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

Proceeding	91226499
Party	Plaintiff Morgans Group LLC
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Submission	Motion to Compel Discovery
Filer's Name	Kate E. Hart
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Signature	/keh/
Date	04/07/2017
Attachments	MORGANS FIND YOUR ROOTS - Motion to Compel Discovery Responses.pdf(15218 bytes) Morgans.Barclay Opp. 91226499 - Motion to Compel Ex. A.pdf(45118 bytes) Morgans.Barclay Opp. 91226499 - Motion to Compel Ex. B.pdf(46306 bytes) Morgans.Barclay Opp. 91226499 - Motion to Compel Ex. C.pdf(291491 bytes) Morgans.Barclay Opp. 91226499 - Motion to Compel Ex. D.pdf(940591 bytes)

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

In the Matter of)	
Application Serial No. 86/595,426)	
Published September 1, 2015)	
)	
Morgans Group LLC,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91226499
)	
Barclay Graebner,)	
)	
Applicant.)	

**MORGANS GROUP LLC’S MOTION TO COMPEL RESPONSES
TO OUTSTANDING DISCOVERY REQUESTS**

Pursuant to 37 C.F.R. § 2.120(e) of the Federal Rules of Civil Procedure and TBMP §§ 523 and 411.01, Opposer Morgans Group LLC (“Morgans”) hereby moves the Board for an order compelling Applicant Barclay Graebner (“Applicant”) to respond to Opposer’s First Set of Interrogatories to Applicant and Opposer’s First Request for Production of Documents and Things to Applicant. In support of this Motion, Morgans states as follows:

RELEVANT BACKGROUND

1. Morgans instituted this action on February 23, 2016. The Board’s order, dated February 24, 2016, set the opening of discovery as May 4, 2016.
2. Morgans served Opposer’s First Set of Interrogatories to Applicant and Opposer’s First Request for Production of Documents and Things to Applicant (collectively, the “Discovery Requests”) on Applicant on December 2, 2016. (Copies of these Discovery Requests are attached hereto as Exhibits A and B respectively.) Morgans served the Discovery Requests by email pursuant to the parties’ prior agreement. (A copy of the service email is attached hereto in Exhibit C, a reproduction of the full email exchange between counsel for the parties relating to

this matter.) Accordingly, Applicant's responses to the Discovery Requests were due on or before January 1, 2017. That date has not been extended.

3. At the time of service of the Discovery Requests, "[f]or the sole purpose of allowing sufficient time for Applicant to respond to Opposer's discovery requests and to carry out any necessary discovery depositions," Morgans sought Applicant's consent to a sixty (60) day extension of the discovery period and all remaining dates. (This request is reflected in the service email attached hereto in Exhibit C.) On December 12, 2016, Applicant's counsel agreed to the extension, and it was filed by Morgans and granted by the Board. (*See Exhibit C.*)

4. On January 10, 2017, counsel for Morgans sent an email to Applicant's counsel, inquiring as to when and if Applicant planned to respond to the Discovery Requests. (*See Exhibit C.*)

5. On January 16, 2017, Applicant's counsel responded, indicating: "I apologize for not submitting the documents as I believed the entire discovery process had been extended, pursuant to your previous email.... Regardless, I will reach out to my clients and try and get these to you in the next day or two." (*See Exhibit C.*)

6. Failing to receive Applicant's discovery responses, on January 23, 2017, counsel for Morgans again sent an email to Applicant's counsel, inquiring as to when Applicant planned to respond to the Discovery Requests. (*See Exhibit C.*)

7. Applicant's counsel did not respond to Morgans' counsel's January 23 email, nor did Applicant respond to the Discovery Requests. Thereafter, on February 24, 2017, counsel for Morgans again sent an email to Applicant's counsel, noting that Applicant's responses to the Discovery Requests had not yet been received and the discovery period was set to close on February 28, 2017. (*See Exhibit C.*)

8. On February 27, 2017, Applicant's counsel consented to a further extension of the discovery period, and indicated that responses to the Discovery Requests would be provided that week. (See Exhibit C.) The extension was filed by Morgans and granted by the Board; accordingly, the discovery period is currently scheduled to close on April 29, 2017. (The request and grant of the extension are attached hereto as Exhibit D.)

9. To date, Applicant has not responded to the Discovery Requests. Applicant has not at any time requested an extension of time to respond to the Discovery Requests. (See Exhibit C.)

10. In view of the efforts set forth herein, and the cessation of correspondence from Applicant's counsel, counsel for Morgans certifies that they have made a good faith attempt to resolve the instant discovery dispute pursuant to 37 C.F.R. § 2.120(e) and TBMP § 523.02, but have been unable to do so absent Board intervention.

ARGUMENT

Morgans' objective with this Motion is straightforward: Applicant should be required to provide responses to the Discovery Requests. Applicant has failed entirely to respond to the outstanding discovery requests. This is not a case where the parties disagree about the proper application of an objection or the vagueness of a request, Applicant has simply willfully refused to respond at all. Moreover, Applicant has provided no explanation for the failure to respond, or even to seek an extension of time to respond to the requests.

Rule 403.03 of the Trademark Board Manual of Procedure states that when a party fails to respond to discovery on time, and cannot show "excusable neglect," that party has forfeited his right to object to the discovery requests on the merits. TBMP § 403.03; *see No Fear Inc. v. Rule*, 54 U.S.P.Q.2d 1551, 1554 (T.T.A.B. 2000) (noting that Board practice in granting an

uncontested motion to compel, or a contested motion where, as here, the non-movant cannot show that its neglect of discovery obligations was excusable, is generally to order discovery responses to be provided without objection). Applicant's indifference to T.T.A.B. procedure merits the same treatment. Applicant could have simply requested an extension of time to respond to the discovery requests but it did not.

The Discovery Requests were designed to quickly and easily get to the information needed to resolve the issue before the Board in this case. Thus, Applicant's failure to respond to the Discovery Requests simply delays these proceedings and wastes time. Timely responses would likely move this case along as it should progress.

REQUEST FOR RELIEF

For all of the foregoing reasons, Morgans respectfully moves this Board for an Order compelling Applicant, within fifteen (15) days from the date of the Order, to fully and completely respond to each of the Discovery Requests; holding that Applicant has waived the right to object to the Discovery Requests on the merits; and for such other and further relief as the Board deems just and proper.

Morgans further moves this Board to reset the close of discovery and subsequent deadlines solely to allow Morgans time to conduct follow up discovery and depositions after the time allocated for Applicant to provide complete and full responses to the discovery detailed herein.

Respectfully submitted,

Morgans Group LLC

By: /s/ carol anne been

Attorney for Morgans Group LLC

Carol Anne Been
Tara Reedy Sliva
Dentons US LLP
P.O. Box #061080
Wacker Drive Station, Willis Tower
Chicago, IL 60606-1080

Filed with the TTAB via
ESTTA on April 7, 2017

CERTIFICATE OF SERVICE

I hereby certify that I caused a true and correct copy of the foregoing MORGANS GROUP LLC'S MOTION TO COMPEL RESPONSES TO OUTSTANDING DISCOVERY REQUESTS to be served on April 7, 2017 upon:

WILLIAM D. WEYROWSKI
250 95th St
Unit 545885
Surfside, FLORIDA 33154-2817
Attorney for Barclay Graebner

via electronic correspondence sent to the email address of record for the Counsel of Record.

