

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

EJW

Mailed: August 28, 2017

Opposition No. 91227647 (parent)

Funkhouser Vegosen Liebman & Dunn Ltd.

v.

The Craft Beer Attorney, APC

Opposition No. 91227650

Nossaman LLP

v.

The Craft Beer Attorney, APC

Opposition No. 91227651

GrayRobinson, P.A.

v.

The Craft Beer Attorney, APC

Opposition No. 91227673

*Tannenbaum Helpern Syracuse &
Hirschtritt LLP*

v.

The Craft Beer Attorney, APC

Opposition Nos. 91227647, 91227650, 91227651, 91227673, 91227681, 91227689, 91227691, 91227703, 91227705, 91227706, and 91227783

Opposition No. 91227681

Lehrman Beverage Law, PLLC

v.

The Craft Beer Attorney, APC

Opposition No. 91227689

Davis Wright Tremaine LLP

v.

The Craft Beer Attorney, APC

Opposition No. 91227691

Ward and Smith PA

v.

The Craft Beer Attorney, APC

Opposition No. 91227703

Strike & Techel LLP

v.

The Craft Beer Attorney, APC

Opposition No. 91227705

Martin Frost & Hill PC

v.

The Craft Beer Attorney, APC

Opposition Nos. 91227647, 91227650, 91227651, 91227673, 91227681, 91227689, 91227691, 91227703, 91227705, 91227706, and 91227783

Opposition No. 91227706

Spaulding Mccullough & Tansil LLP

v.

The Craft Beer Attorney, APC

and

Opposition No. 91227783

Wendel Rosen Black & Dean LLP

v.

The Craft Beer Attorney, APC

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

On August 25, 2017, at the request of counsel for Opposer Funkhouser Vegosen Liebman & Dunn Ltd. (Steven Klein), the Board (by Interlocutory Attorney Elizabeth Winter) conducted a telephone conference with the parties (represented by Eugene Pak, Glenn Rice, Steven Klein, and Kevin Crosby for their respective Opposers and Candace Moon for Applicant, *pro se*) regarding the parties' dispute concerning Applicant's responses to discovery propounded by Opposers. *See* Trademark Rule 2.120(j)(1); TBMP § 502.06(a) (June 2017). This order summarizes the conference and the Board's orders in connection with said discovery, as modified herein.

By way of background, on April 24, 2017, Opposers served on Applicant the following discovery requests: Opposers' First Set of Requests for Production, Opposers' First Set of Interrogatories, and Opposers' First Set of Requests for

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Admission. Applicant served its responses to Opposers' discovery on June 9, 2017.¹ In an email dated July 28, 2017, to Mr. Klein, Applicant's counsel stated, *inter alia*, that certain of Applicant's responses would be amended and that such responses would be provided "early next week"; Applicant also declined to respond to certain requests (see attached correspondence from Karen Hawkes). On August 17, 2017, Mr. Klein requested an *inter partes* telephone conference with the Board, explaining that although Ms. Hawkes had promised to supplement Applicant's discovery responses, no supplemental responses have been served and that Opposers' attempts to meet and confer have not been successful (see attached email from Steven Klein to Interlocutory Attorney Winter). In response to the Board's request, Mr. Klein forwarded to Interlocutory Attorney Winter copies of Opposers' discovery requests and Applicant's responses thereto, as well as copies of emails between Ms. Hawkes and Mr. Klein regarding said discovery.

To move these proceedings forward and in view of the deposition(s) of Applicant scheduled for the first week of September, the Board informed the parties that it would conduct an *inter partes* conference on August 25, 2017. However, on August 24, 2017, Ms. Hawkes informed the Board and Opposers' counsel that she no longer represented Applicant and that Applicant (through Ms. Moon) should be contacted directly (see attached email from Ms. Hawkes). Because Ms. Moon, an attorney, consented to participate in the conference without Applicant's counsel present, the

¹ Applicant's responses due May 24, 2017. *See* Trademark Rule 2.120(a)(3). However, Opposers have not informed the Board that Applicant's responses were untimely.

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Board conducted the conference with the above-identified Opposers' counsel and Ms. Moon, representing Applicant *pro se*.

