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

Proceeding	91239222
Party	Defendant Tat Lee
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Date	08/10/2018
Attachments	Applicants Opposition Interrogatories 1-10.pdf(50122 bytes )

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

Sterling Jewelers Inc., Opposer,  v.  Tat Lee, Applicant.	Opposition No.: 91239222  Mark: <b>TITANIUM KAY</b>  Serial No.: 87/435,559
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**APPLICANT’S FIRST SET OF INTERROGATORY NUMBERS 1-10**

Applicant hereby submits APPLICANT’S FIRST SET OF INTERROGATORY NUMBERS 1-10 to Opposer, Sterling Jewelers Inc., for which Certificate of Service, Instruction, Definitions, and the First Set of Interrogatory Numbers 1-10 are provided.

Opposer has 30 days from date of service to provide Applicant its Answers to this Applicant’s First Set of Interrogatory Numbers 1-10.

Date: August 10, 2018

Respectfully submitted:

/Gregory B. Wood/  
Gregory B. Wood, Esq.  
Attorney for Tat Lee, Applicant  
19222 Mayall Street  
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## **CERTIFICATE OF SERVICE**

Consistent with the Trademark Trial and Appeal Board Manual of Procedure Rule 309.02(c)(1) (amended January 14, 2017), I hereby certify that a true and complete copy of the foregoing APPLICANT'S FIRST SET OF INTERROGATORY NUMBERS 1-10, is being served on Sterling Jewelers, Inc. by forwarding said copy on August 10, 2018, via email to:

Sterling Jewelers, Inc. through its attorney:

AMANDA MARSTON  
HOLLAND & HART LLP  
PO BOX 8749 ATTN TRADEMARK  
DOCKETING  
DENVER, CO 80201  
UNITED STATES

docket@hollandhart.com,  
shavlick@hollandhart.com,  
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mamoore@hollandhart.com  
Phone: 303-473-2861

Date: August 10, 2018

/Amy Wallace/  
Amy Wallace

## **INSTRUCTIONS**

1. The singular form of a word should be interpreted in the plural as well. Any pronoun shall be construed to refer to the masculine, feminine, or neuter gender as in each case is most appropriate. The words "and" and "or" shall be construed conjunctively or disjunctively, whichever makes the request more inclusive. The word "INCLUDING" shall be without limitation. The terms "each" and "any" shall mean any and all.
2. These interrogatories are continuing in nature. You must promptly provide, by way of supplementary answers, such additional information as may be hereafter obtained that will ensure the continued truthfulness, accuracy, completeness, and reliability of your answers to each of these interrogatories. In each instance where you supplement your interrogatory answers, you must also IDENTIFY by Bates Number any documentary information that prompted the supplementation and IDENTIFY when you first became aware of the identified DOCUMENT(s).

## DEFINITIONS

1. "YOU," "YOUR," or "OPPOSER" means the responding party, and:
  - a. Sterling Jewelers Inc.;
  - b. Kay Jewelry Stores;
  - c. Kay Jewelers; and
  - d. Kay.
2. "DOCUMENT" and "DOCUMENTS" are used herein in their broadest sense contemplated by Rules 26 and 34 of the Federal Rules of Civil Procedure.
3. "TITANIUM KAY" means the mark which is the subject of U.S. Trademark Application Serial No. 87435559.
4. "CONTEND" refers to any position, assertion, or argument whatsoever, INCLUDING YOUR denials of allegations by the Applicant for registration of its TITANIUM KAY trademark.
5. "INCLUDE," "INCLUDES," and "INCLUDING" are solely inclusive terms used in these interrogatories to provide examples of what is meant but do not limit in any way the scope of the interrogatories in which those terms appear.
6. "IDENTIFY" when used with respect to any natural person, means that the following information shall be provided: the person's full name, last known home address, last known business address and telephone number, last known title or occupation, and last known employer.
7. "IDENTIFY" when used with respect to any legal entity, such as a corporation, company, or person other than a natural person, means that the following information shall be provided: the entity's name, the place of incorporation or organization, the principal place of business, and the nature of the business conducted by that legal entity, the goods supplied to Opposer.
8. "IDENTIFY" as it related to communications means to describe:
  - a. The substance of each communication;
  - b. The date of each communication;

- c. The name of each person(s) making such communication, the current relationship to plaintiffs if any and the current contact information for such person(s);
  - d. The name of the person(s) to whom such communication was sent as depicted on any written communication;
  - e. The evidence relied on that such communication was sent and received;
  - f. The address to which such communication was sent or at which such communication occurred;
  - g. The description of each DOCUMENT or other evidence that support the communication; and
  - h. The date and substance of any follow-up action taken, or communication made, and each response of the recipient.
9. "SKU" (stock keeping unit) is the identification designation assigned to a jewelry design or item by which that jewelry design or item can be tracked such as for inventory purposes.
10. "ENFORCEMENT EFFORT" means OPPOSER initiated efforts with respect to OPPOSER'S KAY Marks INCLUDING cease and desist communications, infringement notices, opposition or cancellation proceedings, and litigation filings.