/s/ tara reedy sliva
Tara Reedy Sliva

Filed with the TTAB via
ESTTA on April 7, 2017

EXHIBIT A

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

<p>Morgans Group LLC,</p> <p style="text-align:center"><i>Opposer,</i></p> <p style="text-align:center">vs.</p> <p>Barclay Graebner,</p> <p style="text-align:center"><i>Applicant.</i></p>	<p>Opposition No. : 91226499</p> <p>Ser. No.: 86/595426</p> <p>Mark: MORGANS FIND YOUR ROOTS and Design</p>
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OPPOSER’S FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to Rule 33 of the Federal Rules of Civil Procedure, and Rule 2.120 of the Trademark Rules of Practice 37 C.F.R. § 2.120, Opposer Morgans Group LLC (“Opposer”) propounds the following Interrogatories to Applicant Barclay Graebner (“Applicant”) to be answered by Applicant separately in writing and under oath by Applicant. Such answers and responses should be served upon the undersigned attorney at the below listed address within thirty (30) days of service of this request, plus allowance for service time. Definitions of terms used throughout these Interrogatories are set forth below. Each Interrogatory and any subparagraphs thereof are identified by number and letter and answers thereto should correspond to these numbers and letters.

DEFINITIONS AND INSTRUCTIONS

As used herein, the following terms are defined as follows:

A. “Opposer” means Morgans Group LLC, its officers, agents, employees, attorneys, related companies and predecessors in interest as may be further modified by the terms defined herein (hereinafter “Opposer”);

B. “Applicant” or “Barclay Graebner” or “Graebner” or “You” or “Your” means Barclay Graebner and any associated persons or entities, or predecessors in interest, including, but not limited to, business partners, affiliates, licensees or licensors;

C. “Notice of Opposition” means the Notice of Opposition filed by Opposer on February 23, 2016, which instituted the present proceeding, and all amendments and revisions thereto;

D. “Answer” means the Answer filed by Applicant on April 5, 2016, and all amendments and revisions thereto;

E. “Opposer's Mark” means the MORGANS marks as pleaded in the Notice of Opposition paragraphs 6-7 including the marks MORGANS and MORGANS HOTEL GROUP;

F. “Applicant’s Mark” means the designation and application being opposed in the subject Opposition No. 91226499, namely, MORGANS FIND YOUR ROOTS and Design, Ser. No. 86/595,426, filed on April 13, 2015, including variations MORGANS FIND YOUR ROOTS, MORGANS, or any marks consisting of or containing the term MORGANS;

G. “Applicant’s Services” for the purposes of these Requests and other discovery requests by Opposer shall mean those services identified in Applicant’s application Ser. No. 86/595,426, as follows: “Bar services; Catering services; Restaurant services” in International Class 43;

H. In the following Interrogatories, the term “Person” or “Persons” includes any natural person, partnership, corporation, proprietorship, joint venture or other business entity, and all present and former officers, directors, agents, representatives and employees, acting or purporting to act on behalf of such person;

I. A request to “identify” a natural person shall be responded to by stating: (1) the full name of such person; (2) the person’s present or last known business address; (3) the person’s present or last known home address (if his/her business address is unknown); (4) the person’s job title and the name and address of the person’s employer or business at the time to which the Interrogatory relates; and (5) the name and address of the person’s present or last known employer or business and the person’s present or last known job title or business interest;

J. A request to “identify” a business entity or organization shall be responded to by stating: (1) the entity’s or organization’s full name; (2) the entity’s or organization’s legal status (e.g., corporation, limited partnership, partnership, or proprietorship); (3) the entity’s or organization’s state of incorporation, organization or registration; (4) the entity’s or organization’s date of incorporation, organization or registration; (5) the present or last known address of its principal place of business; (6) its principal executive officer, manager or owner;

K. A request to “identify” a product or service shall be responded to by stating: (1) each type of product or service; (2) the trademark, service mark or trade name, whether registered or unregistered, under which the product or service is offered; (3) the date on which the registered or unregistered trademark, service mark or trade name was first used in connection with the product or service; (4) the Target Market for the product or service; (5) the Channels of Trade through which the product or service was or is distributed and/or sold; (6) the amount of sales and revenues from the product or service; and (7) any cessation in offering, selling or distributing the product or service;

L. “Consumer” shall mean any person, whether a natural person or an entity, that has purchased, may purchase, or expressed an interest in purchasing or otherwise receiving a product or service;

M. “Channels of Trade” shall mean any method of disseminating any product or service or advertising for any product or service directly or indirectly to consumers, whether through an actual sale or provision of the service for charge or at no charge, including but not limited to, Internet web sites, social media, direct mail, catalogs, telemarketing, Trade Shows,

infomercials, clinics, provision of services in a traditional or non-traditional setting, and any other media through which Applicant's Services are promoted, offered or sold;

N. "Target Market" shall mean the specific group of customers, purchasers or Consumers to whom Applicant directs or intends to direct Applicant's Services under Applicant's Mark;

O. "Communication" means and includes any transmission or exchange of information between two or more persons, whether orally or in writing, including without limitation, any discussion or information carried on or transmitted by means of letter, note, memorandum, interoffice correspondence, internal office communications, telephone, telex, telecopies, cable, e-mail, instant message, text message, or any other electronic or other medium;

P. In the following Interrogatories, the term "document" or "documents" is defined to be synonymous in meaning and equal in scope to the usage of this term in its broadest possible sense in the Federal Rules of Evidence and the Federal Rules of Civil Procedure, to include, without limitation, the following items, whether printed or recorded or reproduced by any other process, or written or produced by hand, and whether or not claimed to be privileged, subject to work product immunity, confidential or personal, namely: email, websites, social media sites and postings, push notifications, advertising including online; scripts, transcripts and recordings of telemarketing calls; scripts, transcripts and recordings of customer or Consumer inquiry or assistance calls; contracts and agreements, invoices and payments, software programs; agreements; communications, including intra-company communications; correspondence; ; reports; memoranda; summaries and records of telephone conversations; diaries; forecasts; statistical statements; graphs; laboratory and engineering reports and notebooks; charts; plans; sketches; drawings; blueprints; photographs; minutes or records of meetings, including directors' meetings; minutes or records of conferences; expressions or statements of policy; lists of persons attending meetings or conferences; reports and summaries of interviews; reports and summaries of investigations; opinions or reports of consultants; opinions of counsel; records, reports or summaries of negotiations; brochures; pamphlets; advertisements; circulars; trade letters; press releases; drafts of any documents; original or preliminary notes; computer printouts; and other data compilations from which information can be obtained or translated by Applicant through detection devices into reasonably usable form. For further specificity, documents include all information recorded or stored in any electronic medium such as, but not limited to, telephonic memory, computer memory, diskettes, SIM cards or magnetic tape. Any remarks appearing on any document, and not a part of the original text, such as initials, comments or notations of any kind is not deemed to be identical to one without such marks, and is to be produced as a separate "document";

Q. In the case of a document that has not been produced, the terms "identify" and "describe" mean to state: (1) the document's title, if any, as well as a brief description of its subject matter; (2) the type or nature of the document (e.g., letter, memorandum, etc.) and the number of pages it contains; (3) the date the document was drafted; (4) the identity of any person who prepared the document (and, if different, the identity of any person who signed the document); (5) the identity of any person who received a copy of the document; (6) the identity of any person who sent the document; (7) the present whereabouts of the document and the

identity of each and every person having custody thereof; and (8) all other means of identifying the document with sufficient particularity to support a request for production under Fed. R. Civ. P. 34. Attachment to the answers to these Interrogatories of copies of documents inquired about in any Interrogatory will be accepted in lieu of their identification;

R. In the case of a document that has been produced or otherwise made available in this lawsuit, the terms “identify” and “describe” mean to state: (1) the document’s Bates number or other identifying information (e.g., witness name and transcript date for a deposition transcript); and (2) all relevant portions of that document by page numbers;

S. “Date” means the exact day, month and year if known or obtainable, or the most exact approximate possible;

T. “Survey Materials” means all documents concerning proposed, pilot, preliminary, and completed surveys, studies, focus groups and polls and all reports and raw data pertaining thereto, including, but not limited to, interview sheets, interviewer instructions, list of interviewers, list of interviewees, sampling plans, demographic data, questionnaires, materials shown to interviewees, computer cards, computer printout sheets, any other computer input and outputs, work sheets, tabulations, and any statements of the method or program employed in evaluation or preparing the data and the like, and any opinion, evaluation, or report based thereon;

U. The terms “concern,” or “concerning” and “describe” or “describing” when used with respect to any given subject mean to consist, constitute, support, contain, evidence, rebut, compose, comprise, embody, reflect, identify, state, regard, pertain to, deal with, or to have any logical or factual connection whatsoever with that subject;

V. The terms “relate” or “related” mean to directly or indirectly describe, record, refer to, reflect, concern, evidence or to be related in any manner legally, logically, factually, indirectly or directly to the matters discussed;

W. “Commerce” shall mean all commerce that may lawfully be regulated by Congress;

X. “Searches” shall mean any trademark search or investigation conducted using databases of trademark or marketing information, the Internet or by a searching service, and shall include, but is not limited to, any printouts, reports, listings, spreadsheets or similar compilation of such information;

Y. “Trade Shows” as used herein shall mean any trade show, conference, convention, meeting, trade association gathering or other event, whether open to the public or restricted to members of the trade or organization, where products and services are displayed, promoted and/or offered for sale;

Z. “Communications” means and includes any transmission or exchange of information between two or more persons, whether orally or in writing, including without

limitation, any discussion or information carried on or transmitted by means of letter, note, memorandum, interoffice correspondence, internal office communications, telephone, telex, telecopies, cable, e-mail, instant message, text message, or any other electronic or other medium;

AA. When appropriate in the context of an Interrogatory, the singular shall encompass the plural, the masculine gender shall encompass the feminine, and vice versa;

BB. "All" shall include the collective as well as the singular and shall mean "each," "any" and "every," and these terms shall be interchangeable;

CC. "And" and "or" shall be construed conjunctively or disjunctively as necessary to make your response inclusive rather than exclusive. The use of the words "include(s)" and "including" shall be construed to mean "without limitation";

DD. If, in responding to any interrogatory, you perceive any ambiguity in construing either the interrogatory or the instruction or definition relevant to the interrogatory, please set forth the matter deemed ambiguous and the construction chosen or used in answering the interrogatory;

EE. These Interrogatories are to be answered with reference to all information in your possession, custody or control or reasonably available to you. Information is deemed to be in your control if you have the right to secure the information, or documents containing such information, from another person having actual possession thereof;

FF. Each category is to be construed and responded to independently and not to be referenced to any category for purposes of limitation;

GG. Each Interrogatory shall be deemed continuing so as to require prompt supplemental disclosures if additional information is obtained, discovered, or created subsequent to the time of responding to these Interrogatories up to and including the time of Trial. Any information provided in response to these Interrogatories that is later found to be incorrect or incomplete or to have become incorrect or incomplete shall be corrected or completed by timely supplementary answers;

HH. In the event Applicant deems certain information that is otherwise required to be furnished in answering the following Interrogatories to be privileged, Applicant is requested to return with the answers to these Interrogatories a list identifying each category of information Applicant asserts constitutes privileged information that should be excluded from discovery. The list should include the date of preparation of each item within a designated category, the name of the person(s) who prepared each item or has knowledge thereof, identification of the person(s) who received each item, a description of each item of information deemed privileged, and the basis for the claim of privilege or other grounds for exclusion for each item of information; and

II. In the event Applicant deems certain information that is otherwise required to be furnished in answering the following Interrogatories to be confidential, such information shall be handled in accordance with the provisions of the agreed upon Protective Order.

INTERROGATORY NO. 1

Identify each and every product or service in connection with which Applicant has used, intends to use, or authorizes others, or intends to authorize others to use Applicant's Mark.

INTERROGATORY NO. 2

Describe in detail all Searches or investigations conducted by or for Applicant relating to the rights of any Person in the Applicant's Mark and identify any documents relating to such search or investigation including such search reports.

INTERROGATORY NO. 3

Identify all opinions of counsel prepared for Applicant that address any alleged or possible rights of any Person other than Applicant to the Applicant's Mark, including without limitation any opinions concerning a mark containing the term "MORGANS".

INTERROGATORY NO. 4

Describe in detail the facts and circumstances surrounding Applicant's selection, clearance, and decision to adopt the Applicant's Mark including:

- (A) the date thereof;
- (B) resources used in connection thereto;
- (C) the manner in which you selected Applicant's Mark;
- (D) the individuals who collaborated in the selection of Applicant's Mark;
- (E) the individuals who inspired the selection of Applicant's Mark; and
- (F) the identity of any Person(s) who has the most knowledge with respect thereto.

INTERROGATORY NO. 5

Describe in detail the facts and circumstances surrounding Applicant's knowledge of Opposer or use of Opposer's Mark including:

- (A) whether Applicant knew about Opposer, Opposer's hotels, or any restaurants located in Opposer's hotels, at the time Applicant made the decision to adopt the Applicant's Mark;
- (B) what Applicant knew about Opposer, Opposer's hotels, or any restaurants located in Opposer's hotels, at the time Applicant made the decision to adopt the Applicant's Mark;
- (C) the date such knowledge was first obtained; and

- (D) any actions taken by Applicant in response to such knowledge.

INTERROGATORY NO. 6

Describe in detail the facts and circumstances, including decisions, surrounding Applicant's:

- (A) decision to adopt and domain application to register the domain name THEMORGANSRESTAURANT.COM; and
- (B) plans for use of the domain name THEMORGANSRESTAURANT.COM including, but not limited to, whether Applicant plans to use the domain name to promote any restaurant or bar or other services other than the restaurant as currently operated located at 28 NE 29th Street, Miami, FL 33132; and
- (C) whether Applicant plans to obtain any other domain name using any part of the Applicant's Mark.

INTERROGATORY NO. 7

Identify any Survey Materials relating to marks including the Applicant's Mark conducted by or for Applicant.

INTERROGATORY NO. 8

Describe in detail the facts and circumstances concerning Applicant's first use of Applicant's Mark, in connection with each of Applicant's Services in Commerce, including the class of Consumers and Target Market to whom Applicant first offered or provided Applicant's Services in connection with Applicant's Mark, including the geographic locations of Consumers by city and State, and identify the Person(s) having the most knowledge with respect thereto.

INTERROGATORY NO. 9

Describe in detail the current and future Target Market and Channels of Trade through which Applicant offers or intends to offer Applicant's Services under Applicant's Mark or any mark that includes the designation MORGANS, including the geographic locations of Consumers or prospective Consumers by city and State.

INTERROGATORY NO. 10

Describe in detail any current and possible future plans for relocating the restaurant, or opening an additional restaurant offering services under Applicant's Mark or any other mark that includes the designation MORGANS, including the planned or potential geographic locations of all restaurants.

INTERROGATORY NO. 11

Identify and Describe in detail all information and documents concerning internet traffic to the website at the domain name THEMORGANSRESTAURANT.COM since inception, including but not limited to:

- (A) the number of unique visitors;
- (B) the average amount of time visitors spend on the site in general or specific pages located at THEMORGANSRESTAURANT.COM;
- (C) what sites visitors were on before coming to the site at the domain THEMORGANSRESTAURANT.COM
- (D) what sites visitors go to after visiting the site at the domain THEMORGANSRESTAURANT.COM; and
- (E) all other website data analytics not specifically mentioned above.