- *Applicant's Counsel*

Ms. Moon stated during the conference that she was unaware until Ms. Hawkes' August 24, 2017 email that she would no longer represent Applicant in this matter. In addition, Ms. Moon hoped that there was merely a misunderstanding with respect to Ms. Hawkes' continued representation of Applicant. The Board allowed Applicant until Wednesday, August 30th, to submit to the Board a notice stating that Ms. Hawkes is no longer counsel for Applicant, or Ms. Hawkes should submit by that date a withdrawal of counsel in accordance with the relevant rules. The Board also informed the parties that in view of the likelihood that Applicant's counsel would withdraw and the Board's policy to suspend proceedings for thirty days when an attorney for a party withdraws (*see* TBMP § 513.01 (June 2017)), (i) the depositions scheduled for September would likely need to be rescheduled; (ii) the Board would expect any new counsel appointed by Applicant to promptly serve Applicant's supplemental responses to Opposers' discovery (discussed *infra*); and (iii) the Board would extend discovery for Opposers so that previously-noticed depositions of Applicant and Ms. Moon could be conducted and Opposers would have time for any follow-up discovery. Applicant was reminded that discovery had already been delayed due to Applicant's failure to meet and confer with Opposers' counsel and to timely supplement its discovery responses, and that the Board expected Applicant to adhere to all deadlines going forward and that if it did not, the Board would consider a motion

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for sanctions, including for entry of judgment. The Board notes that Applicant's counsel, Ms. Hawkes, submitted a motion to withdraw as counsel on August 25, 2017, after the subject conference (16 TTABVUE). The request has been denied without prejudice because it did not comply with applicable rules (17 TTABVUE 3-4); however, these proceedings have been suspended pending the Board's receipt of an amended motion.

- *Opposer's Discovery Requests*

During the conference, the Board reviewed the discovery requests regarding which Applicant's counsel had responded in the July 28, 2017 email and issued the following summary orders:

Requests for Admission

Federal Rule 36(a)(4) requires that the answering party admit or deny the matter set forth in the requests for admission, or detail the reasons why the party can do neither. Rule 36(a)(4) also specifically provides that "[t]he answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny."

- Request Nos. 14, 15 and 21: Applicant has neither admitted nor denied these requests. Applicant's objections that phrase "integral part of the provision" (nos. 14 and 15) and "craft beer law" (no. 21) within the requests are vague and ambiguous are OVERRULED. "Craft beer law" is no more ambiguous than the phrase used by Applicant in response to

interrogatory no. 19, *i.e.*, “Craft Beer Industry.”² Applicant must admit or deny these three requests, or explicitly state that it “has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.”

- Request Nos. 22 and 23: Applicant has neither admitted nor denied these requests. Applicant’s objections that the phrases “craft beer lawyer” (no. 22) and “craft beer law” (no. 23) used in the requests are vague and ambiguous is **OVERRULED**. The phrases “craft beer lawyer” and “craft beer law” are no more ambiguous than the phrase used by Applicant in response to interrogatory no. 19, *i.e.*, “Craft Beer Industry.” Applicant is **ORDERED** to admit or deny these two requests, or explicitly state that it “has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.”

Interrogatories

- Interrogatory Nos. 14 and 21: Applicant is **ORDERED** to respond without any further objection to these interrogatories. Applicant’s annual sales for services rendered in connection with the applied-for mark and annual advertising expenditures for same are relevant to

² The Board also notes that Applicant did not object to Opposers’ request for production of documents no. 24, which requests documents and things referring to papers concerning the formation of any law firm or association specializing in or focusing on “craft beer law.”

Applicant's claim of acquired distinctiveness and Opposers' claim that the applied-for mark has not acquired distinctiveness. *See* TBMP § 414(18).

