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Filing date: **02/15/2017**

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

Proceeding	91228850
Party	Plaintiff Lacoste Alligator S.A.
Correspondence Address	DAVID EHRLICH FROSS ZELNICK LEHRMAN & ZISSU PC 866 UNITED NATIONS PLAZA NEW YORK, NY 10017 UNITED STATES ehrllich-docket@fzlj.com
Submission	Other Motions/Papers
Filer's Name	Emily Weiss
Filer's e-mail	rlehv@fzlj.com, eweiss@fzlj.com
Signature	/Emily Weiss/
Date	02/15/2017
Attachments	Motion to Compel Initial Disclosures .PDF(123505 bytes )

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

LACOSTE ALLIGATOR S.A.,

Opposer,

v.

RICH C. YOUNG,

Applicant.

Opposition No. 91228850

**OPPOSER’S MOTION TO COMPEL INITIAL DISCLOSURES**

Pursuant to Rule 2.120(f) of the Trademark Rules of Practice and Rule 37(a) of the Federal Rules of Civil Procedure, Opposer Lacoste Alligator S.A. (“Opposer”) hereby moves for an order compelling Applicant Rich C. Young (“Applicant”) to make initial disclosures as required under Rule 2.120(a)(2) of the Trademark Rules of Practice and Rule 26(a)(1) of the Federal Rules of Civil Procedure, and for other appropriate sanctions.

On November 16, 2016, the Board discharged Applicant’s “technical default” and reset the dates in this opposition proceeding. (Dkt. No. 8.) Under the November 16 order, the parties’ initial disclosures were due by no later than January 16, 2017.<sup>1</sup> (*Id.*) Opposer served its initial disclosures by the deadline, but Applicant did not. (Declaration of Emily Weiss in Support of Opposer’s Motion to Compel Initial Disclosures (“Weiss Decl.”) ¶ 3.)

Nearly a month has elapsed since the January deadline, but Applicant still has not served his initial disclosures, despite Opposer’s several requests for Applicant to do so. (*Id.* ¶¶ 4-10 & Exs. A-B, D.) Applicant has not explained why he did not serve his initial disclosures by the

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<sup>1</sup> Because January 16, 2017 was a federal holiday, the deadline was pushed to January 17, 2017. 37 C.F.R. § 2.196.

deadline, nor has he provided Opposer with a date on which he will serve them. (*Id.* ¶ 10.) Applicant's only response to Opposer's communications was an email stating that he "requested for 6 month extension for a response your office's letter in couple weeks ago online method." (*Id.* ¶ 6 & Ex. C.) After counsel for Opposer requested that Applicant clarify what he meant, Applicant emailed Opposer's counsel a Voluntary Amendment Form that Applicant had filed with the United States Patent and Trademark Office ("USPTO"), in which Applicant wrote "applicant serial #86834508 request to extension 6 months for response the opposer motion action." (*Id.* ¶¶ 7-8 & Exs. D-E.) Applicant has not provided Opposer's counsel with any additional information on what relief he is seeking in the Voluntary Amendment Form that he filed with the USPTO. (*Id.* ¶ 9.) Moreover, Applicant has not filed any request for relief with the Board. (*Id.*)

Applicant has no excuse for his failure to comply with Trademark Rule of Practice 2.120(a)(2) and the Board's November 16 order. The Board therefore should grant this motion and order Applicant to make the required initial disclosures.

#### **CERTIFICATION OF COUNSEL**

Pursuant to Trademark Rule of Practice 2.120(f), this motion is made following repeated good faith attempts by counsel for Opposer to resolve the issues presented in this motion. In particular, counsel for Opposer emailed Applicant several times, informing Applicant that the deadline to serve initial disclosures had passed and requesting that Applicant immediately serve his initial disclosures. (*Id.* ¶¶ 4-10 & Exs. A-B, D.) As set forth above, Applicant's only response to these communications was a vague email and a filing with the USPTO, but not the Board. Opposer does not believe that further attempts to contact Applicant are likely to prove fruitful. (*Id.* ¶ 11.)



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LACOSTE ALLIGATOR S.A.,

Opposer,

v.

RICH C. YOUNG,

Applicant.

Opposition No. 91228850

**DECLARATION OF EMILY WEISS IN SUPPORT OF  
OPPOSER'S MOTION TO COMPEL INITIAL DISCLOSURES**

I, Emily Weiss, hereby declare under penalty of perjury:

1. I am an associate at Fross Zelnick Lehrman & Zissu, P.C., attorneys for Opposer Lacoste Alligator S.A. ("Opposer") in the above-captioned opposition proceeding. I submit this declaration in support of Opposer's Motion to Compel Initial Disclosures. I make this declaration based on personal knowledge of the facts and circumstances set forth herein.

