSE TO OPPOSER'S FIRST REQUESTS FOR ADMISSIONS
AND INTERROGATORIES**

Applicant Ideavillage Products Corp. ("Applicant" or "Ideavillage") by its undersigned counsel, and pursuant to Fed. R. Civ. P. 33 and 36, and TBMP §§ 405 and 407, hereby responds to Opposer Dexas International, Ltd.'s ("Opposer" or "Dexas") First Requests for Admissions and Interrogatories (hereinafter, the "Opposer's Admission(s)" and "Opposer's Interrogatory(ies)", respectively) as follows:

I. DEFINITIONS

- A. "Applicant" or "Ideavillage" means Applicant Ideavillage Products Corp. herein.
- B. "Opposer", "Dexas", "You" or "Your" means Dexas International, Ltd. and any of its present or former officers, directors, agents, employees, consultants, representatives, members and attorneys and any fictitious names by which Dexas International, Ltd. is or

has done business; any and all predecessor or successor companies, corporations or other business Entities (defined below) and the present or former officers, directors, agents, employees, consultants, representatives, members and attorneys of any of them, and any parent, subsidiary, division, company, corporation or any other business Entity affiliated with Dexas International, Ltd. or owned by it in whole or in part or which owns Dexas International, Ltd. in whole or in part and the present or former officers, directors, agents, employees, consultants, representatives, members and attorneys of any of them.

- C. "Amended Opposition" means Opposer's First Amended Notice of Opposition filed in the instant proceeding dated March 14, 2016.
- D. "Snackeez Products" means Applicant's line of cups uniquely designed to hold a drink and a snack at the same time.
- E. "SNACKEEZ Mark" means Applicant's U.S. Trademark Registration No. 4,534,742 for the wordmark "SNACKEEZ" used in connection with Applicant's Snackeez Products.
- F. "Snackeez Duo Product" means one of Applicant's cups within its line of Snackeez Products.
- G. "SNACKEEZ DUO Mark" means Applicant's U.S. Trademark Application Serial No. 86/472355 for the wordmark "SNACKEEZ DUO" used in connection with Applicant's Snackeez Duo Product, which is the subject of opposition in Opposer's Amended Opposition.
- H. "Snack-DuO Product" means Opposer's food and drink container marketed and sold under the trademark SNACK-DUO.
- I. "SNACK-DUO Mark" means Opposer's unregistered trademark used in connection with its Snack-DuO Product.

- J. "H-DuO Product" means Opposer's food and drink container marketed and sold under the trademark H-DUO.
- K. "H-DuO Mark" means Opposer's unregistered trademark used in connection with its H-DuO Product.
- L. Other words and terms are defined within Applicant's Responses to Opposer's Admissions and Opposer's Interrogatories below and incorporated herein by reference.

II. GENERAL OBJECTIONS

Applicant hereby asserts the following general objections ("General Objections") and hereby incorporates its General Objections in each of the individual responses set forth below:

- 1. Applicant objects to each definition included in Opposer's Admissions and Opposer's Interrogatories to the extent they conflict with or are less encompassing than Applicant's definitions. Where a defined term is referenced herein by Applicant and not defined herein by Applicant, the defined term should be understood as it was defined in the Complaint.
- 2. Applicant objects to each definition, instruction, admission request and interrogatory request in Opposer's Admissions and Opposer's Interrogatories to the extent it imposes obligations on Applicant beyond those required by the Federal Rules of Civil Procedure.
- 3. Applicant objects to Opposer's Admissions and Opposer's Interrogatories to the extent they seek information that is neither relevant to the claims or defenses of any party, nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, in responding to Opposer's Admissions and Opposer's Interrogatories, Applicant concedes neither the relevance nor the materiality of the responsive information. Applicant reserves the right to object to any further discovery on any of the topics contained in

Opposer's Admissions and Opposer's Interrogatories, to the admissibility of Opposer's Admissions and Opposer's Interrogatories and to the admissibility of any response to Opposer's Admissions and Opposer's Interrogatories in any filing or proceeding, including at trial.

4. Applicant objects to each definition, instruction, admission request and interrogatory request in Opposer's Admissions and Opposer's Interrogatories to the extent it seeks information protected by the attorney-client privilege, the work-product doctrine, or any other privilege or evidentiary principle available under constitutional, federal or state statutory or common law. Nothing in Applicant's responses to Opposer's Admissions and Opposer's Interrogatories is intended as, or shall in any way be deemed, a waiver of any attorney-client privilege, work-product doctrine, or any other privilege or evidentiary principle available under constitutional, federal or state statutory or common law.
5. Applicant objects to each definition, instruction, admission request and interrogatory request in Opposer's Admissions and Opposer's Interrogatories to the extent that it purports to require Applicant to disclose confidential or proprietary business information, concerning itself or a third party, or the content of any part of any agreement between Applicant and a third party which by its terms may not be disclosed by Applicant. Applicant will not disclose any such information absent the consent of the third party in question, by order of a court or pursuant to the terms of a protective order.
6. Applicant objects to each definition, instruction, admission request and interrogatory request in Opposer's Admissions and Opposer's Interrogatories to the extent that it seeks information that is not in the possession, custody, or control of Applicant.
7. Applicant objects to each definition, instruction, admission request and interrogatory

request in Opposer's Admissions and Opposer's Interrogatories as being unduly burdensome to the extent it seeks information that is a matter of public record or that is equally available to Applicant from other sources.

8. Applicant objects to each definition, instruction, admission request and interrogatory request in Opposer's Admissions and Opposer's Interrogatories as being unduly burdensome to the extent that it seeks information that could be obtained more efficiently through other methods of discovery.
9. Applicant objects to each definition, instruction, admission request and interrogatory request in Opposer's Admissions and Opposer's Interrogatories to the extent it asks for duplicative or cumulative information.
10. Applicant objects to each definition, instruction, admission request and interrogatory request in Opposer's Admissions and Opposer's Interrogatories as unduly burdensome insofar as it may be construed to require Applicant to create or compile documents or things.
11. Applicant objects to each definition, instruction, admission request and interrogatory request in Opposer's Admissions and Opposer's Interrogatories to the extent that it requires interpretation and/or application of the legal conclusions and contentions of the parties.
12. Applicant objects to each definition, instruction, admission request and interrogatory request in Opposer's Admissions and Opposer's Interrogatories to the extent that it contains any factual or legal misrepresentation.
13. Applicant objects to each definition, instruction, admission request and interrogatory request in Opposer's Admissions and Opposer's Interrogatories to the extent that it calls

for information that is not now known by Applicant nor reasonably available from sources within the custody or control of Applicant. Applicant's search for responsive information is ongoing. Applicant reserves the right to rely on facts, documents or other evidence that may be discovered by Applicant, come to Applicant's attention at a later time or that is produced by the other party in, or third parties to, this action. Applicant's responses are based on information presently known to Applicant and are set forth without prejudice to Applicant's right to assert additional objections and/or provide supplemental responses should Applicant discover additional grounds for objections and/or additional documents or information. Applicant reserves the right to supplement or amend its responses to Opposer's Admissions and Opposer's Interrogatories at any time prior to the trial(s) of this action. Any statement made herein is not an admission of any factual or legal contention contained in any admission or interrogatory request in Opposer's Admissions and Opposer's Interrogatories.

14. Applicant's responses and objections are made solely for the purpose of discovery in this action. Nothing herein is intended to waive the following objections, which are expressly reserved: all objections as to competency, relevancy, materiality, and admissibility of the subject matter in Opposer's Admissions and Opposer's Interrogatories; all objections as to vagueness, ambiguity, or undue burden; all objections to the use of any information, document or things identified or provided in response to Opposer's Admissions and Opposer's Interrogatories; all objections to any request for further responses to Opposer's Admissions and Opposer's Interrogatories or other discovery requests; all objections to the privileged or work-product nature of any information, document or thing; and any other objections which would require or permit the exclusion from evidence of any

information, document or things provided in response to Opposer's Admissions and Opposer's Interrogatories, all of which objections are reserved and may be interposed at the time of trial.

No documents subject to a protective order will be produced until the parties agree to and execute a protective order and it is so ordered by the Court.

III. APPLICANT'S RESPONSES TO OPPOSER'S ADMISSIONS AND OPPOSER'S INTERROGATORIES

Subject to and without waiver of these General Objections, Applicant responds to Opposer's Admissions and Opposer's Interrogatories as follows:

INTERROGATORY NO. 1: State the date Applicant asserts as its priority date in this Opposition.

RESPONSE: Subject to, and without waiving the General Objections above, Applicant states that the SNACKEEZ Mark has a date of first use of September 2013 and the SNACKEEZ DUO Mark has a constructive date of first use of December 5, 2014.

INTERROGATORY NO. 2: State whether Applicant will rely on a first actual use date or the constructive use date of December 5, 2014 to establish priority over Opposer.

RESPONSE: Subject to, and without waiving the General Objections above, Applicant will rely upon both dates identified in response to Interrogatory No. 1. Applicant also objects to the terms "actual use" as having no defined or understood meaning.

INTERROGATORY NO. 3: If the response to the preceding Interrogatory 2 was to rely on a first actual date, state the first actual use date and describe the acts that constitute the first actual use.

RESPONSE: Subject to, and without waiving the General Objections above, Applicant relies upon the first use date of its SNACKEEZ Mark on Snackeez Products and continuous, uninterrupted use of its SNACKEEZ Mark thereafter on Snackeez Products and substantial sales, marketing and promotions of Snackeez Products bearing the SNACKEEZ Mark through today. Applicant also objects to the terms “actual use” as having no defined or understood meaning.

INTERROGATORY NO. 4: State the facts Applicant alleges are sufficient to establish that Applicant has priority of rights in and to the mark at issue in this Opposition.

RESPONSE: Subject to, and without waiving the General Objections above, this Interrogatory is objected to on the grounds it seeks Applicant’s legal argument and a legal conclusion.

INTERROGATORY NO. 5: State all facts supporting your allegation that Applicant’s use of its applied for mark “SNACKEEZ DUO” is not likely to cause confusion with Opposer’s alleged mark “SNACK-DUO”.

RESPONSE: Subject to, and without waiving the General Objections above, this Interrogatory is objected to on the grounds it seeks Applicant’s legal argument and a legal conclusion.

REQUEST FOR ADMISSION NO. 1: Applicant relies on its constructive use date of December 5, 2014 to establish priority over Opposer in this Opposition.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 2: Applicant does not rely on its first actual date to establish priority over Opposer in this Opposition.

RESPONSE: Denied.

REQUEST FOR ADMISSION NO. 3: Applicant did not begin actual use of the mark SNACKEEZ DUO prior to December 5, 2014.

RESPONSE: Denied.

REQUEST FOR ADMISSION NO. 4: Exhibit A hereto is a true and correct copy of a letter dated March 11, 2015 that was faxed to the President of Dexas International Ltd. by Applicant's attorney Jason M. Drangel.

RESPONSE: Admitted.

REQUEST FOR ADMISSION NO. 5: Jason M. Drangel was acting within the scope of authority from Ideavillage Products Corp. when he faxed the letter referred to in the proceeding Request for Admission 4.

RESPONSE: Admitted.

Dated: November 7, 2016

Respectfully submitted,

AS TO INTERROGATORY AND ADMISSION
RESPONSES

IDEAVILLAGE PRODUCTS CORP.

By: Lori Ann Lombardo

Name: Lori Ann Lombardo

Title: VP, Product Dev

Dated: November 7, 2016

Respectfully submitted,

AS TO OBJECTIONS AND OTHER RESPONSES

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing APPLICANT'S
RESPONSE TO OPPOSER'S FIRST REQUESTS FOR ADMISSIONS AND
INTERROGATORIES was served by First Class Mail and e-mail on this 7th day of November,
2016, upon Opposer attorney of record:

Daniel V. Thompson
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BY: /s/ Jennette Wiser

Jennette Wiser