- Interrogatory No. 20: Applicant's objection that the phrase "craft beer law" is vague and ambiguous is **OVERRULED**. "Craft beer law" is no more ambiguous than the phrase used by Applicant in response to interrogatory no. 19, *i.e.*, "Craft Beer Industry." Applicant is **ORDERED** to respond without any further objection to this interrogatory.
- Interrogatory No. 30: Applicant's objection is **OVERRULED**. Applicant is **ORDERED** to respond to this interrogatory without any further objection.
- Interrogatory No. 34: Applicant's specific objection is **OVERRULED**. However, to the extent the request asks for Applicant's potential witnesses, said request is premature because Applicant's identification of its trial witnesses is not yet due; and to the extent the request asks for Applicant's expert witnesses, Mr. Klein agreed that this question is moot because Applicant did not disclose any expert witnesses.
- Interrogatory No. 44: Applicant is **ORDERED** to clarify Ms. Moon's position(s) with respect to The Craft Beer Attorney Coalition by supplementing Applicant's response to this interrogatory.

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- Interrogatory Nos. 46 and 47: Applicant's objections are **OVERRULED**.
A request for discovery is not necessarily objectionable merely because it requires a party or a witness to give an opinion or contention that relates to fact or the application of law to fact. Applicant is **ORDERED** to respond to this interrogatory without any further objection. *See* TBMP § 414(21).
- Interrogatory No. 48: This interrogatory and Applicant's objection thereto are moot. Applicant's affirmative defenses were stricken in the Board's order mailed July 8, 2016.

Requests for Production of Documents

- Request No. 19: Mr. Klein explained that Opposers had not received printouts of prior versions of the www.craftbeerattorney.com and www.craftbeerattorneycoalition.org websites. Applicant has responded that it has produced all documents responsive to this request. Applicant is **ORDERED** to clarify its response by stating, if applicable, that "no other non-privileged responsive documents exist."
- Request No. 23: Applicant's objection (set forth in the 7/28/2017 email from Ms. Hawkes) is **OVERRULED**. The request seeks documents referencing *an* attorney or *attorneys* that have any time provided legal services in the United States relating to or in connection with craft beer. This request could include documents relating to attorneys in The Craft Beer Attorney Coalition or other attorneys known by Applicant to

provide services relating to or in connection with craft beer. Applicant is **ORDERED** to respond to this request or state that no non-privileged responsive documents exist. *Cf.* TBMP § 414(9); *American Society of Oral Surgeons v. American College of Oral & Maxillofacial Surgeons*, 201 USPQ 531, 533 (TTAB 1979) (relevant to show mark is weak).

- Request No. 24: Applicant is **ORDERED** to clarify whether it has in its possession, custody or control any documents concerning the formation of any law firm or association specializing in or focusing on craft beer law; *and* Applicant must state where such documents may be located if they are not within Applicant's possession, custody or control, e.g., The Craft Beer Attorney Coalition.
- Request No. 26: Applicant's objection that "craft beer law" is vague and ambiguous is **OVERRULED**. See discussion *supra*. Nonetheless, Applicant's response that it "has not located and is not aware of any documents responsive to this request," is acceptable.
- Request No. 30: As discussed *supra*, Opposers are entitled to information (and documents) related to Applicant's advertising expenditures incurred in connection with its use of the applied-for mark. *See* TBMP § 414(18). The 7/28/2017 email from Ms. Hawkes states that Applicant will not provide documents that have not been redacted because they contain information that is privileged and irrelevant to this matter. Ms. Moon could not explain fully during the conference what

information in the documents provided is privileged; however, the documents may contain client information. To the extent that Applicant's responsive documents include customer's names, such information is confidential and is not discoverable even under the Board's standard protective order, and redaction of such information may have been appropriate. *See* TBMP § 414(3). However, the Board is unable to evaluate the propriety of Applicant's objection and redaction of material in the documents without viewing the documents at issue. Therefore, within **FIVE (5) DAYS** of resumption of these proceedings, Applicant is **ORDERED** to designate and submit to the Board as confidential any document served on Opposers in response to request no. 30, and to also separately submit redacted copies of said documents, so that the Board can evaluate whether Applicant's redaction of the documents was proper. *See* Trademark Rule 2.126(c). *Cf. Amazon v. Wax*, 95 USPQ2d 1865, 1869 n.8 (TTAB 2010) ("based on an *in camera* inspection, opposer properly designated produced materials as trade secret/commercially sensitive"). Upon consideration of those documents, the Board will inform the parties as to whether Opposers are entitled to unredacted documents.

- Request Nos. 41-43, and 45: Applicant's responses are acceptable.
- Request No. 48: As discussed *supra*, Opposers are entitled to documents containing information regarding Applicant's *gross* sales for services

rendered in connection with the applied-for mark. Applicant is **ORDERED** to respond to this request.

- Request No. 56: Applicant is **ORDERED** to state, if applicable, that “no other responsive non-privileged documents exist.”
- Request No. 57: Applicant’s objection is **OVERRULED**. To the extent that non-privileged responsive documents referring to membership criteria in The Craft Beer Attorney Coalition are in the possession, custody or control of Applicant, Applicant is **ORDERED** to provide said documents to Opposers.
- Request No. 58: Insofar as The Craft Beer Attorney Coalition is not a party to these proceedings, the Board finds this request to be improper. Applicant is not required to respond thereto.

Applicant is **ORDERED** to serve responses to the foregoing discovery requests on Opposers, as discussed herein, within **TEN (10) DAYS** from the date on which these proceedings resume. Additionally, within **FIVE (5) DAYS** from resumption of these proceedings, Applicant is also **ORDERED** to provide to Opposers at least three dates on which Ms. Moon is available for the previously-noticed depositions. Said depositions should be conducted no later than 45 days from the date of resumption.

Klein, Steven

From: Karen Hawkes, Esq. <karen@craftbeerattorney.com>
Sent: Friday, July 28, 2017 5:18 PM
To: Klein, Steven
Cc: Morrison, Sheila Fox; PDX TM Enforcement; tdover@nossaman.com; Prutzman@thsh.com; Dranit@smlaw.com; grice@fvldlaw.com; barry@strikeandtechel.com; Chris.Mendez@gray-robinson.com; Cole.Carlson@gray-robinson.com; trademarks@bevlaw.com; dan.christopherson@bevlaw.com; DJA@wardandsmith.com; DonWinkle@smlaw.com; Jaglom@thsh.com; trademarks@wardandsmith.com; kfrost@mfhliquorlaw.com; Richard.Blau@gray-robinson.com; rclehrman@bevlaw.com; TMFiling@Nossaman.com; tom@strikeandtechel.com; APD@wardandsmith.com; Kevin.Crosby@gray-robinson.com; EPak@wendel.com; tmdocket@wendel.com; Dunwoody, Stuart
Subject: RE: Funkhouser Vegosen Liebman & Dunn Ltd. v. The Craft Beer Attorney, APC, and Consolidated Matters, Opposition Nos. 91227647 (parent), 91227650, 91227651, 91227673, 91227681, 91227689, 91227691, 91227703, 91227705, 91227706, 91227783

Dear Mr. Klein,

This email is in response to your letter dated July 12, 2017 regarding alleged deficiencies in Applicant's responses and objections to Opposers' written discovery.

A. Responses and Objections to First Set of Requests for Admission

1. RFA Nos. 14 and 15, Applicant will amend its responses to these requests.
2. RFA No. 21, Applicant will amend its response if Opposer provides its definition of "craft beer attorney".
3. RFA Nos. 22 and 23, Applicant will amend its responses to these requests.

B. Responses and Objections to First Set of Requests for Production

1. RFP No. 19, Applicant's search is complete and Applicant has produced all documents responsive to this request.
2. RFP No. 23, Applicant's response stands. Counsel's argument that a mention of a group of persons constitutes a responsive document is meritless as neither refers to a specific attorney that has at any time provided legal services in connection with craft beer in the U.S., and the mentions were general in nature.
3. RFP No. 24, Applicant's search is complete and Applicant's response stands.
4. RFP No. 26, Applicant's search is complete and Applicant's response stands.
5. RFP No. 30, Applicant's search is complete and Applicant's response stands. Applicant will not produce unredacted documents as the redacted materials contain privileged information and information not relevant to the request.
6. RFP No. 41, 42 and 43, Applicant's search is complete and Applicant's response stands.
7. RFP No. 45, Applicant's search is complete and Applicant's response stands.
8. RFP No. 48, Applicant's response stands. Such information is wholly unrelated to the causes at issue.
9. RFP No. 56, Applicant's search is complete and Applicant's response stands.
10. RFP No. 57 and 58, Applicant's response stands. Such information is wholly unrelated to the causes at issue.

Opposition Nos. 91227647, 91227650, 91227651, 91227673, 91227681, 91227689, 91227691, 91227703, 91227705, 91227706, and 91227783

C. Responses and Objections to First Set of Interrogatories

1. No. 14 and 21, Applicant's response stands. Such information is wholly unrelated to the causes at issue.
2. No. 20, Applicant will amend its response if Opposer provides provides its definition of "craft beer law".
3. No. 30, Applicant's objection stands. Applicant is unpersuaded by Counsel's argument.
4. No. 34, Applicant will amend its response.
5. No. 44, Applicant's response stands.
6. No. 46 and 47, Applicant's response stands.
7. No. 48, Applicant's response stands.

Applicant will provide its amended responses where indicated early next week.

Best,

Karen Hawkes, Esq.
Of Counsel



The Craft Beer Attorney, APC
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From: Karen Hawkes, Esq.
Sent: Monday, July 24, 2017 1:56 PM
To: 'Klein, Steven' <StevenKlein@dwt.com>
Cc: Morrison, Sheila Fox <sheilafoxmorrison@dwt.com>; PDX TM Enforcement <PDXTMEnforcement@dwt.com>; tdoover@nossaman.com; Prutzman@thsh.com; Dranit@smlaw.com; grice@fvldlaw.com; barry@strikeandtechel.com; Chris.Mendez@gray-robinson.com; Cole.Carlson@gray-robinson.com; trademarks@bevlaw.com; dan.christopherson@bevlaw.com; DJA@wardandsmith.com; DonWinkle@smlaw.com; Jaglom@thsh.com; trademarks@wardandsmith.com; kfrost@mfhliquorlaw.com; Richard.Blau@gray-robinson.com; rclehrman@bevlaw.com; TMFiling@Nossaman.com; tom@strikeandtechel.com; APD@wardandsmith.com; Kevin.Crosby@gray-robinson.com; EPak@wendel.com; tmdocket@wendel.com; Dunwoody, Stuart <stuardunwoody@dwt.com>

Opposition Nos. 91227647, 91227650, 91227651, 91227673, 91227681, 91227689, 91227691, 91227703, 91227705, 91227706, and 91227783

Wed 8/16/2017 4:47 PM

Klein, Steven <StevenKlein@dwt.com>
 Funkhouser Vegosen Liebman & Dunn Ltd. v. The Craft Beer Attorney, APC, and Consolidated Matters, Opposition Nos. 91227647 (parent), 91227650, 91227651, 91227673, 91227681, 91227689, 91227691, 91227703, 91227705, 91227706, 91227783

To: Winters, Elizabeth

Cc: karen@craftbeerattorney.com; grace@fadelaw.com; thfling@rossman.com; chris.mendler@ay-rdison.com; levin.crosby@ay-rdison.com; cole.carlson@ay-rdison.com; jrutman@fsh.com; trademarks@wardandsmith.com; trademarks@e-law.com; dan.christopherson@e-law.com; barry@petkandtshel.com; haw@petkandtshel.com; d-winter@windel.com; ipak@windel.com; PDR TM Enforcement

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You replied to this message on 8/16/2017 5:06 PM.

Dear Ms. Winters:

We are counsel in these consolidated proceedings for Opposer Davis Wright Tremaine LLP. We write to request an inter parties telephone conference to address multiple deficiencies in Applicant's responses and objections to Opposers' written discovery. In addition to copying Applicant's counsel of record, Ms. Karen Hawkes, we are copying counsel of record for all Opposers.

As you may recall, the Board held a call on July 25, 2017 to address a dispute between the parties regarding the scheduling of Applicant's deposition. After the call, the Board extended the discovery period until September 4, 2017 (for opposers only) based in part on the claim of Applicant's principal, Landace Moon, that she was unavailable to be deposed until that date due to "professional commitments" and a prearranged vacation.

Prior to the July 25 call, Opposers had also engaged in a good faith effort to meet and confer with Applicant's counsel regarding multiple deficiencies in Applicant's responses to Opposers' written discovery. On July 24, Ms. Hawkes indicated that Applicant would supplement its responses to address Opposers' concerns in full (to the extent the requested documents/information were within Applicant's possession, custody or control) and that she anticipated servicing supplemental responses by Friday, July 28. However, after the Board extended discovery for Opposer, Applicant reversed course. Rather than supplement Applicant's responses on July 28, Ms. Hawkes circulated an email reasserting substantive objections to many of Opposers' requests. For those limited requests where Applicant indicated supplemental responses would be provided, Ms. Hawkes stated, "Applicant will provide its amended responses where indicated early next week."

To date, no supplemental responses have been provided and Opposers' attempts to meet and confer on the failure to provide supplemental responses, as well as on Applicant's continued objections, has been met with evasion and further delay.

In the last exchange with Ms. Hawkes, Ms. Hawkes claimed that her first availability to meet and confer with Opposers would be Wednesday, August 23, 2017. When asked to confirm that she was available at 10:00 a.m. on August 23 to discuss the deficiencies in Applicant's responses to Opposers' written discovery, Ms. Hawkes responded: "Your intimate attachment to the written discovery is duly noted. Nonetheless, you will have ample opportunity to get the responses to all of your questions at Ms. Moon's deposition so you can relax, a bit. While I do enjoy your endless emails, I will unavailable this entire week to receive or review them." Ms. Hawkes has not responded to further emails despite receipts indicating that she has both received and read them.

Accordingly, Opposer believes any further attempts to meet and confer will be futile and will only result in additional delay in resolving the dispute and securing full discovery from Applicant in sufficient time to prepare for Applicant's September 8 deposition. Opposer requests the Board set an inter parties telephone conference to address the dispute for August 23, 2017 at 10:00 a.m. (Pacific) or such other time as convenient for the Board.

Very truly yours,

Steven E. Klein | Davis Wright Tremaine LLP
 1303 SW 9th Avenue, Suite 2400 | Portland, OR 97201
 Tel: (503) 774-0200 | Fax: (503) 276-6783
 Email: sklein@law.com | Website: www.dwt.com

Anthony (Bellevue) | Los Angeles | New York | Portland | San Francisco | Seattle | Shanghai (Washington, D.C.)

Thu 8/24/2017 3:42 PM

Karen Hawkes, Esq. <karen@craftbeerattorney.com>
 Re: Funkhouser Vegosen Liebman & Dunn Ltd. v. The Craft Beer Attorney, APC, and Consolidated Matters, Opposition Nos. 91227647 (parent), 91227650, 91227651, 91227673, 91227681, 91227689, 91227691, 91227703, 91227705, 91227706, 91227783

To: Winters, Elizabeth

Cc: Steven, Karen; trademarks; grace@fadelaw.com; thfling@rossman.com; chris.mendler@ay-rdison.com; levin.crosby@ay-rdison.com; cole.carlson@ay-rdison.com; jrutman@fsh.com; trademarks@wardandsmith.com; trademarks@e-law.com; dan.christopherson@e-law.com; barry@petkandtshel.com; haw@petkandtshel.com; d-winter@windel.com; ipak@windel.com; PDR TM Enforcement

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Dear Counsel and Ms. Winters:

Please contact Applicant directly as I am no longer affiliated with Craft Beer Attorney. Applicant's telephone number and email are the same so you do not need to contact Dinsmore to reach Ms. Moon. However, my email will likely be unavailable soon.

Best,

Karen Hawkes

Sent from my iPad

On Aug 24, 2017, at 10:38 AM, Winters, Elizabeth <Elizabeth.Winter@USPTO.GOV> wrote:

Dear Mr. Klein,

I have had the opportunity to review the documents you forwarded to me and am available for an inter parties conference call regarding the discovery dispute on Friday, 8/25 between 2:30-4:30 p.m. (EST) and any time on Monday, 8/28 or Tuesday, 8/29.

Please let me know what date and time would work for all parties concerned.

Cordially,

/Elizabeth J. Winter
 Interlocutory Attorney
 Trademark Trial and Appeal Board
 United States Patent and Trademark Office
elizabeth.winter@uspto.gov
 Phone: 571-272-9240
 Fax: 571-273-9240

<image001.png>