2. Pursuant to the Trademark Trial and Appeal Board's November 16, 2016 order in this proceeding, the parties were required to make initial disclosures by January 16, 2017. (Dkt. No. 8.) Because January 16, 2017 was a federal holiday, the deadline was extended to January 17, 2017. 37 C.F.R. § 2.196.

3. Opposer served its initial disclosures on the January 17 deadline, but Applicant Rich C. Young ("Applicant") did not.

4. On February 8, 2017, I sent an email to Applicant, informing him that we had not yet received his initial disclosures and requesting that he serve them by the end of the week. A

true and correct copy of my February 8 email is attached hereto as **Exhibit A**. I did not receive any response to my February 8 email.

5. On the morning of February 13, 2017, I sent Applicant a second email concerning Applicant's overdue initial disclosures, advising that if Applicant did not serve his initial disclosures by the end of the day, Opposer would be forced to file a motion to compel with the Board. A true and correct copy of my February 13 email is attached hereto as **Exhibit B**.

6. Applicant responded to my February 13 email later that same day. He wrote that he had "requested for 6 month extension for a response your office's letter in couple weeks ago online method." A true and correct copy of Applicant's response is attached hereto as **Exhibit C**.

7. I immediately responded to Applicant's email, advising him that I was unclear what extension request he was referring to and further advising him that we had not been served with a copy of any such request. I asked Applicant to provide us with copies of any documents that he had filed with the Board. I also noted in my response that the Board's November 16 order remained in effect and therefore Applicant's initial disclosures were still overdue. I further informed Applicant that Opposer's deadline to file a motion to compel initial disclosures was February 15, 2017, and therefore if we did not receive his initial disclosures by the end of the day, we would be forced to move to compel. A true and correct copy of my email to Applicant is attached hereto as **Exhibit D**.

8. Later that same day, Applicant forwarded me a Voluntary Amendment Form that he appears to have filed with the United States Patent and Trademark Office ("USPTO") through its Trademark Electronic Application System ("TEAS"). In the Voluntary Amendment Form, Applicant wrote "applicant serial #86834508 request to extension 6 months for response the

opposer motion action.” A true and correct copy of Applicant’s Voluntary Amendment Form is attached hereto as **Exhibit E**.

9. Applicant has not explained what relief he is seeking in the Voluntary Amendment Form, how such relief relates to the deadline to serve initial disclosures, or why such relief was sought from the USPTO in a Voluntary Amendment Form. Moreover, based on my review of TTABVUE, Applicant has not filed any extension request with the Board.

10. To date, we still have not received Applicant’s overdue initial disclosures, and he has not explained why he did not serve his initial disclosures by the deadline, nor has he provided Opposer with a date on which he will serve them.

11. I do not believe that making further attempts to contact Applicant is likely to result in service of the overdue initial disclosures.

I declare under penalty of perjury that the foregoing is true and correct. Executed this 15th day of February 2017.

\_\_\_\_\_  
/Emily Weiss/  
Emily Weiss

**EXHIBIT A**



## Emily Weiss

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**From:** Emily Weiss  
**Sent:** Wednesday, February 08, 2017 2:57 PM  
**To:** 'rcy2001@gmail.com'  
**Cc:** Richard Lehv; Rhonda Fields  
**Subject:** Lacoste Alligator S.A. v. Rich C. Young, Opposition No. 91228850 (FZLZ Ref. LCA 1604853)

Dear Mr. Young,

We write regarding the above-referenced opposition proceeding. Under the Board's November 16, 2016 scheduling order, the deadline to serve initial disclosures was January 16, 2017. To date, we have not received your initial disclosures. Please send them to us by the end of this week.

Regards,  
Emily

Emily Weiss | [Fross Zelnick Lehrman & Zissu, P.C.](#)  
4 Times Square, 17th Floor | New York, New York 10036  
Tel: (212) 813-8188 | Fax: (212) 813-5901 | [www.frosszelnick.com](http://www.frosszelnick.com)

**EXHIBIT B**

## Emily Weiss

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**From:** Emily Weiss  
**Sent:** Monday, February 13, 2017 11:46 AM  
**To:** 'rcy2001@gmail.com'  
**Cc:** Richard Lehv; Rhonda Fields  
**Subject:** RE: Lacoste Alligator S.A. v. Rich C. Young, Opposition No. 91228850 (FZLZ Ref. LCA 1604853)

Dear Mr. Young,

We still have not received your initial disclosures. If we do not receive them **by the end of the day today (Monday, February 13, 2017)**, we will be forced to move to compel your initial disclosures with the Trademark Trial and Appeal Board.

Regards,  
Emily

Emily Weiss | [Fross Zelnick Lehrman & Zissu, P.C.](#)  
4 Times Square, 17th Floor | New York, New York 10036  
Tel: (212) 813-8188 | Fax: (212) 813-5901 | [www.frosszelnick.com](http://www.frosszelnick.com)

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**From:** Emily Weiss  
**Sent:** Wednesday, February 08, 2017 2:57 PM  
**To:** 'rcy2001@gmail.com' <rcy2001@gmail.com>  
**Cc:** Richard Lehv <rlehv@fzlz.com>; Rhonda Fields <rfields@fzlz.com>  
**Subject:** Lacoste Alligator S.A. v. Rich C. Young, Opposition No. 91228850 (FZLZ Ref. LCA 1604853)

Dear Mr. Young,

We write regarding the above-referenced opposition proceeding. Under the Board's November 16, 2016 scheduling order, the deadline to serve initial disclosures was January 16, 2017. To date, we have not received your initial disclosures. Please send them to us by the end of this week.

Regards,  
Emily

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Tel: (212) 813-8188 | Fax: (212) 813-5901 | [www.frosszelnick.com](http://www.frosszelnick.com)

**EXHIBIT C**

## Emily Weiss

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**From:** Rich Young <rcy2001@gmail.com>  
**Sent:** Monday, February 13, 2017 1:00 PM  
**To:** Emily Weiss  
**Subject:** Re: Lacoste Alligator S.A. v. Rich C. Young, Opposition No. 91228850 (FZLZ Ref. LCA 1604853)

Dear Sir,

I have been requested for 6 month extension for a response your office's letter in couple weeks ago online method.

Thank You  
Rich Young

On Tue, Feb 14, 2017 at 12:45 AM, Emily Weiss <[eweiss@fzlz.com](mailto:eweiss@fzlz.com)> wrote:

Dear Mr. Young,

We still have not received your initial disclosures. If we do not receive them **by the end of the day today (Monday, February 13, 2017)**, we will be forced to move to compel your initial disclosures with the Trademark Trial and Appeal Board.

Regards,

Emily

Emily Weiss | [Fross Zelnick Lehrman & Zissu, P.C.](#)

4 Times Square, 17th Floor | New York, New York 10036

Tel: [\(212\) 813-8188](tel:(212)813-8188) | Fax: [\(212\) 813-5901](tel:(212)813-5901) | [www.frosszelnick.com](http://www.frosszelnick.com)

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**From:** Emily Weiss  
**Sent:** Wednesday, February 08, 2017 2:57 PM  
**To:** 'rcy2001@gmail.com' <[rcy2001@gmail.com](mailto:rcy2001@gmail.com)>  
**Cc:** Richard Lehv <[rlehv@fzlz.com](mailto:rlehv@fzlz.com)>; Rhonda Fields <[rfields@fzlz.com](mailto:rfields@fzlz.com)>  
**Subject:** Lacoste Alligator S.A. v. Rich C. Young, Opposition No. 91228850 (FZLZ Ref. LCA 1604853)

Dear Mr. Young,

We write regarding the above-referenced opposition proceeding. Under the Board's November 16, 2016 scheduling order, the deadline to serve initial disclosures was January 16, 2017. To date, we have not received your initial disclosures. Please send them to us by the end of this week.

Regards,

Emily

Emily Weiss | [Fross Zelnick Lehrman & Zissu, P.C.](#)

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**EXHIBIT D**

## Emily Weiss

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**From:** Emily Weiss  
**Sent:** Monday, February 13, 2017 1:17 PM  
**To:** 'Rich Young'  
**Cc:** Richard Lehv; Rhonda Fields  
**Subject:** RE: Lacoste Alligator S.A. v. Rich C. Young, Opposition No. 91228850 (FZLZ Ref. LCA 1604853)

Dear Mr. Young,

I am not sure what you are referencing in your email below. To the extent you filed anything with the Trademark Trial and Appeal Board, we were not provided a service copy and nothing appears on TTABVue. Please forward us any documents that you have filed with the Board.

In any event, the Board's November 16, 2016 scheduling order remains in effect. Under that order, the deadline to serve initial disclosures was January 16, 2017, and we still have not received your initial disclosures. Our deadline to file a motion to compel initial disclosures is Wednesday, so unless we receive your initial disclosures by the end of the day, we will be forced to move to compel.

Regards,  
Emily

Emily Weiss | [Fross Zelnick Lehrman & Zissu, P.C.](#)  
4 Times Square, 17th Floor | New York, New York 10036  
Tel: (212) 813-8188 | Fax: (212) 813-5901 | [www.frosszelnick.com](http://www.frosszelnick.com)

**From:** Rich Young [mailto:rcy2001@gmail.com]  
**Sent:** Monday, February 13, 2017 1:00 PM  
**To:** Emily Weiss <eweiss@fzlz.com>  
**Subject:** Re: Lacoste Alligator S.A. v. Rich C. Young, Opposition No. 91228850 (FZLZ Ref. LCA 1604853)

Dear Sir,  
I have been requested for 6 month extension for a response your office's letter in couple weeks ago online method.  
Thank You  
Rich Young

On Tue, Feb 14, 2017 at 12:45 AM, Emily Weiss <[eweiss@fzlz.com](mailto:eweiss@fzlz.com)> wrote:

Dear Mr. Young,

We still have not received your initial disclosures. If we do not receive them **by the end of the day today (Monday, February 13, 2017)**, we will be forced to move to compel your initial disclosures with the Trademark Trial and Appeal Board.



Regards,

Emily

Emily Weiss | [Fross Zelnick Lehrman & Zissu, P.C.](#)

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**From:** Emily Weiss

**Sent:** Wednesday, February 08, 2017 2:57 PM

**To:** '[rcy2001@gmail.com](mailto:rcy2001@gmail.com)' <[rcy2001@gmail.com](mailto:rcy2001@gmail.com)>

**Cc:** Richard Lehv <[rlehv@fzlz.com](mailto:rlehv@fzlz.com)>; Rhonda Fields <[rfields@fzlz.com](mailto:rfields@fzlz.com)>

**Subject:** Lacoste Alligator S.A. v. Rich C. Young, Opposition No. 91228850 (FZLZ Ref. LCA 1604853)

Dear Mr. Young,

We write regarding the above-referenced opposition proceeding. Under the Board's November 16, 2016 scheduling order, the deadline to serve initial disclosures was January 16, 2017. To date, we have not received your initial disclosures. Please send them to us by the end of this week.

Regards,

Emily

Emily Weiss | [Fross Zelnick Lehrman & Zissu, P.C.](#)

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**EXHIBIT E**

## Emily Weiss

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**From:** Rich Young <rcy2001@gmail.com>  
**Sent:** Monday, February 13, 2017 10:38 PM  
**To:** Emily Weiss  
**Subject:** Fwd: Serial number 86834508: Received Your Voluntary Amendment Form

----- Forwarded message -----

From: <[TEAS@uspto.gov](mailto:TEAS@uspto.gov)>  
Date: Tue, Feb 14, 2017 at 11:34 AM  
Subject: Serial number 86834508: Received Your Voluntary Amendment Form  
To: [rcy2001@gmail.com](mailto:rcy2001@gmail.com)

We have received your Voluntary Amendment Form Filing below.

To the Commissioner for Trademarks:  
Application serial no. **86834508** CROCODYS USA (Stylized and/or with Design, see <https://tmng-al.uspto.gov/resting2/api/img/86834508/large>) has been amended as follows:

### **ADDITIONAL STATEMENTS**

#### **Miscellaneous Statement**

applicant serial #86834508 request to extension 6 months for response the opposer motion action 1 [mis-9640157137-20170213222620700353\_.\_trade\_oppo\_Serial\_86834508\_\_2-12-2017.pdf ]

#### **Voluntary Amendment Signature**

Signature: /Rich Young/ Date: 02/13/2017  
Signatory's Name: Rich Young  
Signatory's Position: owner

Signatory's Phone Number: [6262898822](tel:6262898822)

The signatory has confirmed that he/she is not represented by either an authorized attorney or Canadian attorney/agent, and that he/she is either: (1) the applicant ; or (2) a person(s) with legal authority to bind the applicant; and if an authorized U.S. attorney or Canadian attorney/agent previously represented him/her in this matter, either he/she has filed a signed revocation of power of attorney with the USPTO or the USPTO has granted the request of his/her prior representative to withdraw.

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Thank you,

The TEAS support team  
Mon Feb 13 22:34:05 EST 2017  
STAMP: USPTO/PRA-96.40.157.137-20170213223405085670-86834508-580a7b087493421c959d1269f6638bc579618e8e2881fa1340b8b86749418b2e-N/A-N/A-20170213222620700353

**CERTIFICATE OF SERVICE**

The undersigned certifies that on this 15th day of February 2017, I caused a true and correct copy of the foregoing **Opposer's Motion to Compel Initial Disclosures** and **Declaration of Emily Weiss in Support of Opposer's Motion to Compel Initial Disclosures** to be served by email to Applicant at the email address rcy2001@gmail.com.

\_\_\_\_\_  
/Emily Weiss/

Emily Weiss