## **INTERROGATORIES**

### Interrogatory No. 1

For each of the following listed Du Pont factors, DESCRIBE all probative facts and the supporting evidence for each probative fact YOU CONTEND supports YOUR claim in paragraph 15 of the Notice of Opposition that “TITANIUM KAY so resembles Opposer’s prior use and registered KAY Marks as to be likely, when used in connection with the goods set forth in the Application [for TITANIUM KAY], to cause confusion, or to cause mistake, or to deceive ...”:

1. The similarity of the KAY Marks and the TITANIUM KAY Mark in appearance, sound, connotation, and commercial impression;
2. The similarity and dissimilarity of the nature of the goods . . . described in the TITANIUM KAY application;
3. The similarity and dissimilarity of established, likely-to-continue trade channels;
4. The conditions under which and buyers to whom sales are made, i.e. “impulse” vs. careful, sophisticated purchasing;
5. The number and nature of similar marks in use on similar goods or services;
6. The nature and extent of each instance of actual confusion;
7. The length of time during, and the conditions under which, there has been concurrent use without evidence of actual confusion;
8. The variety of goods on which the KAY Marks and the TITANTIUM KAY marks are or are not used;
9. The market interface between the applicant for TITANIUM KAY mark and the owner/user of the KAY Marks;
10. The extent to which applicant has a right to exclude others from use of its mark on its goods;
11. The extent of potential confusion; and
12. Any other established fact probative of the effect of use.

A:

Interrogatory No. 2

IDENTIFY each manufacturer for whom OPPOSER has provided retail jewelry store services, with respect to goods of such manufacture, since 2005 by providing (a) the name and address of the manufacturer; (b) each jewelry item SKU provided by such manufacture and offered for sale by OPPOSER; (c) each trademark applied to each jewelry item SKU provided by such manufacture and offered for sale by OPPOSER; and (c) each jewelry item SKU of the manufacturer sold in OPPOSER's retail jewelry stores that was made from titanium.

A:

Interrogatory No. 3

IDENTIFY each trademark OPPOSER affixes to, imprints or otherwise uses on jewelry item SKUs it sells in its retail jewelry stores or on its [www.kay.com](http://www.kay.com) website.

A:

Interrogatory No. 4

DESCRIBE with specificity each jewelry SKU of OPPOSER that was "made of titanium under its Kay brand" and offered in its retail stores and on its [www.kay.com](http://www.kay.com) website as alleged in Paragraph 3 of the Notice of Opposition IDENTIFYING for each described jewelry SKU, the specific "Kay brand" used and how that "Kay brand" was affixed or otherwise used in connection with that Jewelry SKU.

A:



Interrogatory No. 5

IDENTIFY each ENFORCEMENT EFFORT undertaken by OPPOSER with respect to its Kay Marks (as defined in paragraph 4 of the Notice of Opposition) since January 1, 2004 INCLUDING the name and address of the target entity against whom the ENFORCEMENT EFFORT was made; the date the ENFORCEMENT EFFORT was first initiated; the trademark or service mark that was the subject of the ENFORCEMENT EFFORT; the date the ENFORCEMENT EFFORT was concluded; the nature of the ENFORCEMENT EFFORT (e.g., letter, suit, opposition, etc.); the location/venue where the ENFORCEMENT EFFORT was undertaken; and the results of the ENFORCEMENT EFFORT.

A:

Interrogatory No. 6

DESCRIBE in detail the “common law rights” alleged to be INCLUDED in the meaning of “KAY Marks” as alleged in paragraph 4 of the Notice of Opposition INCLUDING each geographical area for which use is claimed; the date of first use in each geographic area for which use is claimed; the goods or services in connection with which the Kay Marks were used.

A:

Interrogatory No. 7

DESCRIBE in detail OPPOSER'S awareness of Applicant's TITANIUM KAY mark INCLUDING the date when OPPOSER first learned of Applicant's use of its TITANIUM KAY mark; the date, substance and medium of each communication regarding or referring to the TITANIUM KAY mark after the date OPPOSER first learned of Applicant's use of the TITANIUM KAY mark.

A:

Interrogatory No. 8

DESCRIBE in detail when OPPOSER first began selling jewelry made in whole or in part from titanium IDENTIFYING its jewelry SKU, the date of first sale of each such jewelry SKU; the date when each such jewelry SKU was discontinued; and the total quantity of each such jewelry SKU sold.

A:

Interrogatory No. 9

For each KAY Mark, IDENTIFY each fact OPPOSER CONTENTS to demonstrate that when encountering such Kay Mark, that the public would associate such mark with OPPOSER and not the owner of the following marks registered for use on jewelry:

5446604	JULIA KAYS
5280454	TRU-KAY
5022610	SCOTT KAY
4734295	ALEXIA KAY
4063091	KAY BUENA
4210759	SCOTT KAY GUARDIAN
4301856	THE GUARDIAN BY SCOTT KAY
4279847	RAQUEL KAY
3398675	KAY BOJESSEN
3060827	SCOTT KAY
2719474	DK DETRA KAY JEWELRY DESIGN
2827785	SCOTT KAY

2719473	DETRA KAY JEWELRY DESIGN
4106037	SCOTT KAY CODE
1267889	TRU-KAY
1312253	MARY KAY

A:

Interrogatory No. 10

IDENTIFY each fact OPPOSER CONTENTS to demonstrate that the TITANIUM KAY mark “so resembles Opposer’s prior used and registered Kay Marks as to dilute or be likely to cause dilution...” as alleged in Paragraph 18 of the Notice of Opposition.

A: