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ESTTA Tracking number: **ESTTA961037**

Filing date: **03/18/2019**

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

Proceeding	91233646
Party	Defendant Hi-Tech Pharmaceuticals, Inc.
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Submission	Motion to Compel Discovery or Disclosure
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Date	03/18/2019
Attachments	Hi-Tech Motion to Compel KBI Responses - 03182019.pdf(1874619 bytes)

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

KOBE, INC.,	)	
	)	
Opposer,	)	Opposition No. 91233646
	)	
v.	)	Application Serial No. 86673256
	)	Mark: BLACK MAMBA HYPERRUSH
HI-TECH PHARMACEUTICALS, INC.	)	
	)	
Applicant.	)	
	)	

APPLICANT HI-TECH PHARMACEUTICALS, INC.'S MOTION TO COMPEL

Applicant Hi-Tech Pharmaceuticals, Inc., in accordance with TBMP § 411 and 523 and 37 CFR §2.120, hereby requests that the Board order Opposer Kobe, Inc. to comply with its discovery obligations by 1) providing verifications for Opposer's Responses and Supplemental Responses to Applicant's First Set of Interrogatories, 2) providing verified amended responses to Applicant's First Set of Interrogatories, 3) providing amended responses to Applicant's First Requests for Production, and 4) serving a full and complete document production in response to Applicant's First Requests for Production Nos. 2, 3, 4, 5, 8, 9 and 11. In support of this Motion, Applicant states as follows:

INTRODUCTION

Opposer KBI has refused to provide basic information supporting the claims made in its Opposition, and has yet to produce ***any*** documents responsive to Applicant's First Requests for Production. Opposer guards directly relevant and integral evidence from discovery through inapplicable and unreasoned objections, coupled with evasive or incomplete responses. Opposer's refusal to meaningfully participate in the discovery process is unacceptable, and an order compelling Opposer's production of the plainly discoverable material is necessary.

FACTUAL BACKGROUND

Applicant served its First Set of Interrogatories and First Requests for Production to Opposer on April 3, 2018. Exhibits A and B, respectively. On May 2, 2018, counsel for Opposer requested its deadline to respond be extended to May 14, 2018. Applicant's counsel consented. Exhibit C. On May 21, 2018, Applicant's counsel inquired as to the status of Opposer's overdue responses, to which Opposer's counsel responded, "we should have the responses to you shortly." Exhibit D. Opposer had yet to respond to Applicant's requests on June 22, 2018, when the parties agreed to suspend the Opposition for settlement negotiations.

Settlement negotiations between the Parties ended on October 3, 2018, and the discovery period was set to expire on October 27, 2018. Applicant had yet to receive responses to its First Set of Interrogatories or First Requests for Production by October 8, 2017 and requested Opposer's consent to a ninety-day extension of the discovery period. Counsel for Applicant sent two follow-up requests, but never received a definitive response. Exhibit E. Applicant filed a Motion to Extend the discovery period without consent on October 24, 2018.

On November 6, 2018, Applicant's counsel inquired as to the date upon which Opposer would serve its overdue responses to Applicant's initial discovery requests. Applicant's counsel indicated a Motion to Compel would be filed absent a timely response. Exhibit F. Thereafter, counsel for the parties spoke over the phone and Opposer's counsel expressed an intention to object to a significant portion of Applicant's discovery requests. With this caveat, counsel indicated responses to Applicants' First Interrogatories would be served on November 16, 2018. Counsel declined to provide a date for serving responses to Applicant's First Requests for Production and declined to consent to Applicant's then-pending motion for extension of the discovery period, but assured he would email Applicant's counsel on November 12, 2018 with more information.

Applicant's counsel again mentioned filing a Motion to Compel Opposer's responses. *See* Declaration of Jessica H. Leach, Exhibit G.

Absent any further correspondence from Opposer's counsel, Applicant filed a Motion to Compel full and complete responses to Applicants' First Set of Interrogatories and First Requests for Production on November 14, 2018. At the time of the filing, Applicant's unconsented Motion for Extension of the discovery period was still pending.

On November 16, 2018, Opposer served ***unverified*** Responses to Applicant's First Set of Interrogatories. Exhibit H. On November 20, 2018, Opposer served responses to Applicant's First Requests for Production of Documents. Exhibit I. However, Opposer did not product ***any*** documents responsive to the requests propounded by Applicant, instead providing:

- Letter of Protest Memorandum compiled by the examining attorney for Applicant's BLACK MAMBA HYPERRUSH trademark;
- Applicant's Trademark Assignment for BLACK MAMBA HYPERRUSH;
- Screenshots of Public Notification on FDA's website concerning a counterfeit BLACK MAMBA HYPERRUSH product; and
- Article comparing a counterfeit BLACK MAMBA HYPERRUSH product to a competing supplement named PHENTASLIM.

That same day, Opposer filed a response brief arguing Applicant's Motion to Compel was moot. On December 10, 2018, Applicant replied in support of its Motion to Compel by outlining the deficiencies in Opposer's responses and production, and argued Opposer had yet to meaningfully respond to Applicant's discovery requests.

One week later, the Board denied Applicant's Motion to Compel without prejudice, noting Opposer's responses "consist largely of objections" but reasoning, "[F]airness dictates that those newly alleged deficiencies by raised, if at all, in a new motion to compel after the parties have made a good faith effort to resolve their discovery dispute, reducing the number of discovery requests in dispute to a reasonable number."

Thereafter, counsel for Applicant sent Opposer a deficiency letter reiterating the deficiencies outlined in its reply brief and demanding that Opposer withdraw its previous objections, fully amend its responses, and supplement its production by February 6, 2019. Exhibit J. Counsel for Opposer requested this deadline be extended to February 15, 2019, to which Applicant's counsel agreed. Exhibit K.

On February 15, 2019, Opposer propounded ***unverified*** Supplemental Responses to Applicant's First Interrogatories and two additional files: a table of website links to "Official Twitter Accounts" including references to "#BlackMamba" along with a TSDR-generated report for Opposer's BLACK MAMBA trademark at Serial No. 87021141. A copy of Opposer's Supplemental Responses to Applicant's First Set of Interrogatories is attached hereto as Exhibit L. Opposer did not supplement or amend its responses to Applicant's First Requests for Production.

On March 4, 2019, after thoroughly evaluating Opposer's unverified Supplemental Responses, counsel for Applicant contacted Opposer's counsel, stating:

> KBI's supplemental responses to Hi-Tech's First Interrogatories 4, 19, 21, 26, and 28 contain objections and then provide some responsive information "further to" those objections. Given the information provided, Hi-Tech is currently operating with the understanding that you are not withholding anything pursuant to those objections.
>
> Particularly, with respect to Interrogatory No. 4, KBI provides a long list of objections before ultimately indicating that neither KBI nor Kobe Bryant have sold products bearing the term "BLACK MAMBA". Given the lack of substantive information provided herein, and KBI's responses without objection to Hi-Tech's Interrogatories 5-15, Hi-Tech understands KBI's response to mean that KBI has provided all responsive information it possesses respecting Interrogatory No. 4, and does not possess any information responsive to Interrogatories 5-15.
>
> If our understanding is incorrect, and KBI is withholding information responsive to Interrogatories 4-15, 19, 21, 26, or 28, please advise immediately.

Exhibit M hereto. As counsel for Opposer has yet to respond to the above correspondence as of the date of this filing, Applicant remains under the impression that information has not been

withheld pursuant to objections asserted in response to Applicant's First Set of Interrogatories Nos. 4 – 15, 19, 21, 26 or 28 herein.

On March 8, 2019, counsel for Applicant again contacted counsel for Opposer regarding the deficiencies in Opposer's responses to Applicant's First Set of Interrogatories and First Requests for Production, stating:

> Unfortunately, it seems another Motion to Compel KBI's responses to Hi-Tech's first requests will be necessary. KBI's responses to Hi-Tech's First Interrogatories 1-3, 22-23, and 30 are insufficient. Additionally, KBI has failed to supplement its responses to Hi-Tech's first requests for production, leaving Hi-Tech unable to determine which request each document is intended to respond to, and which requests remain unfulfilled.
>
> Given the lack of substantive responses to its first set of requests, Hi-Tech has been unable to determine whether follow-up requests are necessary. A 30-day extension of the discovery period is not going to be sufficient. Please let me know if you will consent to 90 days.

Exhibit N. Counsel for Opposer responded by consenting to the 90-day extension, but did not indicate any intention to further supplement or amend Opposer's responses.

ARGUMENT AND CITATION OF AUTHORITY

Applicant is unable to meaningfully conduct depositions, issue follow-up discovery requests, move for summary judgment, or prepare for trial until Opposer complies with its outstanding discovery obligations. Despite the good-faith efforts of Applicant's counsel to amicably gain compliance, Opposer has propounded unverified, incomplete, and evasive responses to Applicant's discovery requests and withholds discoverable information and documents based on numerous, inappropriate objections. Opposer has ignored Applicant's attempts to resolve these discovery disputes—initially agreeing to supplement its responses, only to provide rephrased objections and equally unresponsive Supplemental Responses to Applicant's First Set of Interrogatories weeks later, along with a TSDR-generated report and a table of weblinks to Twitter pages. Thus, the intervention of this Board is required.

I. Opposer Asserts Numerous Inappropriate Objections.

Pursuant to TBMP § 405.04(b), "[t]he burden of persuasion is on the objecting party to show that an interrogatory or part thereof should not be answered." Opposer fails to meet this burden in its objections to Applicant's First Set of Interrogatories Nos. 1, 2, 3, 20, 22, 23, 26, 30 and Applicant's First Requests for Production Nos. 2, 3, 4, 5, 8, 9, 11. Rather, Opposer asserts numerous unfounded objections in a clear attempt to improperly narrow and steer the course of discovery away from the production of the materials most relevant to Applicant's position in consolidated Oppositions Nos. 91233646 and 91240032.

A. Opposer's Unfounded Objections Based on Relevance

Opposer attempts to unilaterally narrow the scope of Applicant's discovery by objecting that the information or documents sought are irrelevant or "not related to" Opposer's claims, and therefore "have no bearing" on the Opposition. Opposer's relevance objections are unfounded and inappropriate, as Opposer "may not, by limiting its own discovery and/or presentation of evidence on the case, thereby restrict [Applicant]'s discovery in any way." TBMP § 402.01. *See also Crane Co. v. Shimano Industrial Co., Ltd*. 184 USPQD 691 (TTAB 1975) (rejecting objection that requests did not address the issue of likelihood of confusion and thus served no useful purpose, finding parties "may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action").

B. Opposer's Improper Lists of General and Unreasoned Objections

Opposer asserts lists of unreasoned objections, to include "overly broad, unduly burdensome, vague, ambiguous, harassing and not reasonably calculated to the discovery of admissible evidence" throughout its responses to Applicant's discovery requests. Opposer's general objections are inappropriately asserted, as the Board requires that objections to discovery requests be stated with specificity. *Del Taco LLC v. Ziebarth Holdings, LLC* at Opposition No.

91235706 (TTAB 2018) quoting *Medtronic, Inc. v. Pacesetter Systems, Inc.* 222 USPQ 80, 83 (TTAB 1984) ("It is incumbent upon a party who has been served with interrogatories to respond by articulating his objections (with particularity) to those interrogatories which he believes to be objectionable…") Opposer should be compelled to provide full responses to Applicant's requests.

C. Opposer's Inaccurate "Public[ly] Available" Objections

Opposer objects to several of Applicant's requests on the basis that information or documentation sought is "not proportional to the needs of the case because the requesting party has equal/similar access to relevant information as it is publically available." Opposer argues Applicant has equal access to the documents requested because a "brief internet search easily reveals" documents fitting Applicant's requests. However, Applicant has never requested Opposer regurgitate each of the results produced through a "brief internet search." Rather, Applicant has requested all documents in the possession, custody or control of Opposer—an alleged licensee of Kobe Bryant, "authorized by Kobe to use and defend Kobe's rights in his name, likeness, and trademarks." Opposition at ¶ 5.

II. Applicant Requests Plainly Discoverable Information and Documents.

Applicant has requested the production of information and documents supporting claims made in the Opposition. Applicant is entitled to discover the information requested and thereby avoid unfair surprise at trial.

A. Requests Concerning Kobe Bryant's Alleged Nickname

Applicant's research reflects Mr. Bryant's inspiration for his alleged nickname was the "black mamba" species of snake, which was also the inspiration for Applicant's BLACK MAMBA HYPERRUSH dietary supplement. Applicant's research has also revealed articles indicating Kobe Bryant became interested in the nickname "black mamba" upon watching the movie *Kill Bill*, wherein a character was nicknamed "Black Mamba" in reference to the black mamba species of

snake. It is Applicant's position that use of "black mamba" on its BLACK MAMBA HYPERRUSH dietary supplement points to the "black mamba" snake—which is depicted in its labeling, as reflected in Applicant's trademark application at Serial No. 87544187—rather than Kobe Bryant, who seemingly has no connection to the dietary supplement industry whatsoever.

Opposer asserts relevance objections, as well as unreasoned lists of objections in response to Applicant's discovery requests concerning the origin, selection, or creation of Kobe Bryant's alleged nickname, ultimately reiterating its position that the name has become synonymous with Kobe Bryant. Yet, Applicant is not limited to discovering information that supports Opposer's claim that "black mamba" has become synonymous with Mr. Bryant. Rather, whether ***or not*** the term "black mamba" points uniquely and unmistakably to Kobe Bryant is the heart of the dispute in consolidated Opposition Nos. 91233646 and 91240032 and Applicant is entitled to discover information pertaining to its position that the term "black mamba" references a species of snake.

Thus, the following requests seek relevant, discoverable information and documents, and Opposer should be compelled to propound full and complete responses and production for each:

Applicant's First Set of Interrogatories:

1. Identify the origin of the term "black mamba."

2. Identify each person who participated in the selection of the nickname "black mamba."

3. Identify the process by which the nickname "black mamba" was chosen.[1]

Applicant's First Requests for Production:

2. All non-privileged documents and communications concerning the creation, selection, adoption, origin, and first use of the term 'black mamba.'"

3. All non-privileged documents, communications and recordings, to include video and audio recordings, containing statements made by Kobe Bryant

[1] Opposer has never objected to Applicant's Interrogatory No. 3, but instead responds by directing Applicant to "See Responses to Interrogatory Nos. 1 and 2." Yet, neither response referenced includes any substantive, responsive information.

> concerning the nickname "black mamba," Opposer's Marks, or the black mamba snake.[2]

Applicant is entitled to verified statements from Opposer as to its position on the foregoing topics, as well as any responsive documents Opposer possesses. As the information requested is relevant and discoverable, Opposer should be compelled to provide all identifying information in its possession.

B. Requests Concerning the Licensing and Use of Opposer's Marks

Opposer refuses to respond to discovery requests concerning its Opposition claims that "Opposer's Marks" have been used by "Opposer KBI ***and*** Kobe's other authorized business partners, sponsors and/or licensees (collectively "Licensees")" and asserts various, unfounded objections to include "irrelevant", "overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence" and assertions that the information or documents requested concerning Kobe Bryant's business relationships and associations are publicly available.

Opposer's objections are unfounded. Applicant's requests directly concern the subject matter of the Opposition—in several instances quoting claims made by Opposer verbatim—and seek documents in Opposer's possession. Applicant emphasizes it has never requested "all documents in existence" or "all publicly available documents" but rather seeks all responsive information and documentation possessed by Opposer, in an effort to avoid surprise at trial. Opposer's lists of unreasoned objections should not be considered.

[2] In addition to Opposer's list of unreasoned objections and relevance objection, Opposer objected that the word "concerning" is vague; however, the term was clearly defined in Applicant's First Requests for Production.

Applicant's First Set of Interrogatories and First Requests for Production defined "Opposer's Marks" to mean "Opposer's purported marks, as the term is used in ¶ 4 of the Opposition." The Opposition provides, in relevant part:

> Opposer KBI ***and*** Kobe's other authorized business partners, sponsors and/or licensees (collectively "Licensees"), have used Kobe's name, and likeness and the "Black Mamba" mark and variations thereof (collectively, "Opposer's Marks") in the United States in connection with… products related to sports, sports performance, athletics, fitness, athletic performance, and sports nutrition, including but not limited to Kobe's association with a sports nutrition drink known as "BodyArmor."

Opposition at ¶ 4, emphasis added.

Although blatantly inconsistent with its Opposition claims, Opposer's Supplemental Response to Applicant's Interrogatory No. 4 admits Opposer KBI has ***never*** used the term "BLACK MAMBA" on *any* product (Exhibit L). Thus, it can be deduced that Opposer intends to rely solely upon use by Kobe Bryant's "other authorized business partners, sponsors and/or licensees (collectively "Licensees")" in supporting its claim that Opposer's Marks have been used either in the dietary supplement industry, or on products "so closely related" to the dietary supplement industry, that consumers of dietary supplements would presume a connection to Kobe Bryant upon encountering Applicant's BLACK MAMBA HYPERRUSH dietary supplement.

Even more importantly, Opposer itself claims to be a licensee of Kobe Bryant, "authorized by Kobe to use and defend Kobe's rights in his name, likeness, and trademarks." Opposition at ¶5. Yet, Opposer has declined to provide a verified statement identifying any agreement(s) with Kobe Bryant concerning Kobe's name, and likeness and the "Black Mamba" mark and variations thereof—collectively defined by Opposer as "Opposer's Marks" in the Opposition, and similarly defined in Applicant's discovery requests. Whether Opposer is a licensee authorized to bring the present Opposition is relevant to the threshold issue of standing.

Therefore, Opposer should be compelled to provide full responses and production to the following discovery requests:

Applicant's First Set of Interrogatories:

20. Identify all agreements in which Kobe Bryant has licensed Opposer's Marks for use by any other party.

22. Identify all entities referenced in the Opposition, which have used Kobe's name and likeness and the "Black Mamba" mark and variations thereof… in the United States in connection with…the sale and licensing of…products related to sports nutrition. Opposition at ¶4.

23. Describe in detail Kobe Bryant's association with the sports nutrition drink known as "BodyArmor" referenced in the Opposition.

26. Describe in detail the ways in which Kobe Bryant is, or has ever been, involved in the dietary supplement industry.

Applicant's First Requests for Production:

4. All non-privileged documents and communications concerning the conveyance, grant, license, or assignment of any right, authorization, or consent to the use of Opposer's Marks.

5. All non-privileged documents and communications concerning goods or services sold by Kobe Bryant, KBI, or any other authorized business entity, bearing the term "BLACK MAMBA".

8. All documents and communications concerning the following allegations of the Opposition: "For many years, and long before June 24, 2015… Opposer KBI and Kobe's other authorized business partners, sponsors, and/or licensees… have used Kobe's name and likeness and the "Black Mamba" mark and variations thereof… in the United States in connection with… the sale and licensing of…products related to…sports nutrition, including but not limited to Kobe's association with a sports nutrition drink known as "BodyArmor." Opposition at ¶ 4.

9. All documents and communications concerning the allegation in the Opposition, "Kobe… is so well-known… in the Applicant's proposed class of goods." Opposition at ¶ 23.

Applicant is entitled to all information Opposer intends to use at trial to support its claims that the words "BLACK MAMBA" in Applicant's BLACK MAMBA HYPERRUSH dietary supplement point uniquely and unmistakably to Kobe Bryant. Opposer's Supplemental Response

to Applicant's Interrogatory No. 4 clearly indicates that Opposer intends to rely solely upon use by licensees to support this claim. Absent Opposer's substantive response to Applicant's Interrogatory No. 20, Applicant has no ability to subpoena the third-party licensees referenced for relevant information, and is instead left to awaiambush at trial. Opposer should not be permitted any surprises, and should be compelled to either produce all responsive information in its possession or be precluded from citing use of Opposer's Marks by licensees at trial.

C. Requests Concerning "BLACK MAMBA" Registrations

Opposer refuses to provide information or documentation concerning pre-existing registrations containing or comprised of the words BLACK MAMBA based on its standard list of objections, to include that the Principal Register is a public system to which Opposer and Applicant have equal access. Yet, the Principal Register does not offer the information or documentation requested by Applicant.

The Principal Register includes thirteen live registrations comprised of, or including, the words BLACK MAMBA. Applicant takes the position that its use of BLACK MAMBA HYPERRUSH on dietary supplements in International Class 005 is no more likely to result in confusion amongst consumers than any of the other pre-existing registrations on the Principal Register. Of particular importance, however, is a registration for ROGER BLACK MAMBA MAYWEATHER at U.S. Registration No. 4562869, for fitness-related goods and services.

Whether Kobe Bryant consented to registrations comprised of, or including, the term BLACK MAMBA in fields Applicant would contend are equally irrelevant to Kobe Bryant is relevant and discoverable. Opposer should be compelled to provide full responses to the following:

Applicant's First Set of Interrogatories:

30. Identify all registrations on the Principal Register that Kobe Bryant consented to, which include "BLACK MAMBA."

Applicant's First Requests for Production:

11: All documents and communications concerning Kobe Bryant's consent to registrations on the Principal Register that include the term "BLACK MAMBA."

REQUEST FOR RELIEF

Despite the good-faith efforts of Applicant's counsel, Opposer has propounded unsigned and evasive responses to Applicant's First Set of Interrogatories and has failed to produce a single document responsive to Applicant's First Requests for Production. Opposer has failed to assert valid legal bases for withholding the information and documents requested by Applicant, and should not be permitted to delay this proceeding any further. Applicant therefore requests this Board issue an order compelling Opposer to produce full and complete responses and production respecting Applicant's First Set of Interrogatories Nos. 1, 2, 3, 20, 22, 23, 26, 30 and Applicant's First Requests for Production Nos. 2, 3, 4, 5, 8, 9, 11.

Respectfully submitted this 18th day of March 2019,

/s/ Jessica H. Leach
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Attorney for Applicant, Hi-Tech Pharmaceuticals, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on this 18th day of March 2019 upon the Attorney of Record for Opposer Kobe, Inc., at the following email addresses of record: asaltz@saltzmatkov.com, kdemko@saltzmatkov.com, glauer@saltzmatkov.com

/s/ Jessica H. Leach
Jessica H. Leach, Esq.

EXHIBIT A

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

KOBE, INC.,	)	
	)	
Opposer,	)	
	)	
v.	)	In re Application Serial No. 86/673,256
	)	Opposition No. 91233646
HI-TECH PHARMACEUTICALS, INC.	)	
	)	
Applicant.	)	
	)	

APPLICANT HI-TECH PHARMACEUTICALS, INC.'S
FIRST SET OF INTERROGATORIES TO OPPOSER KOBE, INC.

Pursuant to TBMP § 405, Applicant Hi-Tech Pharmaceuticals, Inc. ("Hi-Tech") hereby requests that Opposer Kobe, Inc. ("KBI") answer in writing the interrogatories set forth below.

INSTRUCTIONS

A. **Time For Service of Responses.** KBI's written responses to Hi-Tech's Requests for Production must comply with TMBP § 405.04(a), which requires that responses to interrogatories be served within 30 days after the date of service.

B. **Nature of Responses.** KBI's written response to this request must comply with TMBP § 405.04(b), such that each interrogatory is answered separately and fully, in writing under oath, unless objected to. If an interrogatory is objected to, the reasons for objection must be stated in lieu of an answer.

DEFINITIONS

C. **Hi-Tech**. The term "Hi-Tech" refers to Applicant, Hi-Tech Pharmaceuticals, Inc.

D. **KBI**. The term "KBI" refers to Opposer, Kobe, Inc. and, where appropriate, all persons acting for KBI, or on its behalf.

E. **You, Your, Opposer.** The terms "you," "your," and "Opposer" refer to KBI.

F. **Kobe Bryant.** The term "Kobe Bryant" refers to the individual identified in ¶ 1 of the Opposition.

G. **Opposer's Marks.** The term "Opposer's Marks" shall mean Opposer's purported marks, as the term is used in ¶ 4 of the Opposition.

H. **Person.** The term "person" is defined as any natural person, or any association or business, legal, government or other entity.

I. **Opposition**. The term "Opposition" refers to KBI's Second Amended Notice of Opposition.

J. **Concerning/Concern(s)**. The terms "concerning" and "concern(s)" shall mean reflecting, evidencing, describing, constituting, relating to or referring to, whether directly or indirectly, partially or fully, to encompass the broadest possible meaning within TMBP § 402.

K. **Communication**. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise) verbally or in writing (including electronically).

L. **Document**. The term "document" is used in the broadest possible sense and includes without limitation any kind of written, recorded, or graphic matter, whether printed, electronic, recorded, or reproduced by any other mechanical process, or stored on paper, cards, tapes, film, recordings, electronic facsimile, computer storage devices or any other media, or written or produced by hand, including but not limited to agreements; communications, including intra company communications; correspondence; electronic mail; memoranda, including internal memoranda; contracts; reports; quotations; invoices; summaries; transcripts; reviews; analyses; studies; records; books; summaries, notes, or records of telephone conversations; summaries, notes, or records of conversations or interviews; summaries, notes, or records of meetings, conferences or communications; opinions; valuations; evaluations; forecasts; projections; appraisals; statistical statements; notes; ledgers; books of record; press releases; drafts of any document; working papers; marginal notations; journals; telephone records; work papers; drawings; specifications; desk calendars; appointment books; calendars; diaries; lists; tabulations; microfilm; computer disks; computer tapes; computer printouts; photocopies; slides; motion pictures; video tapes; audio tapes; electronic data; minutes of meetings; drawings; designs; or any other writings, including non identical copies of any of the foregoing.

M. **And, Or.** The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory all responses that might otherwise be construed to be outside of its scope.

INTERROGATORIES

1. Identify the origin of the term "black mamba."

2. Identify each person who participated in the selection of the nickname "black mamba."

3. Identify the process by which the nickname "black mamba" was chosen.

4. Identify every product sold by Kobe Bryant or KBI bearing the term "BLACK MAMBA".

5. Identify the persons most knowledgeable about each product identified in response to Interrogatory No. 4.

6. Provide the date of first use for each product identified in response to Interrogatory No. 4.

7. Identify the persons most knowledgeable about the facts stated in response to Interrogatory No. 6.

8. Identify the channels of trade used for every product identified in response to Interrogatory No. 4.

9. Identify the persons most knowledgeable about the sales and distribution of each product identified in response to Interrogatory No. 4.

10. Identify the persons most knowledgeable about the advertising and promotion of each product identified in response to Interrogatory No. 4.

11. For each product identified in response to Interrogatory No. 4, list by calendar year the expenditures that have been made on advertising and promotion of the product.

12. For each product identified in response to Interrogatory No. 4, identify the nature and title (if applicable) of the media in which all advertisements of the product have appeared, including the date and geographic scope (by city and state) of such advertisements.

13. For each product identified in response to Interrogatory No. 4, describe the target markets and characteristics of targeted consumers.

14. For each product identified in response to Interrogatory No. 4, identify major competitors in the market and list their competing products.

15. For each product identified in response to Interrogatory No. 4, identify the geographic area in which the product is offered.

16. Identify and describe any studies, tests, ratings, or surveys that have been conducted relating to consumer recognition of Opposer's Marks.

17. Describe in detail each known incident of actual confusion as to the existence of a relationship between Hi-Tech or Hi-Tech's products and Kobe Bryant or products associated with Kobe Bryant.

18. For each incident described in response to Interrogatory No. 17, identify persons with knowledge thereof.

19. Identify any communications received by KBI or Kobe Bryant that were intended for Hi-Tech.

20. Identify all agreements in which Kobe Bryant has licensed Opposer's marks for use by any other party.

21. Describe in detail all efforts made by KBI and/or Kobe Bryant to enforce against third parties, other than Hi-Tech, the rights claimed in Opposer's Marks.

22. Identify all entities referenced in the Opposition, which "have used Kobe's name and likeness and the "Black Mamba" mark and variations thereof... in the United States in connection with… the sale and licensing of… products related to… sports nutrition." Opposition at ¶ 4.

23. Describe in detail Kobe Bryant's association with the sports nutrition drink known as "BodyArmor," referenced in the Opposition. *Id.*

24. Describe in detail how "Kobe… is so well-known… in the Applicant's proposed class of goods." Opposition at ¶ 23.

25. Describe in detail any plans for future expansion of your use of Opposer's Marks to products or services in the dietary supplement industry.

26. Describe in detail the ways in which Kobe Bryant is, or has ever been, involved in the dietary supplement industry.

27. Identify all business entities authorized by Kobe Bryant to use Opposer's Marks.

28. Identify the date upon which the nickname "black mamba" was first used publicly as a reference to Kobe Bryant.

29. Identify all registrations on the Principal Register owned by KBI or Kobe Bryant, which consist of or include the term "BLACK MAMBA."

30. Identify all registrations on the Principal Register that Kobe Bryant consented to, which include "BLACK MAMBA."

31. Identify all persons you intend to or may use as an expert witness in this Opposition, and the facts or subject matter about which they are or would be expected to contribute.

By: */s/ Jessica H. Leach*
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Jessica@ArthurWLeach.com

Attorney for Applicant, Hi-Tech Pharmaceuticals, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on this 3rd day of April 2018 upon the Attorney of Record for Opposer Kobe, Inc., Matthew D. Matkov, at the following email addresses of record: mmatkov@saltzmatkov.com, pgalick@saltzmatkov.com.

/s/ Jessica H. Leach
Jessica H. Leach, Esq.

EXHIBIT B

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

KOBE, INC.,	)	
	)	
Opposer,	)	
	)	
v.	)	In re Application Serial No. 86/673,256
	)	Opposition No. 91233646
HI-TECH PHARMACEUTICALS, INC.	)	
	)	
Applicant.	)	
	)	

APPLICANT HI-TECH PHARMACEUTICALS, INC.'S FIRST REQUESTS FOR PRODUCTION OF DOCUMENTS TO OPPOSER KOBE, INC.

Pursuant to TBMP § 406, Applicant Hi-Tech Pharmaceuticals, Inc. ("Hi-Tech"), pursuant propounds to Opposer KBI, Inc. the following First Requests for Production of Documents.

INSTRUCTIONS

A. **Time For Service of Responses.** KBI's written responses to Hi-Tech's Requests for Production must comply with TMBP § 406.04(a), which requires that responses to requests for production be served within 30 days after the date of service.

B. **Nature of Responses.** KBI's written response to this request must comply with TMBP § 406.04(c), such that for any item or category of documents which is not subject to a stated objection, a proper response shall state whether or not there are responsive documents and, if there are responsive documents, whether they will be produced at a specified reasonable time for inspection or withheld on a claim of privilege. If copies are to be produced in lieu of inspection, the response must so state. If KBI objects to any Request for Production, KBI must state the reasons for objecting with specificity, as well as whether any responsive material is being withheld on the basis of that objection.

C. **Privilege Objections.** Pursuant to TMBP § 406.04(c), if KBI withholds responsive documents on the basis of a claim of privilege, KBI must "(i) expressly make the claim; and (ii) describe the nature of the documents, communications, or tangible things not produced or disclosed – and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim."

DEFINITIONS

D. **Hi-Tech**. The term "Hi-Tech" refers to Applicant, Hi-Tech Pharmaceuticals, Inc.

E. **KBI**. The term "KBI" refers to Opposer, Kobe, Inc. and, where appropriate, all persons acting for KBI, or on its behalf.

F. **You, Your, Opposer.** The terms "you," "your," and "Opposer" refer to KBI.

G. **Kobe Bryant.** The term "Kobe Bryant" refers to the individual identified in ¶ 1 of the Opposition.

H. **Opposer's Marks.** The term "Opposer's Marks" shall mean Opposer's purported marks, as the term is used in ¶ 4 of the Opposition.

I. **Person.** The term "person" is defined as any natural person, or any association or business, legal, government or other entity.

J. **Opposition**. The term "Opposition" refers to KBI's Second Amended Notice of Opposition, dated June 13, 201.

K. **Concerning/Concern(s)**. The terms "concerning" and "concern(s)" shall mean reflecting, evidencing, describing, constituting, relating to or referring to, whether directly or indirectly, partially or fully, to encompass the broadest possible meaning within TMBP § 402.

L. **Communication**. The term "communication" means the transmittal of information (in the form of facts, ideas, inquiries or otherwise) verbally or in writing (including electronically).

M. **Document**. The term "document" is used in the broadest possible sense and includes without limitation any kind of written, recorded, or graphic matter, whether printed, electronic, recorded, or reproduced by any other mechanical process, or stored on paper, cards, tapes, film, recordings, electronic facsimile, computer storage devices or any other media, or written or produced by hand, including but not limited to agreements; communications, including intra company communications; correspondence; electronic mail; memoranda, including internal memoranda; contracts; reports; quotations; invoices; summaries; transcripts; reviews; analyses; studies; records; books; summaries, notes, or records of telephone conversations; summaries, notes, or records of conversations or interviews; summaries, notes, or records of meetings, conferences or communications; opinions; valuations; evaluations; forecasts; projections; appraisals; statistical statements; notes; ledgers; books of record; press releases; drafts of any document; working papers; marginal notations; journals; telephone records; work papers; drawings; specifications; desk calendars; appointment books; calendars; diaries; lists;

tabulations; microfilm; computer disks; computer tapes; computer printouts; photocopies; slides; motion pictures; video tapes; audio tapes; electronic data; minutes of meetings; drawings; designs; or any other writings, including non identical copies of any of the foregoing.

N. **And, Or.** The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all responses that might otherwise be construed to be outside of its scope.

REQUESTS FOR PRODUCTION

1. All non-privileged documents and communications identified in response to Applicant's First Set of Interrogatories.

2. All non-privileged documents and communications concerning the creation, selection, adoption, origin, and first use of the term "black mamba."

3. All non-privileged documents, communications and recordings, to include video and audio recordings, containing statements made by Kobe Bryant concerning the nickname "black mamba," Opposer's Marks, or the black mamba snake.

4. All non-privileged documents and communications concerning the conveyance, grant, license, or assignment of any right, authorization, or consent to the use of Opposer's Marks.

5. All non-privileged documents and communications concerning goods or services sold by Kobe Bryant, KBI, or any other authorized business entity, bearing the term "BLACK MAMBA".

6. All non-privileged documents and communications concerning dietary or nutritional supplements sold by KBI or Kobe Bryant bearing the term "BLACK MAMBA", to include without limitation documents and communications concerning (a) specimens of labels, containers, wrappers, packaging, signs, catalogs, brochures or other materials used to advertise, promote, sell or otherwise commercialize the products, (b) the geographic areas where the goods

have been sold, (c) the channels of trade through which the products have been sold, (d) the length of time each product has been sold, marketed or promoted, (e) the yearly dollar and unit volume of sales to date, and projected future dollar and unit volume of sales, for each product, (f) the gross and net profits from sales of each product, and (g) the yearly cost of advertising, marketing and promoting each product.

7. All documents and communications concerning the type of customers to whom KBI and/or Kobe Bryant sells, markets, or promotes dietary or nutritional supplements bearing the term "BLACK MAMBA".

8. All documents and communications concerning the following allegations of the Opposition:

> For many years, and long before June 24, 2015… Opposer KBI and Kobe's other authorized business partners, sponsors, and/or licensees… have used Kobe's name and likeness and the "Black Mamba" mark and variations thereof… in the United States in connection with… the sale and licensing of…products related to…sports nutrition, including but not limited to Kobe's association with a sports nutrition drink known as "BodyArmor."

Opposition at ¶ 4.

9. All documents and communications concerning the allegation in the Opposition, "Kobe… is so well-known… in the Applicant's proposed class of goods." Opposition at ¶ 23.

10. All non-privileged documents and communications concerning plans of KBI or Kobe Bryant to conduct or expand business in the supplement industry.

11. All documents and communications concerning Kobe Bryant's consent to registrations on the Principal Register that include the term "BLACK MAMBA."

12. All documents and communications concerning any consumer perception surveys or research conducted by or on behalf of Kobe Bryant and/or KBI concerning (a) Kobe Bryant and/or KBI's use of the term "BLACK MAMBA", (b) any goods or services offered or sold by

Kobe Bryant and/or KBI in connection with the term "BLACK MAMBA", or (c) Hi-Tech's use of the mark BLACK MAMBA HYPERRUSH.

13. All documents and communications concerning any consumer confusion, belief, or lack thereof as to the existence of any relationship between (a) Hi-Tech and Kobe Bryant, (b) Hi-Tech's goods and Kobe Bryant, or (c) Hi-Tech's goods and any goods or services sold by Kobe Bryant or KBI.

14. The curriculum vitae of any person that you intend to use as an expert witness in this Opposition and any non-privileged reports, supporting documents, notes, drawings, photographs, writings, or communications by such person(s).

15. All non-privileged documents and communications, not otherwise responsive to the Requests above, which concern or reflect any involvement of Kobe Bryant in the supplement industry.

16. All documents and communications, not otherwise responsive to the Requests above, that you will or may offer as support for claims made in the Opposition.

By: */s/ Jessica H. Leach*

Jessica H. Leach, Esq.
The Law Office of Arthur W. Leach
5780 Windward Parkway, Suite 225
Alpharetta, Georgia 30005
Telephone: (678) 799-0474
Jessica@ArthurWLeach.com

Attorney for Applicant, Hi-Tech Pharmaceuticals, Inc.

CERTIFICATE OF SERVICE

I certify that a copy of the foregoing was served on this 3rd day of April 2018 upon the Attorney of Record for Opposer Kobe, Inc., Matthew D. Matkov, at the following email addresses of record: mmatkov@saltzmatkov.com, pgalick@saltzmatkov.com.

/s/ Jessica H. Leach
Jessica H. Leach, Esq.

EXHIBIT C

From: **Kevin Demko** kdemko@saltzmatkov.com
Subject: RE: TTAB Opposition No. 91233646
Date: May 2, 2018 at 2:00 PM
To: Jessica Leach Jessica@arthurwleach.com

KD

Hi Jessica,

According to my calendar my client's discovery responses are due tomorrow. Can I get an extension to May 14?

Thanks,
Kevin

Kevin M. Demko, Esquire
Saltz Matkov P.C.
998 Old Eagle School Road
Suite 1206
Wayne, PA 19087
Tel: (484) 318-7225
Fax: (484) 318-7248
kdemko@saltzmatkov.com
www.saltzmatkov.com

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From: **Jessica Leach** Jessica@arthurwleach.com
Subject: Re: TTAB Opposition No. 91233646
Date: May 2, 2018 at 2:02 PM
To: Kevin Demko kdemko@saltzmatkov.com

Yes, of course.

EXHIBIT D

From: **Jessica Leach** Jessica@arthurwleach.com
Subject: Re: TTAB Opposition No. 91233646
Date: May 21, 2018 at 4:43 PM
To: Matthew D. Matkov mmatkov@saltzmatkov.com, Kevin Demko kdemko@saltzmatkov.com
Bcc: Art Leach art@arthurwleach.com

Hello Counsel,

Will you consent to a 60-day extension of the discovery period in TTAB Opposition No. 91233646, as well as a 30-day extension of Hi-Tech's deadline for responding to KBI's discovery requests?

As our office has not yet received KBI's responses, I am assuming KBI needs an extension of time as well. Please let me know if there has been some mixup and the responses were sent.

Thank you,

Jessica

From: **Matthew Matkov** mmatkov@saltzmatkov.com
Subject: Re: TTAB Opposition No. 91233646
Date: May 22, 2018 at 3:24 PM
To: Jessica Leach Jessica@arthurwleach.com
Cc: Kevin Demko kdemko@saltzmatkov.com

MM

Thats fine. We may want to ask for 90 and 60 just in case the TTAB cuts it down. Let me know your thoughts.