INTERROGATORY NO. 12

In connection with the advertisement and promotion of Applicant's Services under Applicant's Mark by any Person:

- (A) identify the types of advertising and promotional methods utilized or intended to be utilized by Applicant including but not limited to telemarketing or email marketing, and the media in which each are utilized or intended to be utilized;
- (B) identify the Target Market to which each of the advertising and promotional materials are directed or are intended to be directed;
- (C) identify the annual monetary amounts that have been expended to date and anticipated to be expended in connection with such advertising and promotional activities; and
- (D) identify all Persons involved with or intended to be involved with advertising and promoting Applicant's Services under Applicant's Mark; and
- (E) identify the number of people whom Applicant believes have seen any advertising for Applicant's Services under Applicant's Mark.

INTERROGATORY NO. 13

Identify the amount of sales to Consumers and Applicant's revenue derived therefrom since Applicant's Services were first offered under Applicant's Mark.

INTERROGATORY NO. 14

Identify the number of patrons of the restaurant per year since Applicant's Services were first offered under Applicant's Mark on June 15, 2009.

INTERROGATORY NO. 15

Identify any dispute or proceeding or threatened dispute or proceeding (with the exception of this opposition proceeding) in which Applicant has been involved concerning any trademark, domain name or other designation, including Uniform Dispute Resolution Policy or any equivalent, state court, or federal court proceedings, trademark office opposition or cancellation proceedings, or extensions of time to oppose or cancel and all Correspondence including but not limited to demand letters concerning Applicant's use of such designation or variations thereof.

INTERROGATORY NO. 16

Describe in detail the circumstances known to Applicant of any instance of actual confusion, mistake, association or inquiry about the relationship between Applicant's Mark and Opposer's Mark or between Applicant and Opposer or Opposer's hotels, or any restaurants located in Opposer's hotels.

INTERROGATORY NO. 17

Identify each different print or electronic advertisement which contains or bears the Applicant's Mark in any manner or any form and which has been used at any time in connection with the offer of or the provision of Applicant's Services.

INTERROGATORY NO. 18

Identify and describe in detail any business, financial and marketing plans or objectives and any communications relating thereto, whether written or unwritten, relating to Applicant's Mark or Applicant's Services offered under Applicant's Mark that existed before or after Applicant filed the application for Applicant's Mark including a description of the services provided and the dates the services were provided, and the identity of each Person or business or marketing consultant that created, implemented or made decisions regarding the implementation of the plans or objectives.

INTERROGATORY NO. 19

Identify all Persons that have sought to obtain or hold an interest, monetary, contractual or otherwise and/or an expectation of an interest in Applicant's Mark or a related business and the extent of said interest or expectancy and identify any loans, sale of stock, issuance of debt related to the business and owner of such shares or debt.

INTERROGATORY NO. 20

Identify any and all documents utilized by Applicant in the preparation of the response to each of these Interrogatories.

INTERROGATORY NO. 21

Identify any and all documents utilized by Applicant in the preparation of the response to Opposer's First Request for Production of Documents and Things to Applicant.

INTERROGATORY NO. 22

Identify every Person who supplied documents being produced in response to Opposer's First Request for Production of Documents and Things to Applicant.

INTERROGATORY NO. 23

Identify every Person who supplied information or who otherwise assisted in the preparation of the answers to these Interrogatories, and indicate the specific Interrogatories to which each Person contributed information comprising the answer.

Respectfully submitted,
Morgans Group LLC

December 2, 2016

/s/ /carol anne been /
Attorney for Morgans Group LLC
Carol Anne Been
Tara Reedy Sliva
Dentons US, LLP
P.O. Box #061080
Wacker Drive Station, Willis Tower
Chicago, Illinois 60606-1080

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2016, a copy of the forgoing OPPOSER'S FIRST SET OF INTERROGATORIES TO APPLICANT was served by email, as agreed, upon the following:

WILLIAM D WEYROWSKI
PO BOX 545885
SURFSIDE, FL 33154-5885
UNITED STATES
wdwlawfl@gmail.com, william@weyrowskilaw.com
Attorney for Applicant

By: Dentons US LLP

/s/ /tara reedy sliva/
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Attorneys for Opposer

EXHIBIT B

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

<p>Morgans Group LLC</p> <p style="text-align:center"><i>Opposer,</i></p> <p style="text-align:center">vs.</p> <p>Barclay Graebner,</p> <p style="text-align:center"><i>Applicant.</i></p>	<p>Opposition No. : 91226499</p> <p>Ser. No.: 86/595426</p> <p>Mark: MORGANS FIND YOUR ROOTS and Design</p>
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**OPPOSER’S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS AND THINGS TO APPLICANT**

Pursuant to 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, Opposer Morgans Group LLC (“Opposer”), requests that Applicant Barclay Graebner (“Applicant”), produce and permit Opposer and its attorneys or representatives to inspect and copy each of the following documents and tangible things in Applicant’s possession, custody or control, within thirty (30) days after the service thereof at the offices of Dentons US LLP, counsel for Opposer, at P.O. Box #061080, Wacker Drive Station, Willis Tower, Chicago, Illinois 60606-1080.

Opposer requests that Applicant prepare its responses to these requests for production in accordance with the accompanying definitions and instructions, and serve such responses no later than thirty (30) days after service of these requests for production.

DEFINITIONS AND INSTRUCTIONS

A. “Opposer” means Morgans Group LLC, its officers, agents, employees, attorneys and, related companies predecessors in interest as may be further modified by the terms defined herein (hereinafter “Opposer”);

B. “Applicant” or “Barclay Graebner” or “Graebner” or “You” or “Your” means Barclay Graebner and any associated Persons or entities, or predecessors in interest, including, but not limited to, business partners, affiliates, licensees or licensors;

C. “Notice of Opposition” means the Notice of Opposition filed by Opposer on February 23, 2016, which instituted the present proceeding, and all amendments and revisions thereto;

D. “Answer” means the Answer filed by Applicant on April 5, 2016, and all amendments and revisions thereto;

E. “Opposer's Mark” means the MORGANS marks as pleaded in the Notice of Opposition paragraphs 6-7 including the marks MORGANS and MORGANS HOTEL GROUP;

F. “Applicant’s Mark” means the designation and application being opposed in the subject Opposition No. 91226499, namely, MORGANS FIND YOUR ROOTS and Design, Ser. No. 86/595,426, filed on April 13, 2015, including variations MORGANS FIND YOUR ROOTS, MORGANS, or any marks consisting of or containing the term MORGANS;

G. “Applicant’s Services” for the purposes of these Requests and other discovery requests by Opposer shall mean those services identified in Applicant’s application Ser. No. 86/595,426, as follows: “Bar services; Catering services; Restaurant services” in International Class 43;

H. The term “Person” or “Persons” includes any natural person, partnership, corporation, proprietorship, joint venture or other business entity, and all present and former officers, directors, agents, representatives and employees, acting or purporting to act on behalf of such Person;

I. In the following Requests, the term “document” or “documents” is defined to be synonymous in meaning and equal in scope to the usage of this term in its broadest possible sense in the Federal Rules of Evidence and the Federal Rules of Civil Procedure, to include, without limitation, the following items, whether printed or recorded or reproduced by any other process, or written or produced by hand, and whether or not claimed to be privileged, subject to work product immunity, confidential or personal, namely: email, websites, social media sites and postings, push notifications, advertising including online; scripts, transcripts and recordings of telemarketing calls; scripts, transcripts and recordings of customer or Consumer inquiry or assistance calls; contracts and agreements, invoices and payments, software programs; agreements; communications, including intra-company communications; correspondence; reports; memoranda; summaries and records of telephone conversations; diaries; forecasts; statistical statements; graphs; laboratory and engineering reports and notebooks; charts; plans; sketches; drawings; blueprints; photographs; minutes or records of meetings, including directors’ meetings; minutes or records of conferences; expressions or statements of policy; lists of Persons attending meetings or conferences; reports and summaries of interviews; reports and summaries of investigations; opinions or reports of consultants; opinions of counsel; records, reports or summaries of negotiations; brochures; pamphlets; advertisements; circulars; trade letters; press releases; drafts of any documents; original or preliminary notes; computer printouts; and other data compilations from which information can be obtained or translated by Applicant through detection devices into reasonably usable form. For further specificity, documents include all information recorded or stored in any electronic medium such as, but not limited to, telephonic memory, computer memory, diskettes, SIM cards or magnetic tape. Any remarks appearing on any document, and not a part of the original text, such as initials, comments or notations of any kind is not deemed to be identical to one without such marks, and is to be produced as a separate “document”;

J. The term “thing” includes any tangible object other than a document, and includes objects of every kind and nature such as, but not limited to, prototypes, models, specimens, computer disks and tapes, videotapes and audiotapes;

K. “Communication” means and includes any transmission or exchange of information between two or more Persons, whether orally or in writing, including without limitation, any discussion or information carried on or transmitted by means of letter, note, memorandum, interoffice correspondence, internal office communications, telephone, telex, telecopies, cable, e-mail, instant message, text message, or any other electronic or other medium;

L. “Correspondence” means and includes any transmission or exchange of information between two or more Persons, whether orally or in writing, including without limitation, any discussion or information carried on or transmitted by means of letter, note, memorandum, interoffice correspondence, internal office communications, telephone, telex, telecopies, cable, e-mail, instant message, text message, or any other electronic or other medium;

M. “Consumer” shall mean any Person, whether a natural person or an entity, that has purchased, may purchase, or expressed an interest in purchasing or otherwise receiving a product or service;

N. “Channels of Trade” shall mean any method of disseminating any product or service or advertising for any product or service directly or indirectly to Consumers, whether through an actual sale or provision of the service for charge or at no charge, including but not limited to, Internet web sites, social media, direct mail, catalogs, telemarketing, Trade Shows, infomercials, clinics, provision of services in a traditional or non-traditional setting, and any other media through which Applicant's Services are promoted, offered or sold;

O. “Target Market” shall mean the specific group of customers, purchasers or Consumers to whom Applicant directs or intends to direct Applicant's Services under Applicant's Mark;

P. The term “record” means to quote, report, contain, reflect, symbolize, encode, denote, connote, reveal, summarize the results of, evidence, retain the impression of, depict, schematize, copy or duplicate;

Q. The terms “refer,” or “referring” or “concern” or “concerning” when used with respect to any given subject, means to consist, constitute, support, contain, evidence, concern, compose, comprise, embody, reflect, identify, state, regard, pertain to, deal with, or to have any logical or factual connection whatsoever with that subject;

R. The terms “relate” or “relating” or “show” or “showing” mean to directly or indirectly describe, record, refer to, reflect, concern, evidence or to be related in any manner legally, logically, factually, indirectly or directly to the matters discussed;

S. “Survey Materials” means all documents concerning proposed, pilot, preliminary, and completed surveys, studies, focus groups and polls and all reports and raw data pertaining thereto, including, but not limited to, interview sheets, interviewer instructions, list of interviewers, list of interviewees, sampling plans, demographic data, questionnaires, materials shown to interviewees, computer cards, computer printout sheets, any other computer input and outputs, work sheets, tabulations, and any statements of the method or program employed in evaluation or preparing the data and the like, and any opinion, evaluation, or report based thereon;

T. “Searches” shall mean any trademark search or investigation conducted using databases of trademark or marketing information, the Internet or by a searching service, and shall include, but is not limited to, any printouts, reports, listings, spreadsheets or similar compilation of such information;

U. Applicant shall produce all documents within its possession, custody or control. A document is in Applicant’s control if Applicant has the right to secure the document, or a copy thereof, from another Person having actual possession thereof. If Applicant knows or believes that there may be, or were, documents otherwise meeting the terms of a particular request, but which are not within Applicant’s custody, possession or control, or which no longer exist, Applicant should so state in the response to that particular request;

V. When appropriate in the context of a Request, the singular shall encompass the plural, the masculine gender shall encompass the feminine, and vice versa;

W. “All” shall include the collective as well as the singular and shall mean “each,” “any” and “every,” and these terms shall be interchangeable;

X. “And” and “or” shall be construed conjunctively or disjunctively as necessary to make your response inclusive rather than exclusive. The use of the words “include(s)” and “including” shall be construed to mean “without limitation”;

Y. If, in responding to any Request, you perceive any ambiguity in construing either the Request or the instruction or definition relevant to the Request, please set forth the matter deemed ambiguous and the construction chosen or used in responding to the Request.

Z. These Requests are to be answered with reference to all information in your possession, custody or control or reasonably available to you. Information is deemed to be in your control if you have the right to secure the information, or documents containing such information, from another Person having actual possession thereof. If you know or believe that there may be, or were, documents otherwise meeting the terms of a particular Request, but which are not within your custody, possession or control, or which no longer exist, please so state in your response to that particular Request.

AA. Documents produced should be tendered either in the precise form or manner as they are kept in the usual course of business or organized and labeled to correspond with the categories that follow in these Requests.

BB. Electronic or magnetic data shall be produced on paper printout and in a computer format on a mutually agreeable computer-readable medium.

CC. If any document was, but is no longer, in your possession, subject to your control, or in existence, state:

- (1) whether it is missing or lost, and if so, the name and current address and phone number of the Persons who have knowledge of it;

- (2) whether it has been destroyed, and if so, the circumstances under which it was destroyed and the name and current address and phone number of the Persons who destroyed it or who have knowledge of its destruction;
- (3) whether it has been transferred voluntarily or involuntarily, and in each instance explain the circumstances surrounding the authorization for each disposition and state the date or approximate date of its disposition; and
- (4) the identity of the Person who has possession, custody, or control of the document.

DD. If you claim any privilege of non-production for any document or communication sought in these Requests, provide a privilege log containing the following information:

- (1) the date, identity and general subject matter of the document, and the grounds asserted in support of the failure to produce the document;
- (2) the identity of each Person (other than stenographic or clerical assistants) participating in the preparation of the document;
- (3) the identity of each Person to whom the contents of the document was communicated orally, by copy, by distribution, reading or substantial summarization;
- (4) a description of any document or other material transmitted with or attached to the document;
- (5) the number of pages in the document;
- (6) the particular Requests(s) (and subpart(s)) to which the document is responsive; and
- (7) whether any business or non-legal matter is contained or discussed in the document.

EE. Each category is to be construed and responded to independently and not to be referenced to any category for purposes of limitation.

FF. Each Request shall be deemed continuing so as to require prompt supplemental disclosures if additional information is obtained, discovered, or created subsequent to the time of responding to these Requests.

REQUESTS FOR PRODUCTION

1. All documents and/or things that record, refer to or relate to all products and services Applicant has used, or intends to use, or authorizes others, or intends to authorize others to use in connection with Applicant's Mark.

2. All documents and/or things that record, refer to or relate to trademark searching, trademark clearance, approval or evaluation of Applicant's Mark, including all Searches, opinion letters, charts, investigations, drafts and reference materials.

3. All documents and/or things that record, refer to or relate to any alleged or possible rights of any Person other than Applicant to Applicant's Mark, or any opinions rejecting the adoption of a mark containing the term "MORGANS".

4. All documents and/or things that record, refer to or relate to Applicant's design, creation, selection, clearance, adoption, application for registration, or implementation of Applicant's Mark, including but not limited to any documents that reflect or demonstrate Applicant's inspiration for the creation or selection of Applicant's Mark or any documents that reflect or demonstrate any collaboration with any other Person in the creation or selection of Applicant's Mark.

5. All documents and/or things that record, refer to or relate to Applicant's knowledge of Opposer's use of Opposer's Mark, including but not limited to Applicant's first awareness of Opposer's use of Opposer's Mark, Applicant's awareness of Opposer or the Opposer's hotels or any restaurants located in Opposer's hotels at the time Applicant made the decision to adopt Applicant's Mark.

6. All documents and/or things that record, refer to or relate to Applicant's:

(A) decision to adopt and domain application to register the domain name THEMORGANSRESTAURANT.COM;

(B) plans for use of the domain name THEMORGANSRESTAURANT.COM including, but not limited to, whether Applicant plans to use the domain name to promote any restaurant or bar or other services other than the restaurant as currently operated located at 28 NE 29th Street, Miami, FL 33132; and

(C) plans to obtain any other domain name using any part of the Applicant's Mark.

7. All Survey Materials relating to marks including the Applicant's Mark conducted by or for Applicant.

8. All documents and/or things that record, refer to or relate to Applicant's first use of Applicant's Mark, in connection with each of Applicant's Services in Commerce, including the class of Consumers and Target Market to whom Applicant first offered or provided Applicant's Services in connection with Applicant's Mark, including the geographic locations of Consumers by city and State, and identify the Person(s) having the most knowledge with respect thereto.

9. All documents and/or things that record, refer to or relate to the current and future Target Markets and Channels of Trade through which Applicant offers or intends to offer Applicant's Services under Applicant's Mark or any mark that includes the designation MORGANS, including the geographic locations of Consumers or prospective Consumers by city and State.

10. All documents and/or things that record, refer to or relate to any current and possible future plans for relocating the restaurant, or opening an additional restaurant offering services under Applicant's Mark or any other mark that includes the designation MORGANS, including the planned or potential geographic locations of all restaurants.

11. All documents and/or things that record, refer to or relate to the website at the domain name THEMORGANSRESTAURANT.COM where Applicant's Mark is used since inception, including but not limited to:

- (A) The creation and maintenance of the website and all webpages thereof;
- (B) Internet traffic to the website including the number and geographic location of visitors from inception to the present;
- (C) Data analytics regarding visitors, including the amount of time spent on the website, and the websites that visitors were on immediately before and after visiting THEMORGANSRESTAURANT.COM;
- (C) Sales and revenue generated from the website from inception to present; and
- (D) All other website data analytics not specifically mentioned above.

12. All documents and/or things that record, refer to or relate to the advertising and promotion or intended advertising and promotion of Applicant's Services under Applicant's Mark by any Person, including but not limited to:

- (A) the types of advertising and promotional methods utilized or intended to be utilized by Applicant, including but not limited to telemarketing or email marketing, and the media in which each are utilized or intended to be utilized;
- (B) the Target Market to which each of the advertising and promotional materials are directed or are intended to be directed;

- (C) the annual monetary amounts that have been expended to date and anticipated to be expended in connection with such advertising and promotional activities;
- (D) any Persons involved with or intended to be involved with advertising and promoting Applicant's Services under Applicant's Mark;
- (E) the number of people whom Applicant believes have seen any advertising for Applicant's Services under Applicant's Mark; and
- (F) any documents prepared by any Persons retained by or hired on behalf of Applicant.

13. For each type of media in which Applicant has used or intends to use Applicant's Mark, advertisements, promotional and marketing materials, including, but not limited to, web pages, publications, directories, brochures, catalogs, newspaper and magazine advertisements, commercials, trade association listings, displays, signs and the like.

14. All documents and/or things that record, refer to or relate to the offering or provision of Applicant's Services under Applicant's Mark by Applicant or any Person, including:

- (A) the amount of sales to Consumers and Applicant's revenue derived therefrom since Applicant's Services were first offered under Applicant's Mark;
- (B) the geographic location of Consumers to whom sales have been made, the and types or classes of Consumers (corporate versus individual) to whom sales have been made; and

15. All documents and/or things that record, refer or relate to the number of patrons of the restaurant per year since Applicant's Services were first offered under Applicant's Mark on June 15, 2009.

16. All documents and/or things that record, refer to or relate to any dispute or proceeding or threatened dispute or proceeding (with the exception of this opposition proceeding) in which Applicant has been involved concerning any trademark, domain name or other designation, including Uniform Dispute Resolution Policy or any equivalent, state court, or federal court proceedings, trademark office opposition or cancellation proceedings, or extensions of time to oppose or cancel and all Correspondence including but not limited to demand letters concerning Applicant's use of such designation or variations thereof.

17. All documents and/or things that record, refer to or relate to any instance of actual confusion, mistake, association or inquiry about the relationship between Applicant's Mark and Opposer's Mark or between Applicant and Opposer, or Opposer's hotels or restaurants located in Opposer's hotels.

18. All documents and/or things that record, refer to or relate to print or electronic advertisements which contain or bear Applicant's Mark and which has been used at any time in connection with the offer of or the provision of Applicant's Services.

19. All documents and/or things that record, refer to or relate to any business, financial and marketing plans or objectives and any Communications relating thereto, whether written or unwritten relating to Applicant's Mark or Applicant's Services offered under Applicant's Mark that existed before or after Applicant filed the application for Applicant's Mark and any Person or business or marketing consultant that created, implemented or made decisions regarding the implementation of the plans or objectives.

20. All documents and/or things that record, refer to or relate to any attempts, whether successful or not, by Applicant to obtain federal, state and/or foreign trademark and/or service mark registrations for Applicant's Mark or any designation incorporating "MORGANS", including but not limited to any and all prosecution histories including those pending, registered and abandoned, filed in the name of, on behalf of or currently owned by Applicant, or any predecessor in interest, toward registration of Applicant's Mark or any designation incorporating "MORGANS".

21. All documents and/or things that record, refer to or relate to actual or proposed licenses, waivers, assignments and/or other agreements, to or from any Person, relating to ownership or use of Applicant's Mark.

22. All documents and/or things that record, refer to or relate to any interest (monetary, contractual or otherwise) and/or an expectation of an interest in Applicant's Mark or the related business including but not limited to any issuance of stock or debt.

23. All documents and/or things that record, refer to or relate to guidelines, policies or strategies adopted or employed by Applicant, concerning the usage and/or intended usage by Applicant of Applicant's Mark.

24. All Correspondence between Applicant and any Person whom Applicant intends to call as an expert witness during the testimony period of this proceeding.

25. All documents and/or things analyzed by, referred to, reviewed, prepared or generated by or for any expert for Applicant towards the formulation, documentation or communication of any opinion or testimony regarding any of the issues of this proceeding.

26. All documents and/or things that record, refer to or relate to any inquiry, investigation or analysis comparing Opposer's products or services offered in connection with Opposer's Mark with the products or services of any Person or entity, including Applicant.

27. All documents and/or things that record, refer to or relate to any discussions had, opinions obtained and/or any survey, poll, search or other investigation or research conducted by or for Applicant, or planned by Applicant, regarding the public's recognition of or reaction to Applicant's Mark or Opposer's use of Opposer's Mark, whether for the purpose of ascertaining likelihood of confusion, secondary meaning or otherwise.

28. All documents that support any fact set forth in Applicant's Answer including its Affirmative Defenses.

29. All documents that controvert any fact set forth in Applicant's Answer including its Affirmative Defenses.

30. All documents that support any allegation set forth in any motion or response to any motion that Applicant files in this proceeding.

31. All documents that controvert any allegation set forth in any motion or response to any motion that Applicant files in this proceeding.

32. Any and all documents and/or things, other than those produced in response to any of the foregoing Requests, that Applicant identifies in its responses to Opposer's First Set of Interrogatories to Applicant.

33. Any and all documents and/or things, other than those produced in response to any of the foregoing Requests, that Applicant, or any Person acting for or on behalf of Applicant, examined, reviewed or inspected in connection with the preparation of Applicant's responses to Opposer's First Set of Interrogatories to Applicant.

34. Any and all documents and/or things, other than those produced in response to any of the foregoing Requests, upon which Applicant intends to rely in connection with these proceedings.

Respectfully submitted,
Morgans Group LLC

December 2, 2016

/s/ /carol anne been /
Attorney for Morgans Group LLC
Carol Anne Been
Tara Reedy Sliva
Dentons US, LLP
P.O. Box #061080
Wacker Drive Station, Willis Tower
Chicago, Illinois 60606-1080

CERTIFICATE OF SERVICE

I hereby certify that on this 2nd day of December, 2016, a copy of the forgoing OPPOSER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT was served by email, as agreed, upon the following:

*WILLIAM D WEYROWSKI
PO BOX 545885
SURFSIDE, FL 33154-5885
UNITED STATES
wdwlawfl@gmail.com, william@weyrowskilaw.com
Attorney for Applicant*

By: Dentons US LLP

/s/ /tara reedy sliva/ _____
Carol Anne Been
Tara Reedy Sliva
Dentons US LLP
P.O. Box #061080
Wacker Drive Station, Willis Tower
Chicago, Illinois 60606-1080
Telephone No. (312) 876-8000
Facsimile No. (312) 876-7934

Attorneys for Opposer

EXHIBIT C

Hart, Kate E.

From: Sliva, Tara Reedy
Sent: Monday, February 27, 2017 5:07 PM
To: 'william weyrowski'
Cc: Been, Carol Anne; Perkins, Danielle D.; Karmo, Hope K.; Dentons Trademarks US
Subject: RE: MORGANS FIND YOUR ROOTS Opposition - Opposer's First Set of Interrogatories to Applicant and Opposer's First Request for Production of Documents and Things to Applicant
Attachments: 60 Day Consented Motion to Extend 1.27.17.pdf

Dear William,

Thank you for your email. Attached, please find a copy of the 60 Day Consented Motion to Extend.

Kind regards,
Tara

 **Tara Reedy Sliva**
Counsel

D +1 312 876 2837 | US Internal 12837
tara.sliva@dentons.com
[Bio](#) | [Website](#)
Assistant: Danielle D. Perkins +1 312 876 3123

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大成 [Salans FMC SNR Denton McKenna Long](#)

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From: wdwlawfl@gmail.com [mailto:wdwlawfl@gmail.com] **On Behalf Of** william weyrowski
Sent: Monday, February 27, 2017 1:31 PM
To: Sliva, Tara Reedy
Cc: Been, Carol Anne; Perkins, Danielle D.; Karmo, Hope K.; Dentons Trademarks US
Subject: Re: MORGANS FIND YOUR ROOTS Opposition - Opposer's First Set of Interrogatories to Applicant and Opposer's First Request for Production of Documents and Things to Applicant

Tara - I will agree to an additional extension. It has been difficult, but I will get the responses over to you this week. Other than the responses, if there is anything else you need for your side, please let me know. I don't want to push this back any longer and would rather just get it over. It is not an overly complicated case so no need to drag this out any more. I understand your client's position but unfortunately, my clients do not agree so it appears that this will have to go forward.

Let me know if you have any questions.

Regards,

On Fri, Feb 24, 2017 at 6:18 PM, Sliva, Tara Reedy <tara.sliva@dentons.com> wrote:

William,

Further to the below, you indicated last month that the discovery responses would be forthcoming, however, we have not received them.

Please advise if you consent to another 60 day extension to the discovery period. We would like to make it clear that this request does not propose an extension to your client's time to respond to Morgans' outstanding discovery requests, which are past due. It is simply a proposal to extend the close of the discovery period set by the Board and all remaining dates identified in the Board's last scheduling order.

As the discovery period is set to close on Tuesday, February 28th, we would appreciate your prompt feedback. Please let us know if you have any questions.

Thank you,

Tara



Tara Reedy Sliva
Counsel

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From: Sliva, Tara Reedy
Sent: Monday, January 23, 2017 5:04 PM
To: 'william weyrowski'

Cc: Been, Carol Anne; Perkins, Danielle D.; Karmo, Hope K.; Dentons Trademarks US
Subject: RE: MORGANS FIND YOUR ROOTS Opposition - Opposer's First Set of Interrogatories to Applicant and Opposer's First Request for Production of Documents and Things to Applicant

William,

Do you have an update on when we may receive the responses to discovery?

Regards,
Tara



Tara Reedy Sliva
Counsel

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From: wdwlawfl@gmail.com [<mailto:wdwlawfl@gmail.com>] **On Behalf Of** william weyrowski
Sent: Monday, January 16, 2017 12:26 PM
To: Sliva, Tara Reedy
Cc: Been, Carol Anne; Perkins, Danielle D.; Karmo, Hope K.; Dentons Trademarks US
Subject: Re: MORGANS FIND YOUR ROOTS Opposition - Opposer's First Set of Interrogatories to Applicant and Opposer's First Request for Production of Documents and Things to Applicant

Hello Tara.

First, yes, I still represent them.

Next, I apologize for not submitting the documents as I believed the entire discovery process had been extended, pursuant to your previous email.

Attached, please find:

1. Opposer's First Set of Interrogatories to Applicant; and
2. Opposer's First Request for Production of Documents and Things to Applicant

served via email pursuant to the parties' prior agreement.

For the sole purpose of allowing sufficient time for Applicant to respond to Opposer's discovery requests and to carry out any necessary discovery depositions, we seek your client's consent to a sixty (60) day extension of the discovery period and all remaining dates.

Regardless, I will reach out to my clients and try and get these to you in the next day or two.

Let me know if there is anything else.

Regards,

On Tue, Jan 10, 2017 at 4:21 PM, Sliva, Tara Reedy <tara.sliva@dentons.com> wrote:

Dear William,

We have not yet received a response to our discovery requests which were due January 1, 2017. Could you please advise if the responses are forthcoming? While the discovery period and all remaining Board scheduled dates were extended 60 days, the deadline to respond to the discovery requests was not extended.

Also could you please advise if you still represent your client?

Kind regards,

Tara



Tara Reedy Sliva

Counsel

D [+1 312 876 2837](tel:+13128762837) | US Internal 12837

tara.sliva@dentons.com

[Bio](#) | [Website](#)

Assistant: Danielle D. Perkins [+1 312 876 3123](tel:+13128763123)

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From: Sliva, Tara Reedy

Sent: Monday, December 12, 2016 4:54 PM

To: 'william weyrowski'; 'wdwlawfl@gmail.com'

Cc: Been, Carol Anne; Perkins, Danielle D.; Karmo, Hope K.; Dentons Trademarks US

Subject: RE: MORGANS FIND YOUR ROOTS Opposition - Opposer's First Set of Interrogatories to Applicant and Opposer's First Request for Production of Documents and Things to Applicant

Dear William,

Attached, please find a service copy of the consented motion.

Kind regards,

Tara



Tara Reedy Sliva

Counsel

D [+1 312 876 2837](tel:+13128762837) | US Internal 12837

tara.sliva@dentons.com

[Bio](#) | [Website](#)

Assistant: Danielle D. Perkins [+1 312 876 3123](tel:+13128763123)

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From: wdwlawfl@gmail.com [<mailto:wdwlawfl@gmail.com>] **On Behalf Of** william weyrowski

Sent: Monday, December 12, 2016 1:37 PM

To: Sliva, Tara Reedy

Cc: Been, Carol Anne; Perkins, Danielle D.; Karmo, Hope K.; Dentons Trademarks US

Subject: Re: MORGANS FIND YOUR ROOTS Opposition - Opposer's First Set of Interrogatories to Applicant and Opposer's First Request for Production of Documents and Things to Applicant

Yes, I still represent her for now, even though I haven't been able to discuss this with her for several weeks. Yes I agree to the extension. Thank you.

On Mon, Dec 12, 2016 at 2:05 PM, Sliva, Tara Reedy <tara.sliva@dentons.com> wrote:

Dear William,

Further to the below email and my voicemail of December 9th, please advise if your client consents to a sixty (60) day extension of the discovery period and all remaining dates.

Please let us know if you no longer represent Mr. Graebner in this matter.

Thank you,

Tara



Tara Reedy Sliva

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From: Sliva, Tara Reedy

Sent: Friday, December 02, 2016 5:38 PM

To: 'wdwlawfl@gmail.com'; 'william@weyrowskilaw.com'

Cc: Been, Carol Anne; Perkins, Danielle D.; Karmo, Hope K.; Dentons Trademarks US

Subject: MORGANS FIND YOUR ROOTS Opposition - Opposer's First Set of Interrogatories to Applicant and Opposer's First Request for Production of Documents and Things to Applicant

Dear William,

Attached, please find:

1. Opposer's First Set of Interrogatories to Applicant; and
2. Opposer's First Request for Production of Documents and Things to Applicant

served via email pursuant to the parties' prior agreement.

For the sole purpose of allowing sufficient time for Applicant to respond to Opposer's discovery requests and to carry out any necessary discovery depositions, we seek your client's consent to a sixty (60) day extension of the discovery period and all remaining dates.

Please let us know if you have any questions. We look forward to receiving your consent to the extension of discovery period and remaining dates.

Regards,

Tara



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"There are two ways to slide easily through life: to believe everything or to doubt everything; both ways save us from thinking." - Alfred Korzybski

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EXHIBIT D

ESTTA Tracking number: **ESTTA803958**

Filing date: **02/27/2017**

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

Proceeding.	91226499
Applicant	Plaintiff Morgans Group LLC
Other Party	Defendant Barclay Graebner
Have the parties held their discovery conference as required under Trademark Rules 2.120(a)(1) and (a)(2)?	Yes

Motion for an Extension of Answer or Discovery or Trial Periods With Consent

The Close of Discovery is currently set to close on 02/28/2017. Morgans Group LLC requests that such date be extended for 60 days, or until 04/29/2017, and that all subsequent dates be reset accordingly.

Time to Answer :	CLOSED
Deadline for Discovery Conference :	CLOSED
Discovery Opens :	CLOSED
Initial Disclosures Due :	CLOSED
Expert Disclosure Due :	03/30/2017
Discovery Closes :	04/29/2017
Plaintiff's Pretrial Disclosures :	06/13/2017
Plaintiff's 30-day Trial Period Ends :	07/28/2017
Defendant's Pretrial Disclosures :	08/12/2017
Defendant's 30-day Trial Period Ends :	09/26/2017
Plaintiff's Rebuttal Disclosures :	10/11/2017
Plaintiff's 15-day Rebuttal Period Ends :	11/10/2017

The grounds for this request are as follows:

- *Parties are unable to complete discovery/testimony during assigned period*

Morgans Group LLC has secured the express consent of all other parties to this proceeding for the extension and resetting of dates requested herein.

Morgans Group LLC has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address of record by Email on this date.

Respectfully submitted,
/tara reedy sliva/

Tara Reedy Sliva
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02/27/2017

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

February 27, 2017

Proceeding No. 91226499

Morgans Group LLC

v.

Barclay Graebner

MOTION TO EXTEND GRANTED

NOTICE: CHANGES TO THE TRADEMARK TRIAL AND APPEAL BOARD (“BOARD”) RULES OF PRACTICE EFFECTIVE JANUARY 14, 2017

The USPTO published a Notice of Final Rulemaking in the Federal Register on October 7 2016, at 81 Fed. Reg. 69950. It sets forth **several** amendments to the rules that govern *inter partes* (oppositions, cancellations, concurrent use) and ex parte appeal proceedings. A correction to the final rule was published on December 12, 2016, at 81 Fed. Reg. 89382.

For complete information, the parties are referred to:

- The Board’s home page on the uspto.gov website: <http://www.uspto.gov/trademarks-application-process/trademark-trial-and-appeal-board-ttab>
- The final rule: <http://www.uspto.gov/sites/default/files/documents/81%20FR%2069950.pdf>
- The correction to the final rule: <http://www.uspto.gov/sites/default/files/documents/81%20FR%2089382.pdf>
- A chart summarizing the affected rules and changes: <http://www.uspto.gov/sites/default/files/documents/2017Rulechangehighlights.pdf>

For **all** proceedings, including those **already in progress on January 14, 2017**, some of the changes are:

- All pleadings and submissions must be filed through ESTTA. Trademark Rules 2.101, 2.102, 2.106, 2.111, 2.114, 2.121, 2.123, 2.126, 2.190 and 2.191.
- Service of all papers must be made by email, unless otherwise stipulated. Trademark Rule 2.119.

- Response periods are no longer extended by five days for service by first-class mail, Priority Mail Express®, or overnight courier. Trademark Rule 2.119.
- Deadlines for submissions to the Board that are initiated by a date of service are 20 days. Trademark Rule 2.119. Responses to motions for summary judgment remain 30 days. Similarly, deadlines for responses to discovery requests remain 30 days.
- All discovery requests must be served early enough to allow for responses prior to the close of discovery. Trademark Rule 2.120. Duty to supplement discovery responses will continue after the close of discovery.
- Motions to compel initial disclosures must be filed within 30 days after the deadline for serving initial disclosures. Trademark Rule 2.120.
- Motions to compel discovery, motions to test the sufficiency of responses or objections, and motions for summary judgment must be filed prior to the first pretrial disclosure deadline. Trademark Rules 2.120 and 2.127.
- Requests for production and requests for admission, as well as interrogatories, are each limited to 75. Trademark Rule 2.120.
- Testimony may be submitted in the form of an affidavit or declaration. Trademark Rules 2.121, 2.123 and 2.125
- New requirements for the submission of trial evidence and deposition transcripts. Trademark Rules 2.122, 2.123, and 2.125.
- For proceedings **filed on or after January 14, 2017**, in addition to the changes set forth above, the Board's notice of institution constitutes service of complaints. Trademark Rules 2.105(a) and 2.113(a).

This is only a summary of the significant content of the Final Rule. All parties involved in or contemplating filing a Board proceeding, regardless of the date of commencement of the proceeding, should read the entire Final Rule.

By the Trademark Trial and Appeal Board:

Morgans Group LLC's consent motion to extend, filed **Feb 27, 2017**, is granted. Dates are reset as set out in the motion.