Matthew D. Matkov, Esquire
Saltz Matkov P.C.
998 Old Eagle School Road
Suite 1206
Wayne, PA 19087
Tel: (484) 318-7225
Fax: (484) 318-7248
mmatkov@saltzmatkov.com
www.saltzmatkov.com

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From: **Jessica Leach** Jessica@arthurwleach.com
Subject: Re: TTAB Opposition No. 91233646
Date: May 22, 2018 at 4:42 PM
To: Matthew Matkov mmatkov@saltzmatkov.com
Cc: Kevin Demko kdemko@saltzmatkov.com

Good idea on the 90 days. Just to clarify - are you saying that KBI needs an extension of 60 days from the original deadline for responding to Hi-Tech's requests?

Thanks,

Jessica

From: **Matthew Matkov** mmatkov@saltzmatkov.com
Subject: Re: TTAB Opposition No. 91233646
Date: May 22, 2018 at 6:28 PM
To: Jessica Leach Jessica@arthurwleach.com
Cc: Kevin Demko kdemko@saltzmatkov.com

MM

No, we should have responses to you shortly. I don't think we will require 60 days on that.

Matthew D. Matkov, Esquire
Saltz Matkov P.C.
998 Old Eagle School Road
Suite 1206
Wayne, PA 19087
Tel: (484) 318-7225
Fax: (484) 318-7248
mmatkov@saltzmatkov.com
www.saltzmatkov.com

EXHIBIT E

From: **Jessica Leach** Jessica@arthurwleach.com
Subject: Re: TTAB Opposition No. 91233646
Date: October 8, 2018 at 4:52 PM
To: Matthew Matkov mmatkov@saltzmatkov.com
Cc: Kevin Demko kdemko@saltzmatkov.com, Peter Galick pgalick@saltzmatkov.com, asaltz@saltzmatkov.com, Gretchen Lauer glauer@saltzmatkov.com

---

Matthew,

Will you consent to a 90-day extension of the discovery period in Opposition No. 91233646?

Thanks,

Jessica

From: **Jessica Leach** Jessica@arthurwleach.com
Subject: Re: TTAB Opposition No. 91233646
Date: October 15, 2018 at 12:13 PM
To: Matthew Matkov mmatkov@saltzmatkov.com
Cc: Kevin Demko kdemko@saltzmatkov.com, Peter Galick pgalick@saltzmatkov.com, asaltz@saltzmatkov.com, Gretchen Lauer glauer@saltzmatkov.com

JL

Counsel,

Would you please respond to my email from last week requesting your consent to an extension of the discovery deadline in TTAB Opposition No. 91233646?

Thanks,

Jessica

From: **Kevin Demko** kdemko@saltzmatkov.com
Subject: RE: TTAB Opposition No. 91233646
Date: October 15, 2018 at 12:18 PM
To: Jessica Leach Jessica@arthurwleach.com
Cc: asaltz@saltzmatkov.com, Gretchen Lauer glauer@saltzmatkov.com

---

Jessica,

I apologize for the delay in response. Our client is currently out of the country. Do you think a suspension of proceedings for 60-90 days is more prudent?

Kevin

From: **Jessica Leach** Jessica@arthurwleach.com
Subject: Re: TTAB Opposition No. 91233646
Date: October 15, 2018 at 12:26 PM
To: Kevin Demko kdemko@saltzmatkov.com
Cc: asaltz@saltzmatkov.com, Gretchen Lauer glauer@saltzmatkov.com

---

Hi Kevin,

What would be our basis for requesting the suspension?

Thanks,

Jessica

From: **Jessica Leach** Jessica@arthurwleach.com
Subject: Fwd: TTAB Opposition No. 91233646
Date: October 17, 2018 at 7:59 AM
To: Kevin Demko kdemko@saltzmatkov.com, Matthew Matkov mmatkov@saltzmatkov.com
Cc: Gretchen Lauer glauer@saltzmatkov.com, asaltz@saltzmatkov.com

---

Counsel,

Would you please let me know if you will consent to a 90-day extension in Opposition No. 91233646?

Thank you,

Jessica

From: **Kevin Demko** kdemko@saltzmatkov.com
Subject: Re: TTAB Opposition No. 91233646
Date: October 17, 2018 at 8:01 AM
To: Jessica Leach Jessica@arthurwleach.com

I should have an answer for you today.

Sent from my iPhone

From: **Jessica Leach** Jessica@arthurwleach.com
Subject: Re: TTAB Opposition No. 91233646
Date: October 24, 2018 at 6:27 PM
To: Kevin Demko kdemko@saltzmatkov.com
Cc: asaltz@saltzmatkov.com, Gretchen Lauer glauer@saltzmatkov.com

---

Counsel,

Please find Hi-Tech's Motion to Extend Discovery attached.

Thanks,

Jessica

From: **Kevin Demko** kdemko@saltzmatkov.com
Subject: RE: TTAB Opposition No. 91233646
Date: October 25, 2018 at 9:59 AM
To: Jessica Leach Jessica@arthurwleach.com
Cc: asaltz@saltzmatkov.com, Gretchen Lauer glauer@saltzmatkov.com

Hi Jessica,

We have no objection to extending discovery, as long as we are continuing with only written discovery, which according to the notes in our file, was agreed upon between you and prior counsel.

If acceptable, the motion can be re-filed with consent.

Kevin

From: **Jessica Leach** Jessica@arthurwleach.com
Subject: Re: TTAB Opposition Nos. 91233646 and 91240032
Date: November 1, 2018 at 5:56 PM
To: Kevin Demko kdemko@saltzmatkov.com
Cc: asaltz@saltzmatkov.com, Gretchen Lauer glauer@saltzmatkov.com
Bcc: Arthur W. Leach art@arthurwleach.com

Kevin,

I cannot speak to your file. Of course we did not agree to this. KBI's opposition is based entirely on the supposed nickname of a third party. Hi-Tech has the right to depose said third party and forfeiting that right would not benefit Hi-Tech in any way.

I take your email to mean that KBI is going to oppose Hi-Tech's motion to extend the discovery period in Opposition No. 91233646 if I do not now agree to limit Hi-Tech to written discovery. If this is correct, it is unclear what you hope to accomplish, as plenty of time remains for discovery in the logo opposition. On that note, please 1) let me know whether your firm represents Kobe Bryant, 2) provide your availability for deposition during the week of December 10, and 3) find Hi-Tech's First RFPs and Interrogatories for Opposition No. 91240032 attached.

Thanks,

Jessica

EXHIBIT F

From: **Jessica Leach** Jessica@arthurwleach.com
Subject: Meet and Confer
Date: November 6, 2018 at 5:58 PM
To: Kevin Demko kdemko@saltzmatkov.com, asaltz@saltzmatkov.com
Cc: Gretchen Lauer glauer@saltzmatkov.com

Counsel,

Hi-Tech's responses to KBI's First Interrogatories and First Requests for Production will be ready within the next few days. When can I expect KBI's responses, which were due on May 14, 2018? If I do not receive a response to this email by Friday, November 9, I will proceed to file a Motion to Compel.

Sincerely,

Jessica H. Leach, Esq.
678-799-0474

EXHIBIT G

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

KOBE, INC.,	)	
	)	
Opposer,	)	Opposition No. 91233646
	)	
v.	)	Application Serial No. 86673256
	)	
HI-TECH PHARMACEUTICALS, INC.	)	Mark: BLACK MAMBA HYPERRUSH
	)	
Applicant.	)	
	)	

DECLARATION OF JESSICA H. LEACH IN SUPPORT OF APPLICANT'S MOTION TO COMPEL DISCOVERY

I, Jessica H. Leach, declare as follows:

1. I am an attorney admitted to practice in Georgia and am representing Applicant Hi-Tech Pharmaceuticals, Inc. in the subject Opposition.

2. I have personal knowledge of the facts set forth herein and in Applicant's Motion to Compel.

3. A true and correct copy of Applicant's First Set of Interrogatories to Opposer is attached as Exhibit A to Applicant's Motion to Compel.

4. A true and correct copy of Applicant's First Requests for Production to Opposer is attached as Exhibit B to Applicant's Motion to Compel.

5. True and correct copies of correspondence between myself and counsel for Opposer are attached as Exhibits C, D, E, F, J, K, M, and N.

6. All statements made in Applicant's Motion to Compel respecting telephone communications between counsel for Applicant and counsel for Opposer are true and accurate.

7. A true and correct copy of Opposer's Responses to Applicant's First Set of Interrogatories is attached as Exhibit H to Applicant's Motion to Compel.

8. A true and correct copy of Opposer's Responses to Applicant's First Set of Requests for Production is attached as Exhibit I to Applicant's Motion to Compel.

9. A true and correct copy of Opposer's Supplemental Responses to Applicant's First Set of Interrogatories is attached as Exhibit L to Applicant's Motion to Compel.

Respectfully submitted this 18th day of March 2019,

/s/ Jessica H. Leach

Jessica H. Leach, Esq.
The Law Office of Arthur W. Leach
5780 Windward Parkway, Suite 225
Alpharetta, Georgia 30005
Telephone: (678) 799-0474
Jessica@ArthurWLeach.com

Attorney for Applicant, Hi-Tech Pharmaceuticals, Inc.

EXHIBIT H

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

KOBE, INC.,	)	
	)	
Opposer,	)	
	)	
v.	)	In re Application Serial No. 86/673,256
	)	Opposition No. 91233646
HI-TECH PHARMACEUTICALS, INC.	)	
	)	
Applicant.	)	
_____	)	

OPPOSER KOBE, INC.'S RESPONSES TO APPLICANT'S
FIRST SET OF INTERROGATORIES

Opposer KBI, Inc. ("KBI") hereby responds to Applicant Hi-Tech Pharmaceuticals, Inc.'s ("Hi-Tech") first Set of Interrogatories as follows:

GENERAL OBJECTIONS AND LIMITATIONS

Opposer responds to each and every discovery request subject to these general objections and limitations. These general objections are incorporated into each and every response and are set forth here to avoid duplication and repetition. Some of Opposer's responses refer specifically to particular general objections for greater clarity; the absence of a reference to a specific general objection within a given response does not constitute a waiver thereof.

1. Opposer objects to the discovery requests to the extent that they seek information and/or documents not relevant to the issues in this litigation and do not appear reasonably calculated to lead to the discovery of admissible evidence.

2. Opposer objects to the discovery requests to the extent that they are overly broad and impose an undue burden of inquiry on Opposer.

3. Opposer objects to the discovery requests to the extent that they seek information and/or documents beyond a time period reasonably related to the issues in this litigation.

4. Opposer objects to the discovery requests to the extent that they seek information and/or documents beyond a geographic location reasonably related to the issues in this litigation.

5. Opposer objects to the discovery requests to the extent that their terms are vague and/or ambiguous and/or other otherwise do not sufficiently specify the information and/or documents sought and thus, require Opposer to speculate as to the information requested.

6. Opposer objects to the discovery requests to the extent that they involve opinions or contentions that relate to fact or the application of law to fact at this stage of discovery and/or to the extent that they call for expert opinions from fact witnesses.

7. Opposer objects to the discovery requests to the extent that they call for legal conclusions.

8. Opposer objects to the discovery requests to the extent that they seek information and/or documents protected from disclosure under: (a) the attorney-client privilege; (b) the work product doctrine and documents/information prepared in anticipation of litigation or trial; (c) the deliberative process privilege; and/or (d) the self-critical analysis privilege.

9. Opposer objects to the discovery requests to the extent that they seek information and/or documents that can be found in the public record, are in the possession or control of Applicant and/or other parties or non-parties to this litigation, or are otherwise as readily accessible to the requesting party as to Opposer.

10. Opposer objects to the discovery requests to the extent that they seek to impose obligations beyond the requirements of the Federal Rules of Civil Procedure and the requirements of the Trademark Trial and Appeal Board.

11. Opposer's agreement to produce documents, subject to objections, means that Opposer will produce those non-privileged documents not encompassed by the objections to the extent that such documents exist and can be located.

12. Opposer reserves the right to challenge the competency, relevance, materiality, and admissibility of, and to object on any grounds, to the use of documents and/or information provided by Opposer in any further proceedings, in this or any other action.

13. Opposer objects to the "Definitions" contained in the discovery requests to the extent that they seek to impose obligations beyond the requirements of the Federal Rules of Civil Procedure and the requirements of the Trademark Trial and Appeal Board.

14. Opposer objects to the "Instructions" contained in the discovery requests to the extent that they seek to impose obligations beyond the requirements of the Federal Rules of Civil Procedure and the requirements of the Trademark Trial and Appeal Board.

INTERROGATORIES

1. Identify the origin of the term "black mamba."

RESPONSE: Objection. This interrogatory is unintelligible as written as Applicant has failed to define the words "origin" and "term". Opposer also objects to this Interrogatory as overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. As it would appear to apply to Applicant's interrogatory, Merriam Webster's dictionary defines the word "origin" as "ancestor, parentage" or "rise, beginning, or derivation from a source". Similarly, relative to Applicant's interrogatory, Merriam Webster's dictionary defines the word "term" as "as word or expression that has a precise meaning in some uses or is peculiar to a science, art, profession or subject". While this matter deals with the nickname "Black Mamba", Black Mamba may be used simultaneously to refer to many different "terms". As such, Opposer is unable to formulate a response to this interrogatory. By way of further answer, with regard to the instant Opposition, media outlets and the general public associate the nickname "Black Mamba" with KBI's use of Mr. Bryant's name, image and likeness, both generally and specifically across various product and service types. Moreover, such "Black Mamba" nickname has been the subject of numerous media articles, books and other publicly available content detailing the inception, widespread use, public knowledge and general recognition that the nickname "Black Mamba" is associated with Mr. Kobe Bryant across the globe.

2. Identify each person who participated in the selection of the nickname "black mamba."

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of

admissible evidence. Opposer also objects as this interrogatory is unintelligible as written as Applicant has failed to limit the word "person" or define the words "participation", "selection" and "nickname". As it would appear to apply to Applicant's interrogatory, Merriam Webster's dictionary defines the word "participation" and the "act of participating" and selection" as "the act or process of selection". Similarly, relative to Applicant's interrogatory, Merriam Webster's dictionary defines the word "nickname" as "a usually descriptive name given instead of or in addition to the one belonging to a person, place, or thing" or "a familiar form of a proper name (as of a person or a city)". As an aside, to the extent Applicant's interrogatory invokes the Merriam Webster definition noted above, Opposer can only assume Applicant is not referencing "a familiar form of a proper name" and the words "Black Mamba" do not appear to be a familiar form of any proper name related to this matter. Given Applicant's lack of clarity and the definitions noted above, Opposer could not possibly list every person on planet earth that took part in the "act or process of selection" of those across the globe who gave a descriptive name in addition to Mr. Bryant's proper name should, nor would such a list be relevant to any issue in this matter. However, a brief internet search easily reveals millions of fans, global media outlets and the general public associate the nickname with the rights being enforced by Opposer.

3. Identify the process by which the nickname "black mamba" was chosen.

RESPONSE: See Response to Interrogatory No. 2.

4. Identify every product sold by Kobe Bryant or KBI bearing the term "BLACK MAMBA".

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects as all such information, to the extent it exists and

relative to the parties and issues in this Opposition, is publicly available. Moreover, Opposer objects in that Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. In addition, this interrogatory is unintelligible as written as Applicant has failed to define the word "sold". As it would appear to apply to Applicant's interrogatory, Merriam Webster's dictionary defines the word "sold" as the past tense of "sell", which has various definitions. As it relates to the word "sell" as "to give up (property) to another for something of value (such as money)". To the extent this is the definition of "sold" intended by Applicant, then relative to Opposer, none. Opposer is unaware of any direct sales.

5. Identify the persons most knowledgeable about each product identified in response to Interrogatory No. 4.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

6. Provide the date of first use for each product identified in response to Interrogatory No. 4.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

7. Identify the persons most knowledgeable about the facts stated in response to Interrogatory No. 6.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 6.

8. Identify the channels of trade used for every product identified in response to Interrogatory No. 4.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

9. Identify the persons most knowledgeable about the sales and distribution of each product identified in response to Interrogatory No. 4.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

10. Identify the persons most knowledgeable about the advertising and promotion of each product identified in response to Interrogatory No. 4.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

11. For each product identified in response to Interrogatory No. 4, list by calendar year the expenditures that have been made on advertising and promotion of the product.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

12. For each product identified in response to Interrogatory No. 4, identify the nature and title (if applicable) of the media in which all advertisements of the product have appeared, including the date and geographic scope (by city and state) of such advertisements.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

13. For each product identified in response to Interrogatory No. 4, describe the target markets and characteristics of targeted consumers.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

14. For each product identified in response to Interrogatory No. 4, identify major competitors in the market and list their competing products.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

15. For each product identified in response to Interrogatory No. 4, identify the geographic area in which the product is offered.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

16. Identify and describe any studies, tests, ratings, or surveys that have been conducted relating to consumer recognition of Opposer's Marks.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

17. Describe in detail each known incident of actual confusion as to the existence of a relationship between Hi-Tech or Hi-Tech's products and Kobe Bryant or products associated with Kobe Bryant.

RESPONSE: Unknown. After a reasonable and good faith inquiry, Opposer currently has no further information responsive to this Interrogatory. While a corporate retail customer list was provided, the identities of actual consumers who purchased the supplement from the retailers will be obtained in discovery. Opposer expressly reserves the right to amend or supplement this Response based on the outcome of such investigation. Opposer's investigation and discovery are continuing. Moreover, given the improper transfer and likely inability to use the Applicant's designation along with the negative commentary from the FDA relative to Applicant's product, any potential confusion would have an extremely negative impact on Opposer.

18. For each incident described in response to Interrogatory No. 17, identify persons with knowledge thereof.

RESPONSE: See Response to Interrogatory No. 17.

19. Identify any communications received by KBI or Kobe Bryant that were intended for Hi-Tech.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. By way of further answer, KBI is unaware of any communication received that was intended for Applicant. As noted previously, media outlets and the general public associate the nickname "Black Mamba" with KBI's use of Mr. Bryant's name, image and likeness, both generally and specifically across various product and service types. Moreover, such "Black Mamba" nickname has been the subject of numerous media articles, books and other publicly available content detailing the inception, widespread use, public knowledge and general recognition that the nickname "Black Mamba" is associated with Mr. Kobe Bryant across the globe. Opposer is unaware of any member of the public who would fail to associate "Black Mamba" with Mr. Bryant or who would contact Opposer mistakenly looking for an unknown entity with a negative FDA history such as Applicant. Moreover, given the improper transfer and likely inability to use the Applicant's designation along with the negative commentary from the FDA relative to Applicant's product, any potential confusion would have an extremely negative impact on Opposer.

20. Identify all agreements in which Kobe Bryant has licensed Opposer's marks for use by any other party.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. The issue in the instant Opposition is whether Applicant's mark improperly utilizes Opposer's marks and thereby usurps the widespread public recognition and connection between the language "Black Mamba" and Mr. Bryant's name, image and likeness and other protectable intellectual property, not whether Mr. Bryant has licensed same.

21. Describe in detail all efforts made by KBI and/or Kobe Bryant to enforce against third parties, other than Hi-Tech, the rights claimed in Opposer's Marks.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. By way of further response, KBI has previously enforced rights by virtue of constant internet searches, identification of infringement, contact with infringing parties including telephonic and written, cease and desist notices to offending parties and platforms and at time with the filing of letters of protest and notices of opposition with the USPTO and other similar agencies around the globe.

22. Identify all entities referenced in the Opposition, which "have used Kobe's name and likeness and the "Black Mamba" mark and variations thereof... in the United States in connection with… the sale and licensing of… products related to… sports nutrition." Opposition at ¶ 4.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible

evidence. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. Moreover, this request is overbroad as it places contains no temporal limitation. By way of further answer, with regard to the instant Opposition, licensing entities, media outlets and the general public associate the nickname "Black Mamba" with KBI's use of Mr. Bryant's name, image and likeness, both generally and specifically across various product and service types. Moreover, such "Black Mamba" nickname has been the subject of numerous media articles, books and other publicly available content detailing the inception, widespread use, public knowledge and general recognition that the nickname "Black Mamba" is associated with Mr. Kobe Bryant across the globe. Any such entities products are publicly available and therefore Opposer objects as such information is equally available to both Applicant and Opposer. Moreover, the Notice of Opposition at paragraph 4, being in writing, speaks for itself.

23. Describe in detail Kobe Bryant's association with the sports nutrition drink known as "BodyArmor," referenced in the Opposition. *Id.*

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. In addition, Opposer objects in that the term "association" was not defined in the Notice of Opposition nor in the instant request. Opposer's intent was to place Applicant on notice that the public itself associates the nickname "Black Mamba" with Mr. Bryant, who is much more well-known than Applicant and publicly associated or connected by public perception to sports nutrition drink BodyArmor. Such association between Mr. Bryant and BodyArmor has been highly publicized and is equally available to Applicant and to Opposer.

24. Describe in detail how "Kobe… is so well-known… in the Applicant's proposed class of goods." Opposition at ¶ 23.

RESPONSE: Kobe Bryant is an internationally recognized, famous, recently retired professional basketball player who previously played in the National Basketball Association for the Los Angeles Lakers. Bryant was called "one of the greatest players in the history of our game" by NBA Commissioner Adam Silver and The New York Times wrote that he has had "one of the most decorated careers in the history of the sport." Reuters called him "arguably the best player of his generation," while both Sporting News and TNT named him their NBA player of the decade for the 2000s. In 2008 and again in 2016, ESPN ranked him the second greatest shooting guard of all-time after Michael Jordan. The Press-Enterprise described Kobe as "maybe the greatest Laker in the organization's history." He is the Lakers' all-time leading scorer, and his five titles are tied for the most in franchise history.

Kobe is a five-time NBA champion (2000-2002, 2009-2010); two-time NBA Finals MVP (2009-2010); one-time NBA Most Valuable Player (2008); eighteen-time NBA All Star (1998, 2000-2016); four-time NBA All-Star Game MVP (2002, 2007, 2009, 2011); eleven-time All-NBA First Team (2002-2004, 2006-2013); two-time All-NBA Second Team (2000-2001); two-time All-NBA Third Team (1999, 2005); nine-time NBA All-Defensive First Team (2000, 2003-2004, 2006-2011); three-time NBA All-Defensive Second Team (2001-2002, 2012); two-time NBA scoring champion (2006-2007); NBA Slam Dunk Contest champion (1997); NBA All-Rookie Second Team (1997); Los Angeles Lakers' all-time leading scorer and the third leading scorer in NBA history. (Ex. 9). In 2006, he scored a career-high 81 points against the Toronto Raptors, the second most points scored in a single game in league history.

Kobe Bryant's nickname is universally recognized to be the "Black Mamba." Kobe's "Black Mamba" nickname has been the subject of numerous media articles and advertisements detailing the inception, widespread use, public knowledge and general recognition of his nickname across the globe in connection with sports generally, including sports nutrition and sports drinks, which directly relate to Applicant's Designation. During the longstanding, widespread and continuous use of the nickname "Black Mamba" as it relates to Mr. Bryant, such nickname has become well known by the general public and recognized and relied upon as identifying Mr. Bryant.

Kobe is a person who has a right to privacy and publicity in his nickname, the Black Mamba. Kobe's nickname is world-recognized as the "Black Mamba." The Black Mamba Hyperrush Designation falsely suggests a connection with Kobe Bryant in that it contains the identical nickname used by Kobe; the Black Mamba Hyperrush Designation would be recognized as the name or identity of a person, in that it points uniquely and unmistakably to Kobe; Kobe is not connected with the goods intended to be offered by the Applicant; and, pursuant to general public knowledge, the fame or reputation of Kobe is such that, when the mark is used with the Applicant's goods such as supplements, a connection with Kobe would be presumed. Moreover, given the improper transfer and likely inability to use the Applicant's designation along with the negative commentary from the FDA relative to Applicant's product, any potential confusion would have an extremely negative impact on Opposer.

25. Describe in detail any plans for future expansion of your use of Opposer's Marks to products or services in the dietary supplement industry.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible

evidence. The crux of this opposition is that Applicant is attempting to profit off the name, image and likeness of Kobe Bryant. As a well-known and highly accomplished professional athlete, it is reasonable to conclude that Mr. Bryant would be associated with potentially dangerous nutritional supplements, such as the one sought here by Applicant. Opposer's future contingent plans, if any, concerning dietary supplements, are of no moment to the instant Opposition.

26. Describe in detail the ways in which Kobe Bryant is, or has ever been, involved in the dietary supplement industry.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. Applicant is attempting to profit off the name, image and likeness of Mr. Bryant and Opposer's Notice of Opposition, being in writing, speaks for itself. By way of further response, see response to interrogatory number 24. As a well-known and highly accomplished professional athlete, the public would naturally associate Mr. Bryant with potentially dangerous nutritional supplements, such as the one sought here by Applicant. Moreover, given the improper transfer and likely inability to use the Applicant's designation along with the negative commentary from the FDA relative to Applicant's product, any potential confusion would have an extremely negative impact on Opposer.

27. Identify all business entities authorized by Kobe Bryant to use Opposer's Marks.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects in that this interrogatory is directed to Mr. Bryant and Mr. Bryant is not a party to this action. Whether or not Mr. Bryant has authorized the use of

Opposer's Marks to other business entities is of no moment to the instant Opposition as it does not bear on whether Applicant, who is not authorized to use same, is profiting off the name, image, and likeness of Mr. Bryant.

28. Identify the date upon which the nickname "black mamba" was first used publicly as a reference to Kobe Bryant.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. The date on which the nickname was first used publicly as a reference to Mr. Bryant is, by virtue of the question, publicly available information. In addition, Opposer objects for the reasons set forth in interrogatories 1 and 2, above. By way of further answer, such nickname was associated publicly with Opposer's rights asserted herein well before Applicant's use of Applicant's Designation.

29. Identify all registrations on the Principal Register owned by KBI or Kobe Bryant, which consist of or include the term "BLACK MAMBA."

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. The Principal Register is a public system to which Applicant has equal access as Opposer.

30. Identify all registrations on the Principal Register that Kobe Bryant consented to, which include "BLACK MAMBA."

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of

admissible evidence. The Principal Register is a public system to which Applicant has equal access as Opposer.

31. Identify all persons you intend to or may use as an expert witness in this Opposition, and the facts or subject matter about which they are or would be expected to contribute.

RESPONSE: Opposer has not yet determined which experts, if any, it intends to use in connection with this Opposition. Opposer reserves the right to supplement this response in accordance with any requirements of the Federal Rules of Civil Procedure or the Trademark Trial and Appeal Board.

Dated: November 16, 2018

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CERTIFICATE OF SERVICE

I do hereby certify that on November 16, 2018, I caused a copy of the foregoing

Responses to Applicant's First Set of Interrogatories to be served via email upon the following:

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EXHIBIT I

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

KOBE, INC.,	)	
	)	
Opposer,	)	
	)	
v.	)	In re Application Serial No. 86/673,256
	)	Opposition No. 91233646
HI-TECH PHARMACEUTICALS, INC.	)	
	)	
Applicant.	)	
_____	)	

OPPOSER KOBE, INC.'S RESPONSES TO APPLICANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Opposer KBI, Inc. ("KBI") hereby responds to Applicant Hi-Tech Pharmaceuticals, Inc.'s ("Hi-Tech") first Request for Production of Documents as follows:

GENERAL OBJECTIONS AND LIMITATIONS

Opposer responds to each and every discovery request subject to these general objections and limitations. These general objections are incorporated into each and every response and are set forth here to avoid duplication and repetition. Some of Opposer's responses refer specifically to particular general objections for greater clarity; the absence of a reference to a specific general objection within a given response does not constitute a waiver thereof.

1. Opposer objects to the discovery requests to the extent that they seek information and/or documents not relevant to the issues in this litigation and do not appear reasonably calculated to lead to the discovery of admissible evidence.

2. Opposer objects to the discovery requests to the extent that they are overly broad and impose an undue burden of inquiry on Opposer.

3. Opposer objects to the discovery requests to the extent that they seek information and/or documents beyond a time period reasonably related to the issues in this litigation.

4. Opposer objects to the discovery requests to the extent that they seek information and/or documents beyond a geographic location reasonably related to the issues in this litigation.

5. Opposer objects to the discovery requests to the extent that their terms are vague and/or ambiguous and/or other otherwise do not sufficiently specify the information and/or documents sought and thus, require Opposer to speculate as to the information requested.

6. Opposer objects to the discovery requests to the extent that they involve opinions or contentions that relate to fact or the application of law to fact at this stage of discovery and/or to the extent that they call for expert opinions from fact witnesses.

7. Opposer objects to the discovery requests to the extent that they call for legal conclusions.

8. Opposer objects to the discovery requests to the extent that they seek information and/or documents protected from disclosure under: (a) the attorney-client privilege; (b) the work product doctrine and documents/information prepared in anticipation of litigation or trial; (c) the deliberative process privilege; and/or (d) the self-critical analysis privilege.

9. Opposer objects to the discovery requests to the extent that they seek information and/or documents that can be found in the public record, are in the possession or control of Applicant and/or other parties or non-parties to this litigation, or are otherwise as readily accessible to the requesting party as to Opposer.

10. Opposer objects to the discovery requests to the extent that they seek to impose obligations beyond the requirements of the Federal Rules of Civil Procedure and the requirements of the Trademark Trial and Appeal Board.

11. Opposer's agreement to produce documents, subject to objections, means that Opposer will produce those non-privileged documents not encompassed by the objections to the extent that such documents exist and can be located.

12. Opposer reserves the right to challenge the competency, relevance, materiality, and admissibility of, and to object on any grounds, to the use of documents and/or information provided by Opposer in any further proceedings, in this or any other action.

13. Opposer objects to the "Definitions" contained in the discovery requests to the extent that they seek to impose obligations beyond the requirements of the Federal Rules of Civil Procedure and the requirements of the Trademark Trial and Appeal Board.

14. Opposer objects to the "Instructions" contained in the discovery requests to the extent that they seek to impose obligations beyond the requirements of the Federal Rules of Civil Procedure and the requirements of the Trademark Trial and Appeal Board.

REQUESTS FOR PRODUCTION

1. All non-privileged documents and communications identified in response to Applicant's First Set of Interrogatories.

RESPONSE: See documents previously produced with Opposer KBI's Initial Disclosures and documents produced herewith at KBI000001-000068.

2. All non-privileged documents and communications concerning the creation, selection, adoption, origin, and first use of the term "black mamba."

RESPONSE: Objection. The creation, selection, adoption, origin, and first use of the term "black mamba" is not relevant to this opposition. Moreover, the information sought in this request is not proportional to the needs of the case because the requesting party has equal/similar access to relevant information as it is publically available. A brief internet search easily reveals millions of fans, global media outlets and the general public associate the nickname with the rights being enforced by Opposer. Subject to the foregoing, it is undisputed that Mr. Bryant began using the term "Black Mamba" as a nickname years before Applicant's product was put to market.

3. All non-privileged documents, communications and recordings, to include video and audio recordings, containing statements made by Kobe Bryant concerning the nickname "black mamba," Opposer's Marks, or the black mamba snake.

RESPONSE: Objection. This request is irrelevant, vague, overly broad and burdensome. Moreover, the information sought in this request is not proportional to the needs of the case because the requesting party has equal/similar access to relevant information as it is publically available. A brief internet search easily reveals millions of fans, global media outlets and the general public associate the nickname with the rights being enforced by Opposer. Thousands of articles and interviews since 2003 refer to Mr. Bryant or the "Black Mamba" synonomously. Seeking a request for all recordings of same is incredibly overbroad and

burdensome on Opposer. Further, the request seeks documents "concerning the nickname." The word "concerning" is vague and would lead to the production of irrelevant documents.

4. All non-privileged documents and communications concerning the conveyance, grant, license, or assignment of any right, authorization, or consent to the use of Opposer's Marks.

RESPONSE: Objection. This request is irrelevant as whether Opposer has licensed Opposer's Marks is not at issue in this proceeding.

5. All non-privileged documents and communications concerning goods or services sold by Kobe Bryant, KBI, or any other authorized business entity, bearing the term "BLACK MAMBA".

RESPONSE: Objection. This Request is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. Subject to the foregoing, multiple products bearing the term "Black Mamba" have been available over the last fifteen (15) years, all of which are of public record.

6. All non-privileged documents and communications concerning dietary or nutritional supplements sold by KBI or Kobe Bryant bearing the term "BLACK MAMBA", to include without limitation documents and communications concerning (a) specimens of labels, containers, wrappers, packaging, signs, catalogs, brochures or other materials used to advertise, promote, sell or otherwise commercialize the products, (b) the geographic areas where the goods have been sold, (c) the channels of trade through which the products have been sold, (d) the length of time each product has been sold, marketed or promoted, (e) the yearly dollar and unit volume of sales to date, and projected future dollar and unit volume of sales, for each product, (f)

the gross and net profits from sales of each product, and (g) the yearly cost of advertising, marketing and promoting each product.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. Subject to the foregoing, relative to KBI, none.

7. All documents and communications concerning the type of customers to whom KBI and/or Kobe Bryant sells, markets, or promotes dietary or nutritional supplements bearing the term "BLACK MAMBA".

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. Subject to the foregoing, relative to KBI, none.

8. All documents and communications concerning the following allegations of the Opposition:

> For many years, and long before June 24, 2015… Opposer KBI and Kobe's other authorized business partners, sponsors, and/or licensees… have used Kobe's name and likeness and the "Black Mamba" mark and variations thereof… in the United States in connection with… the sale and licensing of…products related to…sports nutrition, including but not limited to Kobe's association with a sports nutrition drink known as "BodyArmor."

Opposition at ¶ 4.

RESPONSE: Objection. This Request is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Mr. Bryant is not a party to this matter nor personally represented by counsel of

record herein. Subject to the foregoing, multiple products bearing the term "Black Mamba" have been available over the last fifteen (15) years, all of which are of public record.

9. All documents and communications concerning the allegation in the Opposition, "Kobe… is so well-known… in the Applicant's proposed class of goods." Opposition at ¶ 23.

RESPONSE: Objection. This Request is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence.

10. All non-privileged documents and communications concerning plans of KBI or Kobe Bryant to conduct or expand business in the supplement industry.

RESPONSE: Objection. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. Subject to the foregoing, relative to KBI, none at this time.

11. All documents and communications concerning Kobe Bryant's consent to registrations on the Principal Register that include the term "BLACK MAMBA."

RESPONSE: Objection. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. Subject to the foregoing, any consent relative to a registration on the Principal Register is publicly available, in writing and speaks for itself.

12. All documents and communications concerning any consumer perception surveys or research conducted by or on behalf of Kobe Bryant and/or KBI concerning (a) Kobe Bryant and/or KBI's use of the term "BLACK MAMBA", (b) any goods or services offered or sold by Kobe Bryant and/or KBI in connection with the term "BLACK MAMBA", or (c) Hi-Tech's use of the mark BLACK MAMBA HYPERRUSH.

RESPONSE: Objection. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. Subject to the foregoing, KBI is not aware of any such studies in the dietary supplement field. However, discovery is continuing and KBI reserves the right to supplement this response with expert analysis, if any, pursuant to the Federal Rules of Civil Procedure and the requirements of the Trademark Trial and Appeal Board.

13. All documents and communications concerning any consumer confusion, belief, or lack thereof as to the existence of any relationship between (a) Hi-Tech and Kobe Bryant, (b) Hi-Tech's goods and Kobe Bryant, or (c) Hi-Tech's goods and any goods or services sold by Kobe Bryant or KBI.

RESPONSE: Objection. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. Subject to the foregoing, KBI is not aware of any such studies in the dietary supplement field. However, discovery is continuing and KBI reserves the right to supplement this response with expert analysis, if any, pursuant to the Federal Rules of Civil Procedure and the requirements of the Trademark Trial and Appeal Board.

14. The curriculum vitae of any person that you intend to use as an expert witness in this Opposition and any non-privileged reports, supporting documents, notes, drawings, photographs, writings, or communications by such person(s).

RESPONSE: Opposer has not yet determined which experts, if any, it intends to use in this Opposition. However, discovery is continuing and KBI reserves the right to supplement this response pursuant to the Federal Rules of Civil Procedure and the requirements of the Trademark Trial and Appeal Board.

15. All non-privileged documents and communications, not otherwise responsive to the Requests above, which concern or reflect any involvement of Kobe Bryant in the supplement industry.

RESPONSE: Objection. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. Subject to the foregoing, KBI is not aware of any such documents or communications. Discovery is continuing and KBI reserves the right to supplement this response pursuant to the Federal Rules of Civil Procedure and the requirements of the Trademark Trial and Appeal Board.

16. All documents and communications, not otherwise responsive to the Requests above, that you will or may offer as support for claims made in the Opposition.

RESPONSE: Opposer has not yet determined what documents, if any, it intends to offer as support for the pending Opposition.

Dated: November 20, 2018

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CERTIFICATE OF SERVICE

I do hereby certify that on November 20, 2018, I caused a copy of the foregoing Responses to Applicant's First Request for Production of Documents to be served via email upon the following:

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EXHIBIT J

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Re: TTAB Opposition No. 91233646

Counsel,

I write in an effort to resolve discovery disputes related to Opposer Kobe, Inc.'s Responses to Applicant Hi-Tech Pharmaceuticals, Inc.'s First Set of Interrogatories and First Requests for Production of Documents in TTAB Opposition No. 91233646. The discovery disputes at issue are addressed collectively below.

A. Opposer KBI Has Failed to Produce Any Documents Responsive to Applicant's First Requests for Production.

The only documents Opposer KBI produced were cited in response to Applicant's first Requests for Production, and the documents were outside the category of documents requested therein, as none were "identified in response to Applicant's First Set of Interrogatories." Opposer responses consisted of fourteen "general objections and limitations" to "each and every discovery request" propounded in Applicant's First Requests for Production and included individual objections to fourteen of Applicant's sixteen requests. Opposer's objections to Applicant's Requests for Production are unreasoned, overly broad, irrelevant, vague and conclusory. Applicant's maintains that Opposer's position in objecting to each and every discovery request propounded is unjustified. Accordingly, Applicant requests Opposer withdraw its objections, fully amend its responses, and produce the requested documents.

B. Opposer's Responses and Objections to Applicant's Interrogatories are Insufficient.

Opposer asserted fourteen "general objections and limitations" to "each and every discovery request" propounded in Applicant's First Set of Interrogatories. Exhibit A. Opposer also asserted objections in individual responses to fourteen (14) interrogatories, which Opposer then referenced in response to thirteen (13) other interrogatories. Similar to Opposer's objections to Applicant's Requests for Production, Opposer's objections to Applicant's Interrogatories are unreasoned, overly broad, irrelevant, vague and conclusory.

As to Applicant's first three Interrogatories, Opposer responded to Applicant's first three Interrogatories by asserting each was "unintelligible as written," remitting long-winded and ambiguous objections focused on the perceived meaning of undefined terms, and then ultimately failed to provide any substantive information.

- Interrogatory No. 1: "Identify the origin of the term 'black mamba.'" Opposer objected that Applicant's failure to define "origin" and "term" rendered Opposer "unable to formulate a response to this Interrogatory."

- Interrogatory No. 2: "Identify each person who participated in the selection of the nickname 'black mamba.'" Opposer objected that Applicant "failed to limit" the word "person"– defined by Applicant as "any natural person, or any association or business, legal, government or other entity"—or define the words "participation", "selection" and "nickname."

- Interrogatory No. 3: "Identify the process by which the nickname 'black mamba' was chosen." Opposer responded, "See Response to Interrogatory No. 2."

Applicant requests that Opposer amend its responses to these Interrogatories to provide substantive responses.

Opposer's response to Applicant's Interrogatory No. 4 is insufficient in light of the following claims made in Opposer's Second Amended Notice of Opposition:

> "For many years… Opposer KBI…ha[s] used Kobe's name and likeness and the "Black Mamba" mark and variations thereof (collectively, "Opposer's Marks") in the United States in connection with, *inter alia,* the sale and licensing of: shirts and tee shirts; athletic footwear; hats, caps; base-layers; athletic uniforms; sweatshirts; posters; trading cards; backpacks; phone cases; water bottles; and other products related to sports, sports performance, athletics, fitness, and sports nutrition, including but not limited to Kobe's association with a sports nutrition drink known as "BodyArmor."

Opposition at ¶ 4. Also insufficient are Opposer responses to Interrogatory Nos. 5 – 15, which referenced products identified in response to Interrogatory No. 4, "Not applicable. By way of further response, see response to Interrogatory No. 4." Inexplicably, Opposer also responded to Applicant's Interrogatory No. 16 in this manner, which did not relate to products identified in response to Interrogatory No. 4, but instead requested that Opposer "Identify and describe any studies, tests, ratings, or surveys that have been conducted relating to consumer recognition of Opposer's Marks." Applicant contends "Not applicable" is not a proper response, and requests that Opposer amend its responses to provide the substantive information requested respecting the products referenced in its Opposition for each of Applicant's Interrogatories 4-15. Applicant also requests that Opposer provide a full response to Applicant's Interrogatory No. 16.

Further, Opposer objected to the following Interrogatories, which request information related to Kobe Bryant's intellectual property rights simply because "Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein"

- Interrogatory No. 19: "Identify any communications received by KBI or Kobe Bryant that were intended for Hi-Tech."

- Interrogatory No. 20: "Identify all agreements in which Kobe Bryant has licensed Opposer's marks for use by any other party."

- Interrogatory No. 21: "Describe in detail all efforts made by KBI and/or Kobe Bryant to enforce against third parties, other than Hi-Tech, the rights claimed in Opposer's Marks."

- Interrogatory No. 22: "Identify all entities referenced in the Opposition, which 'have used Kobe's name and likeness and the 'Black Mamba' mark and variations thereof... in the United States in connection with… the sale and licensing of… products related to… sports nutrition.' Opposition at ¶ 4."

- Interrogatory No. 23: "Describe in detail Kobe Bryant's association with the sports nutrition drink known as "BodyArmor," referenced in the Opposition."

- Interrogatory No. 26: "Describe in detail the ways in which Kobe Bryant is, or has ever been, involved in the dietary supplement industry."

- Interrogatory No. 27: "Identify all business entities authorized by Kobe Bryant to use Opposer's Marks."

As Opposer's claims are entirely based upon the intellectual property rights of Kobe Bryant, it is immaterial that Mr. Bryant is not himself a party to this matter. Applicant requests that Opposer amend its responses to provide the information requested.

Applicant's Interrogatory No. 24 quoted the Opposition in requesting that Opposer, "Describe in detail how 'Kobe… is so well-known… in the Applicant's proposed class of goods'" as per Opposition ¶ 23. Opposer's response merely provided a longwinded description of Mr. Bryant's successes in professional basketball, and failed to provide any details related to the claim made in its Opposition, "Opposer KBI and Kobe's other authorized business partners, sponsors, and/or licensees (collectively "Licensees") have used Kobe's name and likeness and the 'Black Mamba' mark and variations thereof (collectively 'Opposer's Marks') in the United States in connection with… products related to… sports nutrition, including but not limited to Kobe's association with a sports nutrition drink known as 'BodyArmor.'" Opposer's responses to Interrogatory Nos. 23 and 26 above also decline to provide any responsive information that would substantiate this claim. Applicant requests that Opposer amend its responses to provide the information requested.

Opposer also declines to provide information responsive to Applicant's Interrogatory No. 25, "Describe in detail any plans for future expansion of your use of Opposer's Marks to products or services in the dietary supplement industry" instead offering a list of unreasoned objections and Opposer's opinion that Interrogatory No. 25 does not relate to the "crux" of the Opposition. Applicant's Interrogatories do not have to relate to the "crux" of the Opposition. Applicant requests that Opposer amend to provide substantive responsive information.

Further, Opposer objected to the Interrogatories listed below with assertions that the information requested is "publically available" and therefore "equally available to both Applicant and Opposer."

- Interrogatory No. 28: "Identify the date upon which the nickname "black mamba" was first used publicly as a reference to Kobe Bryant."

- Interrogatory No. 29: "Identify all registrations on the Principal Register owned by KBI or Kobe Bryant, which consist of or include the term "BLACK MAMBA."

- Interrogatory No. 30: "Identify all registrations on the Principal Register that Kobe Bryant consented to, which include 'BLACK MAMBA.'"

With respect to Interrogatories 29 and 30, Opposer contended the information requested is accessible via the Public Register—which is simply incorrect. Regarding Interrogatory No. 28, as well as Interrogatory Nos. 1, 4, 19, 22 and 23—which were also objected to on this basis—Opposer did not provide the location of information it deems "publically available" but inferred it is Applicant's responsibility to track down information substantiating the claims asserted in its Opposition. This proposition is also incorrect. Applicant is entitled to substantive responses to the Interrogatories propounded and requests that Opposer amend to provide the information requested.

CONCLUSION

This letter is sent as a good faith attempt to resolve the aforementioned discovery disputes without further need for intervention by the Board. As Opposer was made aware of Applicant's objections to Opposer's responses on December 10, 2018, Applicant requests that Opposer's amended responses and production be provided no later than **February 6, 2019**.

Sincerely,

/s/ Jessica H. Leach
Jessica H. Leach, Esq.

EXHIBIT K

From: **Jessica Leach** Jessica@arthurwleach.com
Subject: Re: Opposition No. 91233646 - Meet and Confer
Date: January 31, 2019 at 3:32 PM
To: Kevin Demko kdemko@s-nlaw.com
Cc: glauer@s-nlaw.com, Al Saltz asaltz@s-nlaw.com

JL

Kevin,

This is acceptable.

Sincerely,

Jessica H. Leach

> On Jan 31, 2019, at 9:17 AM, Kevin Demko <kdemko@s-nlaw.com> wrote:
>
> Jessica,
>
> Our office is in the process of moving so things are quite chaotic here at the moment. Your letter gives a deadline of February 6 to respond to same. I request an extension until Friday, February 15, 2019 out of professional courtesy.
>
> Regards,
> Kevin Demko
>
> -----Original Message-----
> From: Jessica Leach [mailto:Jessica@arthurwleach.com]
> Sent: Wednesday, January 30, 2019 6:49 PM
> To: asaltz@s-nlaw.com; Kevin Demko
> Cc: glauer@s-nlaw.com
> Subject: Opposition No. 91233646 - Meet and Confer
>
> Counsel,
>
> Please see the attached letter regarding discovery disputes in TTAB Opposition No. 91233646.
>
> Thank you,
>
> Jessica H. Leach, Esq.
> 678-799-0474

EXHIBIT L

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

KOBE, INC.,	)	
	)	
Opposer,	)	
	)	
v.	)	In re Application Serial No. 86/673,256
	)	Opposition No. 91233646
HI-TECH PHARMACEUTICALS, INC.	)	
	)	
Applicant.	)	
_____	)	

OPPOSER KOBE, INC.'S SUPPLEMENTAL RESPONSES TO APPLICANT'S FIRST SET OF INTERROGATORIES

Opposer KBI, Inc. ("KBI") hereby supplements its responses to Applicant Hi-Tech Pharmaceuticals, Inc.'s ("Hi-Tech") first Set of Interrogatories as follows:

GENERAL OBJECTIONS AND LIMITATIONS

Opposer responds to each and every discovery request subject to these general objections and limitations. These general objections are incorporated into each and every response and are set forth here to avoid duplication and repetition. Some of Opposer's responses refer specifically to particular general objections for greater clarity; the absence of a reference to a specific general objection within a given response does not constitute a waiver thereof.

1. Opposer objects to the discovery requests to the extent that they seek information and/or documents not relevant to the issues in this litigation and do not appear reasonably calculated to lead to the discovery of admissible evidence.

2. Opposer objects to the discovery requests to the extent that they are overly broad and impose an undue burden of inquiry on Opposer.

3. Opposer objects to the discovery requests to the extent that they seek information and/or documents beyond a time period reasonably related to the issues in this litigation.

4. Opposer objects to the discovery requests to the extent that they seek information and/or documents beyond a geographic location reasonably related to the issues in this litigation.

5. Opposer objects to the discovery requests to the extent that their terms are vague and/or ambiguous and/or other otherwise do not sufficiently specify the information and/or documents sought and thus, require Opposer to speculate as to the information requested.

6. Opposer objects to the discovery requests to the extent that they involve opinions or contentions that relate to fact or the application of law to fact at this stage of discovery and/or to the extent that they call for expert opinions from fact witnesses.

7. Opposer objects to the discovery requests to the extent that they call for legal conclusions.

8. Opposer objects to the discovery requests to the extent that they seek information and/or documents protected from disclosure under: (a) the attorney-client privilege; (b) the work product doctrine and documents/information prepared in anticipation of litigation or trial; (c) the deliberative process privilege; and/or (d) the self-critical analysis privilege.

9. Opposer objects to the discovery requests to the extent that they seek information and/or documents that can be found in the public record, are in the possession or control of Applicant and/or other parties or non-parties to this litigation, or are otherwise as readily accessible to the requesting party as to Opposer.

10. Opposer objects to the discovery requests to the extent that they seek to impose obligations beyond the requirements of the Federal Rules of Civil Procedure and the requirements of the Trademark Trial and Appeal Board.

11. Opposer's agreement to produce documents, subject to objections, means that Opposer will produce those non-privileged documents not encompassed by the objections to the extent that such documents exist and can be located.

12. Opposer reserves the right to challenge the competency, relevance, materiality, and admissibility of, and to object on any grounds, to the use of documents and/or information provided by Opposer in any further proceedings, in this or any other action.

13. Opposer objects to the "Definitions" contained in the discovery requests to the extent that they seek to impose obligations beyond the requirements of the Federal Rules of Civil Procedure and the requirements of the Trademark Trial and Appeal Board.

14. Opposer objects to the "Instructions" contained in the discovery requests to the extent that they seek to impose obligations beyond the requirements of the Federal Rules of Civil Procedure and the requirements of the Trademark Trial and Appeal Board.

INTERROGATORIES

1. Identify the origin of the term "black mamba."

RESPONSE: Objection. This interrogatory is irrelevant to the trade mark dispute at issue. Where the name "Black Mamba" originated from has no bearing on whether that name has become synonymous and identifiable with Kobe Bryant since 2003 which is the subject of this opposition.

2. Identify each person who participated in the selection of the nickname "black mamba."

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Further, this Interrogatory has no bearing on the subject of this dispute which is whether the name "Black Mamba" has become synonymous with Kobe Bryant since 2003.

3. Identify the process by which the nickname "black mamba" was chosen.

RESPONSE: See Responses to Interrogatory Nos. 1 and 2.

4. Identify every product sold by Kobe Bryant or KBI bearing the term "BLACK MAMBA".

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects as all such information, to the extent it exists and relative to the parties and issues in this Opposition, is publicly available. To the extent this is the definition of "sold" intended by Applicant, then relative to Opposer, none. Opposer is unaware of any direct sales. Opposer is unaware of direct sales by Mr. Bryant; however, since 2003

licensees of Mr. Bryant, such as Nike, have sold various products including shoes and apparel, bearing the name, image and likeness of Mr. Bryant as "Black Mamba."

5. Identify the persons most knowledgeable about each product identified in response to Interrogatory No. 4.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

6. Provide the date of first use for each product identified in response to Interrogatory No. 4.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

7. Identify the persons most knowledgeable about the facts stated in response to Interrogatory No. 6.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 6.

8. Identify the channels of trade used for every product identified in response to Interrogatory No. 4.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

9. Identify the persons most knowledgeable about the sales and distribution of each product identified in response to Interrogatory No. 4.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

10. Identify the persons most knowledgeable about the advertising and promotion of each product identified in response to Interrogatory No. 4.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

11. For each product identified in response to Interrogatory No. 4, list by calendar year the expenditures that have been made on advertising and promotion of the product.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

12. For each product identified in response to Interrogatory No. 4, identify the nature and title (if applicable) of the media in which all advertisements of the product have appeared, including the date and geographic scope (by city and state) of such advertisements.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

13. For each product identified in response to Interrogatory No. 4, describe the target markets and characteristics of targeted consumers.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

14. For each product identified in response to Interrogatory No. 4, identify major competitors in the market and list their competing products.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

15. For each product identified in response to Interrogatory No. 4, identify the geographic area in which the product is offered.

RESPONSE: Not applicable. By way of further response, see response to Interrogatory No. 4.

16. Identify and describe any studies, tests, ratings, or surveys that have been conducted relating to consumer recognition of Opposer's Marks.

RESPONSE: Opposer has conducted no such studies, tests, ratings, or surveys at this time. Opposer is unaware if any other licensee or entity has conducted such studies, tests, ratings or surveys.

17. Describe in detail each known incident of actual confusion as to the existence of a relationship between Hi-Tech or Hi-Tech's products and Kobe Bryant or products associated with Kobe Bryant.

RESPONSE: Unknown. After a reasonable and good faith inquiry, Opposer currently has no further information responsive to this Interrogatory.

18. For each incident described in response to Interrogatory No. 17, identify persons with knowledge thereof.

RESPONSE: See Response to Interrogatory No. 17.

19. Identify any communications received by KBI or Kobe Bryant that were intended for Hi-Tech.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. By way of further answer, KBI is unaware of any communication received that was intended for Applicant. 20. Identify all agreements in which Kobe Bryant has licensed Opposer's marks for use by any other party.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Further, this objection is irrelevant as whether Mr. Bryant has licensed his name, image, likeness, or marks to other entities has no bearing on this Opposition. 21.

Describe in detail all efforts made by KBI and/or Kobe Bryant to enforce against third parties, other than Hi-Tech, the rights claimed in Opposer's Marks.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Moreover, this request is irrelevant to the instant litigation as it has no bearing on Applicant's registration. By way of further response, KBI has previously enforced rights by virtue of constant internet searches, identification of infringement, contact with infringing parties including telephonic and written, cease and desist notices to offending parties and platforms and at time with the filing of letters of protest and notices of opposition with the USPTO and other similar agencies around the globe.

22. Identify all entities referenced in the Opposition, which "have used Kobe's name and likeness and the "Black Mamba" mark and variations thereof... in the United States in connection with… the sale and licensing of… products related to… sports nutrition." Opposition at ¶ 4.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. Moreover, this request is overbroad as it places contains no temporal limitation. By way of further answer, with regard to the instant Opposition, licensing entities, media outlets

and the general public associate the nickname "Black Mamba" with KBI's use of Mr. Bryant's name, image and likeness, both generally and specifically across various product and service types. Moreover, such "Black Mamba" nickname has been the subject of numerous media articles, books and other publicly available content detailing the inception, widespread use, public knowledge and general recognition that the nickname "Black Mamba" is associated with Mr. Kobe Bryant across the globe. More recently, Mr. Bryant is affiliated with the sports nutrition product known as Body Armor.

23. Describe in detail Kobe Bryant's association with the sports nutrition drink known as "BodyArmor," referenced in the Opposition. *Id.*

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Mr. Bryant's involvement/association with Body Armor is not relevant to the instant opposition. Opposer's intent was to place Applicant on notice that the public itself associates the nickname "Black Mamba" with Mr. Bryant, who is much more well-known than Applicant and publicly associated or connected by public perception to sports nutrition drink BodyArmor. Such association between Mr. Bryant and BodyArmor has been highly publicized and is equally available to Applicant and to Opposer.

24. Describe in detail how "Kobe… is so well-known… in the Applicant's proposed class of goods." Opposition at ¶ 23.

RESPONSE: Kobe Bryant is an internationally recognized, famous, recently retired professional basketball player who previously played in the National Basketball Association for the Los Angeles Lakers. Bryant was called "one of the greatest players in the history of our game" by NBA Commissioner Adam Silver and The New York Times wrote that he has had

"one of the most decorated careers in the history of the sport." Reuters called him "arguably the best player of his generation," while both Sporting News and TNT named him their NBA player of the decade for the 2000s. In 2008 and again in 2016, ESPN ranked him the second greatest shooting guard of all-time after Michael Jordan. The Press-Enterprise described Kobe as "maybe the greatest Laker in the organization's history." He is the Lakers' all-time leading scorer, and his five titles are tied for the most in franchise history.

Kobe is a five-time NBA champion (2000-2002, 2009-2010); two-time NBA Finals MVP (2009-2010); one-time NBA Most Valuable Player (2008); eighteen-time NBA All Star (1998, 2000-2016); four-time NBA All-Star Game MVP (2002, 2007, 2009, 2011); eleven-time All-NBA First Team (2002-2004, 2006-2013); two-time All-NBA Second Team (2000-2001); two-time All-NBA Third Team (1999, 2005); nine-time NBA All-Defensive First Team (2000, 2003-2004, 2006-2011); three-time NBA All-Defensive Second Team (2001-2002, 2012); two-time NBA scoring champion (2006-2007); NBA Slam Dunk Contest champion (1997); NBA All-Rookie Second Team (1997); Los Angeles Lakers' all-time leading scorer and the third leading scorer in NBA history. (Ex. 9). In 2006, he scored a career-high 81 points against the Toronto Raptors, the second most points scored in a single game in league history.

As a well-known and highly accomplished professional athlete, the public would naturally associate Mr. Bryant with potentially dangerous nutritional supplements, such as the one sought here by Applicant.

25. Describe in detail any plans for future expansion of your use of Opposer's Marks to products or services in the dietary supplement industry.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible

evidence. The crux of this opposition is that Applicant is attempting to profit off the name, image and likeness of Kobe Bryant. As a well-known and highly accomplished professional athlete, it is reasonable to conclude that Mr. Bryant would be associated with potentially dangerous nutritional supplements, such as the one sought here by Applicant. Opposer's future contingent plans, if any, concerning dietary supplements, are of no moment to the instant Opposition.

26. Describe in detail the ways in which Kobe Bryant is, or has ever been, involved in the dietary supplement industry.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Mr. Bryant is not a party to this matter nor personally represented by counsel of record herein. Applicant is attempting to profit off the name, image and likeness of Mr. Bryant and Opposer's Notice of Opposition, being in writing, speaks for itself. By way of further response, see response to interrogatory number 26. As a well-known and highly accomplished professional athlete, the public would naturally associate Mr. Bryant with potentially dangerous nutritional supplements, such as the one sought here by Applicant.

27. Identify all business entities authorized by Kobe Bryant to use Opposer's Marks.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. Opposer further objects in that this interrogatory is directed to Mr. Bryant and Mr. Bryant is not a party to this action. Whether or not Mr. Bryant has authorized the use of Opposer's Marks to other business entities is of no moment to the instant Opposition as it does not bear on whether Applicant, who is not authorized to use same, is profiting off the name, image, and likeness of Mr. Bryant.

28. Identify the date upon which the nickname "black mamba" was first used publicly as a reference to Kobe Bryant.

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. The date on which the nickname was first used publicly as a reference to Mr. Bryant is, by virtue of the question, publicly available information. In addition, Opposer objects for the reasons set forth in interrogatories 1 and 2, above. By way of further answer, such nickname was associated publicly with Opposer's rights asserted herein well before Applicant's use of Applicant's Designation and date as early as 2003.

29. Identify all registrations on the Principal Register owned by KBI or Kobe Bryant, which consist of or include the term "BLACK MAMBA."

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. The Principal Register is a public system to which Applicant has equal access as Opposer.

30. Identify all registrations on the Principal Register that Kobe Bryant consented to, which include "BLACK MAMBA."

RESPONSE: Objection. This Interrogatory is overly broad, unduly burdensome, vague, ambiguous, harassing, and not reasonably calculated to lead to the discovery of admissible evidence. The Principal Register is a public system to which Applicant has equal access as Opposer. Further, this interrogatory is irrelevant as whether Kobe Bryant consented to a registration including "BLACK MAMBA" has no bearing on Applicant's registration, which does not have the consent of Mr. Bryant.

31. Identify all persons you intend to or may use as an expert witness in this Opposition, and the facts or subject matter about which they are or would be expected to contribute.

RESPONSE: Opposer has not yet determined which experts, if any, it intends to use in connection with this Opposition. Opposer reserves the right to supplement this response in accordance with any requirements of the Federal Rules of Civil Procedure or the Trademark Trial and Appeal Board.

Dated: February 15, 2019

By: */s/Kevin M. Demko*
Albert M. Saltz, Esquire
Kevin M. Demko, Esquire
Attorney ID Nos. 51497/311112
Saltz Matkov P.C.
998 Old Eagle School Rd., Ste. 1206
Wayne, PA 19087
(484) 318-7225
asaltz@saltzmatkov.com
kdemko@saltzmatkov.com

Attorneys for Kobe, Inc.

CERTIFICATE OF SERVICE

I do hereby certify that on February 15, 2019, I caused a copy of the foregoing Responses to Applicant's First Set of Interrogatories to be served via email upon the following:

Jessica H. Leach, Esq.
The Law Office of Arthur W. Leach
5780 Windward Pkwy, Suite 225
Alpharetta, GA 30005
Jessica@arthurwleach.com

/s/Kevin M. Demko
Kevin M. Demko, Esq.

EXHIBIT M

From: **Jessica Leach** Jessica@arthurwleach.com
Subject: Re: Opposition No. 91233646 - Meet and Confer
Date: March 4, 2019 at 12:40 PM
To: Kevin Demko kdemko@s-nlaw.com
Cc: Gretchen Lauer glauer@s-nlaw.com, Al Saltz asaltz@s-nlaw.com

JL

Kevin,

KBI's supplemental responses to Hi-Tech's First Interrogatories 4, 19, 21, 26, and 28 contain objections and then provide some responsive information "further to" those objections. Given the information provided, Hi-Tech is currently operating with the understanding that you are not withholding anything pursuant to those objections.

Particularly, with respect to Interrogatory No. 4, KBI provides a long list of objections before ultimately indicating that neither KBI nor Kobe Bryant have sold products bearing the term "BLACK MAMBA". Given the lack of substantive information provided herein, and KBI's responses without objection to Hi-Tech's Interrogatories 5-15, Hi-Tech understands KBI's response to mean that KBI has provided all responsive information it possesses respecting Interrogatory No. 4, and does not possess any information responsive to Interrogatories 5-15.

If our understanding is incorrect, and KBI is withholding information responsive to Interrogatories 4-15, 19, 21, 26, or 28, please advise immediately.

Sincerely,

Jessica H. Leach

> On Jan 31, 2019, at 3:42 PM, Kevin Demko <kdemko@s-nlaw.com> wrote:
>
> Thank you.
>
> -----Original Message-----
> From: Jessica Leach [mailto:Jessica@arthurwleach.com]
> Sent: Thursday, January 31, 2019 3:32 PM
> To: Kevin Demko
> Cc: glauer@s-nlaw.com; Al Saltz
> Subject: Re: Opposition No. 91233646 - Meet and Confer
>
> Kevin,
>
> This is acceptable.
>
> Sincerely,
>
> Jessica H. Leach
>
> > On Jan 31, 2019, at 9:17 AM, Kevin Demko <kdemko@s-nlaw.com> wrote:
> >
> > Jessica,
> >
> > Our office is in the process of moving so things are quite chaotic here at the moment. Your letter gives a deadline of February 6 to respond to same.
> > I request an extension until Friday, February 15, 2019 out of professional courtesy.
> >
> > Regards,
> > Kevin Demko
> >
> > -----Original Message-----
> > From: Jessica Leach [mailto:Jessica@arthurwleach.com]
> > Sent: Wednesday, January 30, 2019 6:49 PM
> > To: asaltz@s-nlaw.com; Kevin Demko
> > Cc: glauer@s-nlaw.com
> > Subject: Opposition No. 91233646 - Meet and Confer
> >
> > Counsel,
> >
> > Please see the attached letter regarding discovery disputes in TTAB Opposition No. 91233646.
> >
> > Thank you,
> >
> > Jessica H. Leach, Esq.
> > 678-799-0474

EXHIBIT N

From: **Jessica Leach** Jessica@arthurwleach.com
Subject: Re: Opposition No. 91233646 - HT Responses to KBI 2d RFAs
Date: March 8, 2019 at 11:03 AM
To: Kevin Demko kdemko@s-nlaw.com

JL

Kevin,

That is fine. Please ensure KBI provides verifications for its responses to Hi-Tech's Second Set of Interrogatories, and please provide a verification for the supplemental responses propounded on February 15 at your earliest convenience.

Unfortunately, it seems another Motion to Compel KBI's responses to Hi-Tech's first requests will be necessary. KBI's responses to Hi-Tech's First Interrogatories 1-3, 22-23, and 30 are insufficient. Additionally, KBI has failed to supplement its responses to Hi-Tech's first requests for production, leaving Hi-Tech unable to determine which request each document is intended to respond to, and which requests remain unfulfilled.

Given the lack of substantive responses to its first set of requests, Hi-Tech has been unable to determine whether follow-up requests are necessary. A 30-day extension of the discovery period is not going to be sufficient. Please let me know if you will consent to 90 days.

Thank you,

Jessica

> On Mar 8, 2019, at 10:11 AM, Kevin Demko <kdemko@s-nlaw.com> wrote:
>
> Jessica,
>
> My client contact has changed. I need an extension similar to the one requested below to respond to your most recent rogs to March 15. Please advise if this is acceptable.
>
> Regards,
> Kevin
>
> ---
>
> **From:** Jessica Leach [mailto:Jessica@arthurwleach.com]
> **Sent:** Monday, March 04, 2019 6:35 PM
> **To:** Kevin Demko
> **Cc:** Gretchen Lauer; Al Saltz
> **Subject:** Opposition No. 91233646 - HT Responses to KBI 2d RFAs
>
> Kevin,
>
> Please find Hi-Tech's responses to KBI's Second Set of RFAs attached. Hi-Tech requires an extension of its time to respond to KBI's second set of interrogatories and requests for production. If KBI does not consent to extending Hi-Tech's deadline to March 15, 2019 — the current close of discovery – please let me know immediately.
>
> Sincerely,
>
> **Jessica H. Leach, Esq.**
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