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Filing date: **04/30/2020**

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

| | |
|------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Proceeding | 91242257 |
| Party | Plaintiff Traxxas, L.P. |
| Correspondence Address | GREGORY W CARR CARR LAW FIRM PLLC 6170 RESEARCH ROAD SUITE 111 FRISCO, TX 75033 UNITED STATES trademarks@carrip.com, gcarr@carrip.com 214-760-3000 |
| Submission | Motion to Compel Discovery or Disclosure |
| Filer's Name | Gregory W. Carr |
| Filer's email | gcarr@carrip.com, trademarks@carrip.com |
| Signature | /Gregory W. Carr/ |
| Date | 04/30/2020 |
| Attachments | Traxxas L.P. v. Dennis Caco - Motion to Compal 4-30-2020.pdf(996820 bytes) |

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

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| TRAXXAS, L.P. | § | |
| | § | |
| Opposer | § | Opposition No. 91242257 |
| | § | |
| v. | § | |
| | § | |
| Dennis Caco | § | |
| | § | Mark: MAX BOOST |
| Applicant | § | Application No.: 87/532,431 |
| | § | |

OPPOSER TRAXXAS, L.P.’S MOTION TO COMPEL DISCOVERY

Pursuant to TBMP § 411.02 and Rules 37 of the Federal Rules of Civil Procedure, Opposer Traxxas, L.P. (“Opposer”) moves to compel Applicant Dennis Caco (“Applicant”) to comply with its discovery obligations.

On January 21, 2020, Opposer served its first set production requests and interrogatories on Applicant. See Exhibits 1 and 2. On February 5, 2020, in light of a lack of response from Applicant to settlement discussions that have been pending for over a year, Opposer contacted Applicant, withdrew Opposer’s settlement proposal, and indicated to Applicant that complete responses to pending discovery requests were expected. See Exhibit 3. No extensions to the discovery response deadlines were discussed or agreed to between the parties or requested from the Board by Applicant.

On April 21, 2020, Opposer emailed a letter to counsel for Applicant noting Applicant’s failure to provide timely respond to Opposer’s discovery requests and requesting that discovery responses and documents be produced as soon as possible and, in any event, not later than by April 28, 2020. See Exhibit 4.

To date, Opposer has received no discovery responses or document production from Applicant. Opposer attaches a statement from counsel regarding his good faith effort to resolve this discovery dispute without interference from the Board pursuant to 37 C.F.R. § 2.120(e) and TBMP § 523.02.

Accordingly, pursuant to F.R.C.P. 37(a) and TBMP §§ 411.02 and 523.01, Opposer respectfully requests that the Board compel Applicant Dennis Caco to serve its responses to Opposer's discovery requests immediately.

Dated: April 30, 2020

Respectfully Submitted,

/s/ Gregory W. Carr

Gregory W. Carr
Attorney for Opposer
Carr Law Firm PLLC
6170 Research Road, Suite 111
Frisco, Texas 75033
Telephone: (214) 760-3000
Email: gcarr@carrip.com

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury that **on April 30, 2020** a true copy of the foregoing OPPOSER TRAXXAS, L.P.'S MOTION TO COMPEL DISCOVERY was served **via email** on Victoria Newland at Law Offices of Victoria Newland APC, 3460 Marron Road Suite 103-356, Oceanside, CA 92056, attorney of record for Applicant, sent to the addresses noted below:

victoria@vnewlandlaw.com

/s/ Gregory W. Carr
Gregory W. Carr
Attorney for Opposer
CARR Law Firm, PLLC
6170 Research Rd, Suite 111
Frisco, TX 75033
Telephone: (214) 760-3000
Email: gcarr@carrip.com

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

TRAXXAS, L.P.

Opposer

v.

Dennis Caco

Applicant

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Opposition No. 91242257

Mark: MAX BOOST
Application No.: 87/532,431

DECLARATION OF GREGORY W. CARR, ESQ.

I, Gregory W. Carr, Esq., declare as follows:

1. I represent Opposer Traxxas, L.P. in the above referenced proceeding.
2. I have personal knowledge of the facts set forth herein and in Opposer's Motion to Compel.
3. Opposer served its first set of interrogatories and requests for production on Application on January 21, 2020, true and correct copies of which are attached hereto as Exhibits 1 and 2.
4. On February 5, 2020, I emailed counsel for Applicant, a true and correct copy of which is attached as Exhibit 3, advising Applicant that Opposer was withdrawing its settlement proposal sent on March 13, 2019 and that Opposer will be expecting complete responses to discovery requests be served by Applicant.
5. Between February 5, 2020 and April 21, 2020, no agreement between the parties were reached to extend the response deadline to Opposer's discovery requests.

6. On April 21, 2020, Opposer emailed a letter to Applicant's counsel, a true and correct copy of which is attached as Exhibit 4, noting Applicant's failure to timely provide complete responses and failure to produce documents.
7. As of April 30, 2020, counsel for Applicant has not provided responses of any kind to Opposer's discovery requests.
8. I have made a good faith effort to resolve the issue presented by Applicant's failure to provide responses to Opposer's discovery requests.

I declare under penalty of Perjury that all of the foregoing is true and correct.

Dated: April 30, 2020

Respectfully Submitted,

/s/ Gregory W. Carr

Gregory W. Carr
Attorney for Opposer

EXHIBIT 1

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

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| Applicant | § | Mark: MAX BOOST |
| | § | Application No.: 87/532,431 |
| | § | |

**OPPOSER TRAXXAS, L.P.’S FIRST SET OF
INTERROGATORIES NOS. 1-25**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposer TRAXXAS, L.P. (“OPPOSER”) hereby requests that Applicant Dennis Caco (“Applicant”) fully answer each of the following interrogatories, in writing and under oath, without evasion, within thirty (30) days of service of these interrogatories.

DEFINITIONS

1. “OPPOSER” means TRAXXAS, L.P., the OPPOSER in the above-captioned proceeding.

2. “APPLICANT”, “YOU” or “YOUR” means Applicant Dennis Caco, its subsidiaries, divisions, predecessor, and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party, and/or each of the foregoing entities' employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any person who served in any such capacity at any time during the relevant time period specified herein.

3. “OPPOSER’S MARK” means the marks identified in pages 1-2 of the Notice of Opposition in this proceeding.

4. “CHALLENGED MARK” means the mark that is the subject of U.S. Trademark Application No. 87/532,431 and this proceeding.

5. “MARK” includes trademarks, service marks, collective marks, certification marks, and trade names as defined in 15 U.S.C. § 1127, both federally registered and those protected by state or common law.

6. “DATE” means the exact day, month, and year if ascertainable, or, if not, the best available approximation (including relationship to other events).

7. “DOCUMENTS” is synonymous in meaning and equal in scope to its usage in Federal Rules of Civil Procedure 34(a)(1)(A). The term “DOCUMENT” refers to any document now or at any time in Applicant's possession, custody, or control. A person is deemed in control of a document if the person has any ownership, possession, or custody of the document, or the right to secure the document or a copy thereof from any person or public or private entity having physical possession thereof.

8. “COMMUNICATION” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

9. “CONCERNING” means consisting of, referring to, relating to, reflecting, or being in any way logically or factually connected with the matter discussed.

10. “DESCRIBE” means set forth fully and unambiguously every fact relevant to the subject of the interrogatory, of which you (including your agents and representatives) have knowledge or information.

11. “IDENTIFY” with respect to a person that is not an individual means to state its: full name, legal form, date of organization, state of incorporation or organization or other business or license authority, present or last known address and telephone number, and the identity of its chief executive officer, partners, or persons in equivalent positions.

12. "IDENTIFY" with respect to a document means to give, to the extent known, the

- (a) type of document(letter, memorandum, tape recording, etc.);
- (b) general subject matter;
- (c) date of the document;
- (d) author(s), addressee(s) and recipient(s);
- (e) person(s) who approved the document;
- (f) its date;
- (g) present location: and
- (h) present custodian.

In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Rule 33 of the Federal Rules of Civil Procedure.

13. "IDENTIFY" with respect to communications means to give, to the extent known,

- (a) a description of the substance of the communication;
- (b) the form of the communication (e.g., telephone, facsimile, email, etc.);
- (c) the identity of each person that was a party to and/or present at the time of the communication, as well as the full name, present or last known address, and the current or last known place of employment of each person;
- (d) the identity of the person whom you contend initiated the communication; and
- (e) the time, date, and place of the communication.

14. "IDENTIFY" with respect to source of information means to give, to the extent known,

- (a) identify the person from whom you obtained the information; and
- (b) identify each communication from such person constituting, summarizing, reflecting, or otherwise referring to or relating to the information.

15. "IDENTIFY" with respect to person, means to give with respect to each such individual or person, to the extent known,

- (a) Name of the person;
- (b) Present business and home address;
- (c) Present business, home, and telephone number;
- (d) Present or last known employer and present or last known position with such employer; and
- (e) Relationship with you (including the dates each such relationship commenced and terminated, and a brief description of the relationship).

16. A reference to a “PERSON” includes an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity and includes all of that person's principals, employees, agents, attorneys, consultants, and other representatives.

17. The terms “and” and “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of the request all responses that might otherwise fall outside the scope of this request.

18. The terms “all,” “any,” or “each” encompass any and all of the matter discussed.

19. The use of singular form includes plural, and *vice versa*.

20. The use of present tense includes past tense, and *vice versa*.

21. The masculine form shall also be construed to include the feminine and *vice versa*.

INSTRUCTIONS

1. Answers to these interrogatories shall be served upon the undersigned attorneys at CARR Law Firm, PLLC within thirty (30) days of service of these interrogatories.

2. Each interrogatory is to be answered fully based on information in Applicant’s possession, custody, or control, or in the possession, custody, or control of Applicant’s representatives, agents, or attorneys.

3. If you object to any interrogatory or any portion of an interrogatory on the ground that the answer reflects or would reveal the substance of a privileged communication, identify:

- (a) the nature of the privilege claimed;
- (b) the person who made the communication, whether oral or in writing;
- (c) if the communication was oral, all persons present while the communication was made;
- (d) if the communication was written, the author, addressees, and any other recipients;
- (e) the relationship of the author of the communication to each recipient;
- (f) the relationship of the persons present to the person who made the communication;

- (g) the date and place of the communication; and
- (h) the general subject matter of the communication.

OR

If you object to any interrogatory, in whole or in part, on the grounds of privilege, provide all information required by Federal Rule of Civil Procedure 26(b)(5) and TBMP § 405.04(b).

4. If, after a reasonable and thorough investigation using due diligence, you are unable to answer any interrogatory or any part thereof, on the ground of lack of information available to you, please state what has been done to locate such information. In addition, specify what knowledge or belief you do have concerning the unanswered portion of any interrogatory and set forth the facts upon which knowledge or believe is based.

5. Where an interrogatory does not specifically requests a particular fact, but where such fact or facts are necessary to make the answer to said interrogatory either comprehensible, complete, or not misleading, you should include such fact or facts as part of said answer and said interrogatory shall be deemed specifically to request such fact or facts.

6. Unless otherwise stated herein, these interrogatories cover the time period from January 1, 2017 to and including the date Applicant signs its responses to these interrogatories.

7. If you respond to an interrogatory by reference to documents pursuant to Federal Rule of Civil Procedure 33(d), identify with specificity, such as, for example, identifying the applicable Bates Numbers assigned to such documents.

8. For the convenience of the Board and the parties, each interrogatory should be quoted in full immediately preceding the response.

9. These interrogatories are continuing in nature. If you receive or otherwise become aware of information responsive to any interrogatory after you have signed the response to that interrogatory, you

must promptly supplement your response to provide such information, as required by Federal Rule of Civil Procedure 26(e) and TBMP § 408.03.

INTERROGATORIES

INTERROGATORY NO. 1: DESCRIBE in detail the facts and circumstances CONCERNING YOUR conception, creation, selection, and adoption of the CHALLENGED MARK.

INTERROGATORY NO. 2: IDENTIFY all PERSONS who were or are, responsible for or participated in, the conception, creation, selection, or adoption of any CHALLENGED MARK.

INTERROGATORY NO. 3: IDENTIFY each trademark search, investigation, review or any other inquiry conducted by or for APPLICANT CONCERNING the availability to use or register the CHALLENGED MARK.

INTERROGATORY NO. 4: IDENTIFY each PERSON involved in the review of any trademark search, investigation, review or other inquiry conducted by or for APPLICANT CONCERNING the availability to use or register the CHALLENGED MARK.

INTERROGATORY NO. 5: IDENTIFY all “toy vehicle” and “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods that APPLICANT has promoted, advertised, offered for sale, sold, or provided under or in connection with the CHALLENGED MARK in the United States.

INTERROGATORY NO. 6: For each “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” good that YOU have promoted, advertised, offered, sold, or provided under or in connection with the CHALLENGED MARK, state the date ranges of actual and planned use of the CHALLENGED MARK in connection with the good or service, including the specific DATE of first use or intended first use of the MARK for each good or service, and the nature of the use whether by affixing the MARK to the good or service or otherwise.

INTERROGATORY NO. 7: For each “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” good that YOU have promoted, advertised, offered, sold, or provided under or in connection with the CHALLENGED MARK, please DESCRIBE such advertising, promoting, offering for sale, selling and providing activities, including, without limitation, the PERSONS involved, DATE, type, geographic area of distribution, and cost.

INTERROGATORY NO. 8: IDENTIFY all PERSONS who were or are, responsible for or participated in, the promoting, marketing or advertising of any “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods offered for sale, sold, or intended to be offered for sale or sold by or for APPLICANT under or in connection with the CHALLENGED MARK.

INTERROGATORY NO. 9: IDENTIFY all website(s) displaying the CHALLENGED MARK that are owned, operated, or controlled by APPLICANT, and all PERSONS who have been or are, responsible for or participating in, the creation and development of each website.

INTERROGATORY NO. 10: DESCRIBE all market research conducted by or on behalf of APPLICANT CONCERNING the CHALLENGED MARK or any “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods marketed or proposed to be marketed under the CHALLENGED MARK, including the results of such research.

INTERROGATORY NO. 11: DESCRIBE all channels of trade in the United States through which APPLICANT has been or is promoting, advertising, offering for sale, selling, or intends to offer for sale or sell goods or services under or in connection with the CHALLENGED MARK.

INTERROGATORY NO. 12: DESCRIBE all classes and/or types of customers/consumers (for example, age, gender, occupation, socioeconomic group, etc.) that comprise the past, current and intended markets for the “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods promoted, advertised, offered for sale, sold, or intended to be offered for sale or sold under or in connection with the CHALLENGED MARK.

INTERROGATORY NO. 13: IDENTIFY the geographic regions in the United States in which advertising, promoting, marketing, displaying, distributing, offering for sale, or selling, either directly by APPLICANT or by or through others, of any goods or services under or in connection with the CHALLENGED MARK, has occurred or has been planned.

INTERROGATORY NO. 14: IDENTIFY by name and location all trade shows in the United States where goods or services under the CHALLENGED MARK have been, will be, or are intended to be advertised, displayed, promoted, offered for sale or sold.

INTERROGATORY NO. 15: DESCRIBE the DATE and circumstances of APPLICANT first becoming aware of OPPOSER'S use and registration of OPPOSER'S MARKS.

ANSWER:

INTERROGATORY NO. 16: IDENTIFY all agreements CONCERNING the CHALLENGED MARK by DATE, parties to the agreement, and the subject matter of the agreement. Agreements CONCERNING the CHALLENGED MARK include any formal or informal contractual relationship, whether written, implied-in fact, or oral, between the APPLICANT and any third parties pertaining to the manufacture, marketing, development, sale, distribution, trademark registration, and/or licensing of (e.g., of any intellectual property used in connection with) product(s) bearing the CHALLENGED MARK.

INTERROGATORY NO. 17: DESCRIBE in detail any COMMUNICATIONS between APPLICANT and any third party CONCERNING OPPOSER or OPPOSER'S MARKS, and any actions taken by APPLICANT as a result of such COMMUNICATIONS.

INTERROGATORY NO. 18: DESCRIBE in detail any COMMUNICATIONS between APPLICANT and OPPOSER.

INTERROGATORY NO. 19: DESCRIBE each and every instance of which APPLICANT is aware in which any PERSON has been in any way confused, mistaken, or deceived as to the source, origin, or sponsorship of any goods or services advertised, promoted, sold, offered for sale, or provided under or in connection with the CHALLENGED MARK.

INTERROGATORY NO. 20: DESCRIBE all facts that would support a contention that APPLICANT owns any rights in the CHALLENGED MARK.

INTERROGATORY NO. 21: DESCRIBE all facts that YOU contend demonstrate that the CHALLENGED MARK has been used as an identification of the source of goods or services.

INTERROGATORY NO. 22: IDENTIFY all PERSONS that furnished information for the responses to these interrogatories, designating the number of each interrogatory for which each such PERSON furnished information.

INTERROGATORY NO. 23: As to each of OPPOSER TRAXXAS, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION NOS. 1-28, if any DOCUMENT was, but no longer is, in YOUR possession, subject to YOUR control, or in existence, include a statement (a) IDENTIFYING the DOCUMENT; (b) Describing where the DOCUMENT is now; (c) IDENTIFYING the PERSON who has control of the DOCUMENT; (d) Describing how the DOCUMENT became lost or destroyed or was transferred; and (e) IDENTIFYING each of those PERSONS responsible for or having knowledge of the loss, destruction, or transfer of this document from YOUR possession, custody, or control.

INTERROGATORY NO. 24: As to each of OPPOSER TRAXXAS, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION NOS. 1-28, if YOUR response is that the DOCUMENTS are not within YOUR possession or custody, describe in detail the unsuccessful efforts YOU made to locate each such DOCUMENT. If YOUR response is that the DOCUMENTS are not under YOUR control, identify the PERSON who has the control and the location of the DOCUMENT.

INTERROGATORY NO. 25: As to each of OPPOSER TRAXXAS, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION NOS. 1-28, if any DOCUMENT was, but no longer is, in your possession, subject to YOUR control, or in existence, provide the governing document retention policy DESCRIBING why the DOCUMENT was but no longer is in YOUR possession, subject to YOUR control, or in existence.

Dated: January 21, 2020

Respectfully Submitted,

/s/ Gregory W. Carr

Gregory W. Carr
Attorney for Opposer
Carr Law Firm PLLC
6170 Research Road
Suite 111
Frisco, Texas 75033
Telephone: (214) 760-3000
Email: gcarr@carrlp.com

ATTORNEY'S FED. R. CIV. P. CERTIFICATION

The undersigned attorney for Applicant has read the foregoing responses to OPPOSER TRAXXAS, L.P.'S FIRST SET OF INTERROGATORIES NOS. 1-25, and they are in compliance with Fed. R. Civ. P. 26(g).

DATED: _____

Law Office of Victoria Newland APC

Respectfully Submitted,

By _____
Victoria Newland
3460 Marron Road Suite 103-356
Oceanside, CA 92056
Attorney for Applicant,
Dennis Caco

VERIFICATION

I, _____, declare under penalty of perjury under the laws of the United States that I am the _____ of Applicant in this matter, and I have reviewed the foregoing responses to OPPOSER TRAXXAS, L.P.'S FIRST SET OF INTERROGATORIES NOS. 1-25, know the contents thereof, and believe them to be true and correct

DATED: _____

[Applicant]

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury that **on January 21, 2020** a true copy of the foregoing OPPOSER TRAXXAS, L.P.'S FIRST SET OF INTERROGATORIES NOS. 1-25 was served **via email** on Victoria Newland at Law Offices of Victoria Newland APC, 3460 Marron Road Suite 103-356, Oceanside, CA 92056, attorney of record for Applicant, sent to the addresses noted below:

victoria@vnewlandlaw.com

/s/ Gregory W. Carr
Gregory W. Carr
Attorney for Opposer
CARR Law Firm, PLLC
6170 Research Rd, Suite 111
Frisco, TX 75033
Telephone: (214) 760-3000
Email: gcarr@carrlp.com

EXHIBIT 2

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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| TRAXXAS, L.P. | § | |
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| | § | |

**OPPOSER TRAXXAS, L.P.’S FIRST SET OF
REQUESTS FOR PRODUCTION NOS. 1-28**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, OPPOSER TRAXXAS, L.P. (“OPPOSER”) hereby requests that Applicant Dennis Caco (“Applicant”), by its undersigned counsel, respond to the following requests for the production of documents and things by providing written responses thereto and producing for inspection and copying the documents requested herein at the offices of Opposer’s attorneys, CARR Law Firm, PLLC, 6170 Research Rd. Suite 111 Frisco, TX 75033, Attn: Gregory Carr, within thirty (30) days of service of these requests.

DEFINITIONS

1. “OPPOSER” means TRAXXAS, L.P., the OPPOSER in the above-captioned proceeding.

2. “APPLICANT,” “YOU,” or “YOUR” means Applicant Dennis Caco, its subsidiaries, divisions, predecessor, and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party, or each of the foregoing entities’ employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any PERSON who served in any such capacity at any time during the relevant time period specified herein.

3. “OPPOSER’S MARK” means the marks identified in pages 1-2 of the Notice of Opposition in this proceeding.

4. “CHALLENGED MARK” means the mark that is the subject of U.S. Trademark Application No. 87/532,431 and this proceeding.

5. “MARK” includes trademarks, service marks, collective marks, certification marks, and trade names as defined in 15 U.S.C. § 1127, both federally registered and those protected by state or common law.

6. The term “IN COMMERCE” means “use in commerce” as defined in Section 45 of the Lanham Act, 15 U.S.C. § 1127.

7. “DATE” means the exact day, month, and year if ascertainable, or, if not, the best available approximation (including relationship to other events).

8. “DOCUMENT” is synonymous in meaning and equal in scope to its usage in FRCP 34(a)(1)(A). The term “document” refers to any document now or at any time in Applicant's possession, custody, or control. A person is deemed in control of a document if the person has any ownership, possession, or custody of the document, or the right to secure the document or a copy thereof from any person or public or private entity having physical possession thereof.

9. “COMMUNICATION” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

10. “CONCERNING” means consisting of, referring to, relating to, reflecting, or being in any way logically or factually connected with the matter discussed.

11. “IDENTIFY” with respect to a person that is not an individual means to state its: full name, legal form, date of organization, state of incorporation or organization or other business or license authority, present or last known address and telephone number, and the identity of its chief executive officer, partners, or persons in equivalent positions.

12. “IDENTIFY” with respect to a document means to give, to the extent known, the

- (a) type of document(letter, memorandum, tape recording, etc.);
- (b) general subject matter;
- (c) date of the document;
- (d) author(s), addressee(s) and recipient(s);
- (e) person(s) who approved the document;
- (f) its date;
- (g) present location: and
- (h) present custodian.

In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Rule 33 of the Federal Rules of Civil Procedure.

13. “IDENTIFY” with respect to communications means to give, to the extent known,

- (a) a description of the substance of the communication;
- (b) the form of the communication (e.g., telephone, facsimile, email, etc.);
- (c) the identity of each person that was a party to or present at the time of the communication, as well as the full name, present or last known address, and the current or last known place of employment of each person;
- (d) the identity of the person whom you contend initiated the communication; and
- (e) the time, date, and place of the communication.

14. “IDENTIFY” with respect to source of information means to give, to the extent known,

- (a) identify the person from whom you obtained the information; and
- (b) identify each communication from such person constituting, summarizing, reflecting, or otherwise referring to or relating to the information.

15. “IDENTIFY” with respect to person, means to give with respect to each such individual or person, to the extent known,

- (a) Name of the person;
- (b) Present business and home address;
- (c) Present business, home, and telephone number;
- (d) Present or last known employer and present or last known position with such employer; and
- (e) Relationship with you (including the dates each such relationship commenced and terminated, and a brief description of the relationship).

16. A reference to a “PERSON” includes an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity and includes all of that person's principals, employees, agents, attorneys, consultants, and other representatives.

17. The terms “and” and “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of the request all responses that might otherwise fall outside the scope of this request.

18. The terms “all,” “any,” or “each” encompass any and all of the matter discussed.

19. The use of singular form includes plural, and *vice versa*.

20. The use of present tense includes past tense, and *vice versa*.

INSTRUCTIONS

1. All documents are to be produced as they are kept in the usual course of business with any identifying labels, file markings, or similar identifying features, or shall be organized and labeled to correspond to the categories requested herein. If there are no documents in response to a particular request or if you withhold any responsive documents or categories of documents based on any objections, you shall state so in writing.

2. Electronically stored information (ESI) must be produced in its original native format with its accompanying metadata. For example:

(a) Documents created using Microsoft Word must be produced as .doc files; and

(b) E-mails must be produced in a form that readily supports import into standard email client programs (e.g., .msg or .pst files).

OR

Electronically stored information (ESI) must be produced in PDF format with corresponding load files containing the document's text and all available metadata.

3. These requests call for the production of all responsive documents in your possession, custody, or control, or in the possession, custody, or control of your employees, predecessors, successors, parents, subsidiaries, divisions, affiliates, partners, joint venturers, brokers, accountants, financial advisors, representatives, and agents or other persons acting on your behalf, without regard to the physical location of such documents.

4. In responding to these requests, include documents obtained on your behalf by your counsel, employees, agents, or any other persons acting on your behalf. If your response is that

the documents are not within your possession or custody, describe in detail the unsuccessful efforts you made to locate each such document. If your response is that documents are not under your control, identify who has the control and the location of the documents.

5. If any document was, but no longer is, in your possession, subject to your control, or in existence, include a statement:

- (a) Identifying the document;
- (b) Describing where the document is now;
- (c) Identifying who has control of the document;
- (d) Describing how the document became lost or destroyed or was transferred; and
- (e) Identifying each of those persons responsible for or having knowledge of the loss, destruction, or transfer of this document from your possession, custody, or control.

6. Each request contemplates production of all documents in their entirety. If a portion of a document is responsive to one or more requests, the document shall be produced in its entirety.

7. If any document is withheld in whole or in part for any reason including, without limitation, a claim of privilege or other protection from disclosure such as the work product doctrine, business confidentiality, or trade secret protection, set forth separately with respect to each such document:

- (a) The ground of privilege or protection claimed;
- (b) Each and every basis under which the document is withheld;
- (c) The type of document;
- (d) Its general subject matter;
- (e) The document's date; and
- (f) Identifying each person having knowledge of the reason(s) for withholding all or any portion of the document.

8. To the extent you assert that a document contains information that should be protected from disclosure (based on the attorney-client privilege, work product doctrine, or another protection) and non-privileged information, the non-privileged portions of the document must be produced. For each such document, indicate the portion of the document withheld by stamping

the words “MATERIAL REDACTED” on the document in an appropriate location that does not obscure the remaining text.

9. Unless otherwise stated herein, all documents requested are for the period commencing January 1, 2017 to and including the date Applicant signs its responses to these requests for production.

10. Unless otherwise stated herein, all request for productions apply to activities in or in connection with the United States.

11. For the convenience of the Board and the parties, each request for production should be quoted in full immediately preceding the response.

12. These requests are continuing, and your response to these requests must be promptly supplemented when appropriate or necessary in accordance with Federal Rule of Civil Procedure 26(e) and TBMP 408.03.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: All DOCUMENTS relied upon by APPLICANT in drafting the answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: All DOCUMENTS CONCERNING APPLICANT’S selection, conception, creation, or adoption of the CHALLENGED MARK for use on or in connection with any goods or services.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: DOCUMENTS sufficient to IDENTIFY all PERSONS actually, planned to, or intended to be responsible for or were consulted CONCERNING the selection, conception, creation, or adoption of the CHALLENGED MARK for use on or in connection with any of APPLICANT'S goods or services.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4: DOCUMENTS CONCERNING any actual, planned, or intended trademark search, investigation, review, or inquiry, conducted by or on behalf of APPLICANT and all related materials CONCERNING the availability for use or registration of the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5: All DOCUMENTS CONCERNING United States Trademark Application No. 87/532,431, including, but not limited to, copies of all DOCUMENTS submitted to or received from the United States Patent and Trademark Office and any other PERSON in connection with the application.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6: DOCUMENTS sufficient to IDENTIFY all goods and services actually, planned, or intended to be sold, offered, or licensed by APPLICANT under or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7: DOCUMENTS sufficient to IDENTIFY all PERSONS actually, planned, or intended to be responsible for inventing, creating, manufacturing, designing, or revising any goods actually, planned, or intended to be sold, offered, or licensed by APPLICANT under or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8: ALL DOCUMENTS CONCERNING the actual, planned, or intended manufacturing, including orders and samples of “toy vehicle” and “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods actually, planned, or intended to be sold, offered, or licensed by APPLICANT under or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9: All DOCUMENTS CONCERNING any actually, planned, or intended assessment, evaluation, or consideration by APPLICANT of how to categorize, describe, or define the goods and services actually, planned or intended to be sold, offered, provided, or licensed under or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10: DOCUMENTS CONCERNING all channels of trade through which APPLICANT actually, planned, or intended to advertise, promote, distribute, sell, offer, or license the “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods under or in connection with the CHALLENGED MARK, including, but not limited to, DOCUMENTS that IDENTIFY the distributors, retail, or other business outlets that actually, plan, or intend to sell or offer for sell APPLICANT’S goods in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11: DOCUMENTS CONCERNING purchasers, target purchasers, or potential purchasers of the “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods actually, planned, or intended to be sold, offered, distributed, or licensed by APPLICANT under or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: DOCUMENTS CONCERNING each visual, oral, and other manner in which APPLICANT actually, planned to, or intended to present or authorize the presentation of the CHALLENGED MARK, including, but not limited to, all pronunciations

of and typestyles, fonts, typefaces, designs, shapes, graphics, and colors used for or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13: Representative samples of each actual, planned, or intended type of advertisement and promotional material (e.g., print, radio, television, brochures, catalogues, flyers, press releases, website pages, website banners, in-store displays, point-of-sale promotional items, etc.) that display the CHALLENGED MARK, including DOCUMENTS CONCERNING every manner of presentation of the CHALLENGED MARK in each type of advertisement or promotional material.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14: Representative samples of all tags, labels, signs, and packaging that have actually, was planned to, or was intended to display the CHALLENGED MARK, including DOCUMENTS CONCERNING every manner of presentation of the CHALLENGED MARK in such materials.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15: All newspaper, magazine, newsletter, trade journal, website, and other media coverage, in any form or medium (print, electronic, or other), CONCERNING the CHALLENGED MARK, whether or not authored by any official member of the press.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16: DOCUMENTS CONCERNING any PERSONS actually, planned or intended to be considered, contracted, or engaged by APPLICANT with respect to the preparation of any DOCUMENTS and things bearing or otherwise using the CHALLENGED MARK, and all DOCUMENTS CONCERNING COMMUNICATIONS between the APPLICANT and each such PERSON.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17: All DOCUMENTS CONCERNING APPLICANT'S knowledge of OPPOSER or OPPOSER'S MARK, including, but not limited to, all DOCUMENTS CONCERNING COMMUNICATIONS about or with OPPOSER and about APPLICANT'S awareness of OPPOSER'S use of any of OPPOSER'S MARKs.

RESPONSE:

REQUEST FOR PRODUCTION NO. 18: All DOCUMENTS CONCERNING the DATE when APPLICANT first became aware of OPPOSER, as well as the DATE and the circumstances under which APPLICANT first became aware of the OPPOSER'S MARKs, and all DOCUMENTS that IDENTIFY the PERSONS to whom such awareness was communicated.

RESPONSE:

REQUEST FOR PRODUCTION NO. 19: All studies, surveys, investigations, reviews, research, development, analyses, or opinions CONCERNING the CHALLENGED MARK, including, but not limited to, any such DOCUMENTS comparing the CHALLENGED MARK to any of OPPOSER'S MARKs or CONCERNING any actual confusion or likelihood of confusion between the CHALLENGED MARK (or any MARK that incorporates, in whole or in part, the CHALLENGED MARK or is similar thereto) and any of OPPOSER'S MARKs.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20: DOCUMENTS CONCERNING any complaint, petition, demand, objection, administrative proceeding, or civil action made by or against APPLICANT in which any trademark, trade dress, dilution, unfair competition, copyright, or domain name claims were asserted.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21: All DOCUMENTS CONCERNING any observations, perceptions, impressions, or inquiries of any PERSON CONCERNING whether the goods or services actually, planned or intended to be sold, offered, provided, or licensed by or on behalf of APPLICANT under or in connection with the CHALLENGED MARK are produced, sponsored, or endorsed by, or in any manner associated or affiliated with, OPPOSER or any goods or services offered under or in connection with any of OPPOSER'S MARKs.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22: All DOCUMENTS CONCERNING any instances of actual or possible confusion, mistake, deception, or association of any kind between OPPOSER, any of OPPOSER’S MARKs, or OPPOSER’S goods or services on the one hand, and APPLICANT, the CHALLENGED MARK, or APPLICANT’S goods or services on the other hand.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23: All DOCUMENTS CONCERNING any COMMUNICATIONS in which any PERSON inquired about, commented on, or mentioned OPPOSER, OPPOSER’S MARK, or OPPOSER’S goods or services in any way.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24: All agreements between or among APPLICANT and any other PERSON CONCERNING the CHALLENGED MARK, or the actual, planned, or intended manufacture, advertisement, promotion, marketing, distribution, sale, offer, or licensing of the “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods under or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 25: DOCUMENTS CONCERNING all third parties that actually, planned, or intend to be manufacturing, selling, offering, distributing or licensing the “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods under or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 26: DOCUMENTS CONCERNING all third party MARKS that APPLICANT contends is relevant to this opposition proceeding.

RESPONSE:

REQUEST FOR PRODUCTION NO. 27: ALL DOCUMENTS referred to, used in the preparation of, or used to obtain information for the responses to any of OPPOSER TRAXXAS, L.P.’S FIRST SET OF INTERROGATORIES NOS. 1-25.

RESPONSE:

REQUEST FOR PRODUCTION NO. 28: DOCUMENTS describing the document retention policy including retention plans, guidelines, rules, standards, protocols, and procedures of the APPLICANT in effect since the earliest date of the range of time stated in this request.

RESPONSE:

Dated: January 21, 2020

Respectfully Submitted,

/s/ Gregory W. Carr

Gregory W. Carr
Attorney for Opposer
Carr Law Firm PLLC
6170 Research Road
Suite 111
Frisco, Texas 75033
Telephone: (214) 760-3000
Email: gcarr@carrip.com

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury that **on January 21, 2020** a true copy of the foregoing OPPOSER TRAXXAS, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION NOS. 1-28 was served **via email** on Victoria Newland at Law Offices of Victoria Newland APC, 3460 Marron Road Suite 103-356, Oceanside, CA 92056, attorney of record for Applicant, sent to the addresses noted below:

victoria@vnewlandlaw.com

/s/ Gregory W. Carr
Gregory W. Carr
Attorney for Opposer
CARR Law Firm, PLLC
6170 Research Rd, Suite 111
Frisco, TX 75033
Telephone: (214) 760-3000
Email: gcarr@carrip.com

EXHIBIT 3

Greg Carr

From: Greg Carr
Sent: Wednesday, February 05, 2020 10:16 AM
To: Victoria Newland; David Huang
Cc: trademarks
Subject: RE: Traxxas, L.P. v. Dennis Caco - Opposition Proceeding No. 91242257

| Tracking: | Recipient | Delivery |
|------------------|------------------|------------------------------|
| | Victoria Newland | |
| | David Huang | Delivered: 2/5/2020 10:16 AM |
| | trademarks | Delivered: 2/5/2020 10:16 AM |

Dear Ms. Newland:

Please let us know if you are available for a discovery conference Friday afternoon this week, at 2pm PST (your time). If another time is necessary, please give us a couple of alternatives – Thursday afternoon is also convenient for us.

Please advise your client that the settlement proposal previously offered by our client is hereby withdrawn. The settlement proposal was sent by our client *almost a year ago*, on March 13, 2019. Three months later, your client finally responded that our terms were acceptable, but with your client still wanting an exception of being allowed “some small type of reference to his comic book character MAX BOOST,” for certain goods. We asked for an example of the requested modification. Despite several requests, we have received no response.

We look forward to receiving complete responses to our discovery requests from your client, instead.

Please let us know your availability for the discovery conference requested above.

Regards,
Greg Carr

From: Victoria Newland <Victoria@vnewlandlaw.com>
Sent: Thursday, January 30, 2020 5:19 PM
To: David Huang <dhuang@carrip.com>
Cc: trademarks <trademarks@carrip.com>
Subject: RE: Traxxas, L.P. v. Dennis Caco - Opposition Proceeding No. 91242257

Dear Mr. Huang,

I confirm receipt of your email. I have forwarded it and a reminder to my client to contact me , but have not heard back from him yet. I am available for a discovery call any afternoon next week, hopefully I will have heard from my client by then.

Thank you,

Victoria Newland
The Law Offices of Victoria Newland, APC
3460 Marron Road, Suite 103-356
Oceanside, CA 92056
Ph: (760) 216-6440
Mobile: (949) 292-0869
Email: victoria@vnewlandlaw.com

****PLEASE NOTE OUR NEW ADDRESS****

The information contained in this email message, together with any attachments, is a private communication. If you are not the intended recipient, do not read, copy or use it or disclose it to others. If you have received this message in error, please notify the sender immediately by replying to this message and then delete it from your computer. In accordance with IRS Circular 230, this information is not intended or written to be used, and cannot be used as or considered a "covered opinion" or other written tax advice and should not be relied upon for the purpose of avoiding tax-related penalties under the Internal Revenue Code; promoting, marketing, or recommending to another party any transaction or tax-related matter(s) addressed herein; for IRS audit, tax dispute or other purposes.

From: David Huang [<mailto:dhuang@carrip.com>]
Sent: Tuesday, January 21, 2020 2:27 PM
To: Victoria Newland
Cc: trademarks
Subject: Re: Traxxas, L.P. v. Dennis Caco - Opposition Proceeding No. 91242257



David C. Huang
Attorney and Counselor
6170 Research Road
Suite 111
Frisco, Texas 75033
Direct: 214.760.3005
www.CarrIP.com

The following is a confidential communication made for purposes of settlement, made without prejudice, and is inadmissible, pursuant to FRE 408.

Re: Traxxas, L.P. v. Dennis Caco
Opposition Proceeding No.: 91242257

Dear Ms. Newland,

Given the lack of response from your client, please let us know if your client is still interested in the attached settlement we previously discussed. As stated before, our client is ready to move forward with the proceeding if settlement cannot be completed within the next couple of weeks.

Attached is a copy of Traxxas, L.P.'s Initial Disclosures, as well as Traxxas, L.P.'s first set of production requests and interrogatories served today, January 21, 2020.

Attached is also a copy of my prior correspondence regarding your availability for a discovery conference. We have not received any response from you since then. Please advise on your availability to have the conference next week.

Please let me know if you have any questions regarding the above.

Regards,

David

Protecting your share of the marketplace.®

Important/Confidential: This message from the CARR Law Firm PLLC is intended only for the use of the addressees shown above. It contains information that may be subject to the attorney-client privilege, confidential and/or exempt from disclosure under applicable law. If you are not the intended recipient of this message, you are hereby notified that the copying, use or distribution of any information or materials transmitted in or with this message is strictly prohibited. If you received this message by mistake, please immediately call us collect at (214) 760-3000 and destroy the original message. Thank you.

EXHIBIT 4

April 21, 2020

Via Electronic Mail
to: victoria@vnewlandlaw.com

Ms. Victoria Newland
Law Offices of Victoria Newlands APC
3460 Marron Road Suite 103-356
Oceanside, CA 92056

Re: Traxxas, L.P. v. Dennis Caco
Trademark Opposition No. 91242257
Mark: MAX BOOST
USPTO App No. 87532431

Dear Ms. Newland:

Pursuant FRCP Rule 37, this letter is intended to resolve, without involvement of the Trademark Trial and Appeal Board, the failure of Applicant Dennis Caco to provide responses to discovery requests previously served by Traxxas, L.P. Copies of the discovery requests are attached as Exhibits A and B to this letter.

As you know, Opposer's discovery requests were served January 21, 2020 and no extensions to the response deadline were agreed to between the parties or requested from the Board. Accordingly, all possible objections are now waived, including without limitation claims of attorney-client privilege and work product immunity. Accordingly, Traxxas requests that the discovery responses and documents be produced as soon as possible and, in any event, not later than by **April 28, 2020**, please.

If responses were previously sent, please let us know and, in that event, please send us another copy of the response. If this matter is not resolved timely, we will file a motion to compel with the Board.

Ms. Victoria Newland
April 21, 2020
Page 2

Sincerely,



Gregory W. Carr
Attorney for Opposer

GWC/DCH
Enclosure

Exhibit A

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

| | | |
|---------------|---|-----------------------------|
| TRAXXAS, L.P. | § | |
| | § | |
| Opposer | § | Opposition No. 91242257 |
| | § | |
| v. | § | |
| | § | |
| Dennis Caco | § | |
| | § | Mark: MAX BOOST |
| Applicant | § | Application No.: 87/532,431 |
| | § | |

**OPPOSER TRAXXAS, L.P.’S FIRST SET OF
REQUESTS FOR PRODUCTION NOS. 1-28**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, OPPOSER TRAXXAS, L.P. (“OPPOSER”) hereby requests that Applicant Dennis Caco (“Applicant”), by its undersigned counsel, respond to the following requests for the production of documents and things by providing written responses thereto and producing for inspection and copying the documents requested herein at the offices of Opposer’s attorneys, CARR Law Firm, PLLC, 6170 Research Rd. Suite 111 Frisco, TX 75033, Attn: Gregory Carr, within thirty (30) days of service of these requests.

DEFINITIONS

1. “OPPOSER” means TRAXXAS, L.P., the OPPOSER in the above-captioned proceeding.

2. “APPLICANT,” “YOU,” or “YOUR” means Applicant Dennis Caco, its subsidiaries, divisions, predecessor, and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party, or each of the foregoing entities’ employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any PERSON who served in any such capacity at any time during the relevant time period specified herein.

3. “OPPOSER’S MARK” means the marks identified in pages 1-2 of the Notice of Opposition in this proceeding.

4. “CHALLENGED MARK” means the mark that is the subject of U.S. Trademark Application No. 87/532,431 and this proceeding.

5. “MARK” includes trademarks, service marks, collective marks, certification marks, and trade names as defined in 15 U.S.C. § 1127, both federally registered and those protected by state or common law.

6. The term “IN COMMERCE” means “use in commerce” as defined in Section 45 of the Lanham Act, 15 U.S.C. § 1127.

7. “DATE” means the exact day, month, and year if ascertainable, or, if not, the best available approximation (including relationship to other events).

8. “DOCUMENT” is synonymous in meaning and equal in scope to its usage in FRCP 34(a)(1)(A). The term “document” refers to any document now or at any time in Applicant's possession, custody, or control. A person is deemed in control of a document if the person has any ownership, possession, or custody of the document, or the right to secure the document or a copy thereof from any person or public or private entity having physical possession thereof.

9. “COMMUNICATION” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

10. “CONCERNING” means consisting of, referring to, relating to, reflecting, or being in any way logically or factually connected with the matter discussed.

11. “IDENTIFY” with respect to a person that is not an individual means to state its: full name, legal form, date of organization, state of incorporation or organization or other business or license authority, present or last known address and telephone number, and the identity of its chief executive officer, partners, or persons in equivalent positions.

12. “IDENTIFY” with respect to a document means to give, to the extent known, the

- (a) type of document(letter, memorandum, tape recording, etc.);
- (b) general subject matter;
- (c) date of the document;
- (d) author(s), addressee(s) and recipient(s);
- (e) person(s) who approved the document;
- (f) its date;
- (g) present location: and
- (h) present custodian.

In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Rule 33 of the Federal Rules of Civil Procedure.

13. “IDENTIFY” with respect to communications means to give, to the extent known,

- (a) a description of the substance of the communication;
- (b) the form of the communication (e.g., telephone, facsimile, email, etc.);
- (c) the identity of each person that was a party to or present at the time of the communication, as well as the full name, present or last known address, and the current or last known place of employment of each person;
- (d) the identity of the person whom you contend initiated the communication; and
- (e) the time, date, and place of the communication.

14. “IDENTIFY” with respect to source of information means to give, to the extent known,

- (a) identify the person from whom you obtained the information; and
- (b) identify each communication from such person constituting, summarizing, reflecting, or otherwise referring to or relating to the information.

15. “IDENTIFY” with respect to person, means to give with respect to each such individual or person, to the extent known,

- (a) Name of the person;
- (b) Present business and home address;
- (c) Present business, home, and telephone number;
- (d) Present or last known employer and present or last known position with such employer; and
- (e) Relationship with you (including the dates each such relationship commenced and terminated, and a brief description of the relationship).

16. A reference to a “PERSON” includes an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity and includes all of that person's principals, employees, agents, attorneys, consultants, and other representatives.

17. The terms “and” and “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of the request all responses that might otherwise fall outside the scope of this request.

18. The terms “all,” “any,” or “each” encompass any and all of the matter discussed.

19. The use of singular form includes plural, and *vice versa*.

20. The use of present tense includes past tense, and *vice versa*.

INSTRUCTIONS

1. All documents are to be produced as they are kept in the usual course of business with any identifying labels, file markings, or similar identifying features, or shall be organized and labeled to correspond to the categories requested herein. If there are no documents in response to a particular request or if you withhold any responsive documents or categories of documents based on any objections, you shall state so in writing.

2. Electronically stored information (ESI) must be produced in its original native format with its accompanying metadata. For example:

(a) Documents created using Microsoft Word must be produced as .doc files; and

(b) E-mails must be produced in a form that readily supports import into standard email client programs (e.g., .msg or .pst files).

OR

Electronically stored information (ESI) must be produced in PDF format with corresponding load files containing the document's text and all available metadata.

3. These requests call for the production of all responsive documents in your possession, custody, or control, or in the possession, custody, or control of your employees, predecessors, successors, parents, subsidiaries, divisions, affiliates, partners, joint venturers, brokers, accountants, financial advisors, representatives, and agents or other persons acting on your behalf, without regard to the physical location of such documents.

4. In responding to these requests, include documents obtained on your behalf by your counsel, employees, agents, or any other persons acting on your behalf. If your response is that

the documents are not within your possession or custody, describe in detail the unsuccessful efforts you made to locate each such document. If your response is that documents are not under your control, identify who has the control and the location of the documents.

5. If any document was, but no longer is, in your possession, subject to your control, or in existence, include a statement:

- (a) Identifying the document;
- (b) Describing where the document is now;
- (c) Identifying who has control of the document;
- (d) Describing how the document became lost or destroyed or was transferred; and
- (e) Identifying each of those persons responsible for or having knowledge of the loss, destruction, or transfer of this document from your possession, custody, or control.

6. Each request contemplates production of all documents in their entirety. If a portion of a document is responsive to one or more requests, the document shall be produced in its entirety.

7. If any document is withheld in whole or in part for any reason including, without limitation, a claim of privilege or other protection from disclosure such as the work product doctrine, business confidentiality, or trade secret protection, set forth separately with respect to each such document:

- (a) The ground of privilege or protection claimed;
- (b) Each and every basis under which the document is withheld;
- (c) The type of document;
- (d) Its general subject matter;
- (e) The document's date; and
- (f) Identifying each person having knowledge of the reason(s) for withholding all or any portion of the document.

8. To the extent you assert that a document contains information that should be protected from disclosure (based on the attorney-client privilege, work product doctrine, or another protection) and non-privileged information, the non-privileged portions of the document must be produced. For each such document, indicate the portion of the document withheld by stamping

the words "MATERIAL REDACTED" on the document in an appropriate location that does not obscure the remaining text.

9. Unless otherwise stated herein, all documents requested are for the period commencing January 1, 2017 to and including the date Applicant signs its responses to these requests for production.

10. Unless otherwise stated herein, all request for productions apply to activities in or in connection with the United States.

11. For the convenience of the Board and the parties, each request for production should be quoted in full immediately preceding the response.

12. These requests are continuing, and your response to these requests must be promptly supplemented when appropriate or necessary in accordance with Federal Rule of Civil Procedure 26(e) and TBMP 408.03.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1: All DOCUMENTS relied upon by APPLICANT in drafting the answer.

RESPONSE:

REQUEST FOR PRODUCTION NO. 2: All DOCUMENTS CONCERNING APPLICANT'S selection, conception, creation, or adoption of the CHALLENGED MARK for use on or in connection with any goods or services.

RESPONSE:

REQUEST FOR PRODUCTION NO. 3: DOCUMENTS sufficient to IDENTIFY all PERSONS actually, planned to, or intended to be responsible for or were consulted CONCERNING the selection, conception, creation, or adoption of the CHALLENGED MARK for use on or in connection with any of APPLICANT'S goods or services.

RESPONSE:

REQUEST FOR PRODUCTION NO. 4: DOCUMENTS CONCERNING any actual, planned, or intended trademark search, investigation, review, or inquiry, conducted by or on behalf of APPLICANT and all related materials CONCERNING the availability for use or registration of the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 5: All DOCUMENTS CONCERNING United States Trademark Application No. 87/532,431, including, but not limited to, copies of all DOCUMENTS submitted to or received from the United States Patent and Trademark Office and any other PERSON in connection with the application.

RESPONSE:

REQUEST FOR PRODUCTION NO. 6: DOCUMENTS sufficient to IDENTIFY all goods and services actually, planned, or intended to be sold, offered, or licensed by APPLICANT under or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 7: DOCUMENTS sufficient to IDENTIFY all PERSONS actually, planned, or intended to be responsible for inventing, creating, manufacturing, designing, or revising any goods actually, planned, or intended to be sold, offered, or licensed by APPLICANT under or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 8: ALL DOCUMENTS CONCERNING the actual, planned, or intended manufacturing, including orders and samples of “toy vehicle” and “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods actually, planned, or intended to be sold, offered, or licensed by APPLICANT under or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 9: All DOCUMENTS CONCERNING any actually, planned, or intended assessment, evaluation, or consideration by APPLICANT of how to categorize, describe, or define the goods and services actually, planned or intended to be sold, offered, provided, or licensed under or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 10: DOCUMENTS CONCERNING all channels of trade through which APPLICANT actually, planned, or intended to advertise, promote, distribute, sell, offer, or license the “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods under or in connection with the CHALLENGED MARK, including, but not limited to, DOCUMENTS that IDENTIFY the distributors, retail, or other business outlets that actually, plan, or intend to sell or offer for sell APPLICANT’S goods in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 11: DOCUMENTS CONCERNING purchasers, target purchasers, or potential purchasers of the “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods actually, planned, or intended to be sold, offered, distributed, or licensed by APPLICANT under or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 12: DOCUMENTS CONCERNING each visual, oral, and other manner in which APPLICANT actually, planned to, or intended to present or authorize the presentation of the CHALLENGED MARK, including, but not limited to, all pronunciations

of and typestyles, fonts, typefaces, designs, shapes, graphics, and colors used for or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 13: Representative samples of each actual, planned, or intended type of advertisement and promotional material (e.g., print, radio, television, brochures, catalogues, flyers, press releases, website pages, website banners, in-store displays, point-of-sale promotional items, etc.) that display the CHALLENGED MARK, including DOCUMENTS CONCERNING every manner of presentation of the CHALLENGED MARK in each type of advertisement or promotional material.

RESPONSE:

REQUEST FOR PRODUCTION NO. 14: Representative samples of all tags, labels, signs, and packaging that have actually, was planned to, or was intended to display the CHALLENGED MARK, including DOCUMENTS CONCERNING every manner of presentation of the CHALLENGED MARK in such materials.

RESPONSE:

REQUEST FOR PRODUCTION NO. 15: All newspaper, magazine, newsletter, trade journal, website, and other media coverage, in any form or medium (print, electronic, or other), CONCERNING the CHALLENGED MARK, whether or not authored by any official member of the press.

RESPONSE:

REQUEST FOR PRODUCTION NO. 16: DOCUMENTS CONCERNING any PERSONS actually, planned or intended to be considered, contracted, or engaged by APPLICANT with respect to the preparation of any DOCUMENTS and things bearing or otherwise using the CHALLENGED MARK, and all DOCUMENTS CONCERNING COMMUNICATIONS between the APPLICANT and each such PERSON.

RESPONSE:

REQUEST FOR PRODUCTION NO. 17: All DOCUMENTS CONCERNING APPLICANT'S knowledge of OPPOSER or OPPOSER'S MARK, including, but not limited to, all DOCUMENTS CONCERNING COMMUNICATIONS about or with OPPOSER and about APPLICANT'S awareness of OPPOSER'S use of any of OPPOSER'S MARKs.

RESPONSE:

REQUEST FOR PRODUCTION NO. 18: All DOCUMENTS CONCERNING the DATE when APPLICANT first became aware of OPPOSER, as well as the DATE and the circumstances under which APPLICANT first became aware of the OPPOSER'S MARKs, and all DOCUMENTS that IDENTIFY the PERSONS to whom such awareness was communicated.

RESPONSE:

REQUEST FOR PRODUCTION NO. 19: All studies, surveys, investigations, reviews, research, development, analyses, or opinions CONCERNING the CHALLENGED MARK, including, but not limited to, any such DOCUMENTS comparing the CHALLENGED MARK to any of OPPOSER'S MARKs or CONCERNING any actual confusion or likelihood of confusion between the CHALLENGED MARK (or any MARK that incorporates, in whole or in part, the CHALLENGED MARK or is similar thereto) and any of OPPOSER'S MARKs.

RESPONSE:

REQUEST FOR PRODUCTION NO. 20: DOCUMENTS CONCERNING any complaint, petition, demand, objection, administrative proceeding, or civil action made by or against APPLICANT in which any trademark, trade dress, dilution, unfair competition, copyright, or domain name claims were asserted.

RESPONSE:

REQUEST FOR PRODUCTION NO. 21: All DOCUMENTS CONCERNING any observations, perceptions, impressions, or inquiries of any PERSON CONCERNING whether the goods or services actually, planned or intended to be sold, offered, provided, or licensed by or on behalf of APPLICANT under or in connection with the CHALLENGED MARK are produced, sponsored, or endorsed by, or in any manner associated or affiliated with, OPPOSER or any goods or services offered under or in connection with any of OPPOSER'S MARKs.

RESPONSE:

REQUEST FOR PRODUCTION NO. 22: All DOCUMENTS CONCERNING any instances of actual or possible confusion, mistake, deception, or association of any kind between OPPOSER, any of OPPOSER’S MARKs, or OPPOSER’S goods or services on the one hand, and APPLICANT, the CHALLENGED MARK, or APPLICANT’S goods or services on the other hand.

RESPONSE:

REQUEST FOR PRODUCTION NO. 23: All DOCUMENTS CONCERNING any COMMUNICATIONS in which any PERSON inquired about, commented on, or mentioned OPPOSER, OPPOSER’S MARK, or OPPOSER’S goods or services in any way.

RESPONSE:

REQUEST FOR PRODUCTION NO. 24: All agreements between or among APPLICANT and any other PERSON CONCERNING the CHALLENGED MARK, or the actual, planned, or intended manufacture, advertisement, promotion, marketing, distribution, sale, offer, or licensing of the “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods under or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 25: DOCUMENTS CONCERNING all third parties that actually, planned, or intend to be manufacturing, selling, offering, distributing or licensing the “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods under or in connection with the CHALLENGED MARK.

RESPONSE:

REQUEST FOR PRODUCTION NO. 26: DOCUMENTS CONCERNING all third party MARKS that APPLICANT contends is relevant to this opposition proceeding.

RESPONSE:

REQUEST FOR PRODUCTION NO. 27: ALL DOCUMENTS referred to, used in the preparation of, or used to obtain information for the responses to any of OPPOSER TRAXXAS, L.P.’S FIRST SET OF INTERROGATORIES NOS. 1-25.

RESPONSE:

REQUEST FOR PRODUCTION NO. 28: DOCUMENTS describing the document retention policy including retention plans, guidelines, rules, standards, protocols, and procedures of the APPLICANT in effect since the earliest date of the range of time stated in this request.

RESPONSE:

Dated: January 21, 2020

Respectfully Submitted,

/s/ Gregory W. Carr

Gregory W. Carr
Attorney for Opposer
Carr Law Firm PLLC
6170 Research Road
Suite 111
Frisco, Texas 75033
Telephone: (214) 760-3000
Email: gcarr@carrip.com

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury that **on January 21, 2020** a true copy of the foregoing OPPOSER TRAXXAS, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION NOS. 1-28 was served **via email** on Victoria Newland at Law Offices of Victoria Newland APC, 3460 Marron Road Suite 103-356, Oceanside, CA 92056, attorney of record for Applicant, sent to the addresses noted below:

victoria@vnewlandlaw.com

/s/ Gregory W. Carr
Gregory W. Carr
Attorney for Opposer
CARR Law Firm, PLLC
6170 Research Rd, Suite 111
Frisco, TX 75033
Telephone: (214) 760-3000
Email: gcarr@carrip.com

Exhibit B

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

| | | |
|---------------|---|-----------------------------|
| TRAXXAS, L.P. | § | |
| | § | |
| Opposer | § | Opposition No. 91242257 |
| | § | |
| v. | § | |
| | § | |
| Dennis Caco | § | |
| | § | |
| Applicant | § | Mark: MAX BOOST |
| | § | Application No.: 87/532,431 |
| | § | |

**OPPOSER TRAXXAS, L.P.’S FIRST SET OF
INTERROGATORIES NOS. 1-25**

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Opposer TRAXXAS, L.P. (“OPPOSER”) hereby requests that Applicant Dennis Caco (“Applicant”) fully answer each of the following interrogatories, in writing and under oath, without evasion, within thirty (30) days of service of these interrogatories.

DEFINITIONS

1. “OPPOSER” means TRAXXAS, L.P., the OPPOSER in the above-captioned proceeding.

2. “APPLICANT”, “YOU” or “YOUR” means Applicant Dennis Caco, its subsidiaries, divisions, predecessor, and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party, and/or each of the foregoing entities' employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any person who served in any such capacity at any time during the relevant time period specified herein.

3. “OPPOSER’S MARK” means the marks identified in pages 1-2 of the Notice of Opposition in this proceeding.

4. “CHALLENGED MARK” means the mark that is the subject of U.S. Trademark Application No. 87/532,431 and this proceeding.

5. “MARK” includes trademarks, service marks, collective marks, certification marks, and trade names as defined in 15 U.S.C. § 1127, both federally registered and those protected by state or common law.

6. “DATE” means the exact day, month, and year if ascertainable, or, if not, the best available approximation (including relationship to other events).

7. “DOCUMENTS” is synonymous in meaning and equal in scope to its usage in Federal Rules of Civil Procedure 34(a)(1)(A). The term “DOCUMENT” refers to any document now or at any time in Applicant's possession, custody, or control. A person is deemed in control of a document if the person has any ownership, possession, or custody of the document, or the right to secure the document or a copy thereof from any person or public or private entity having physical possession thereof.

8. “COMMUNICATION” means the transmittal of information (in the form of facts, ideas, inquiries or otherwise).

9. “CONCERNING” means consisting of, referring to, relating to, reflecting, or being in any way logically or factually connected with the matter discussed.

10. “DESCRIBE” means set forth fully and unambiguously every fact relevant to the subject of the interrogatory, of which you (including your agents and representatives) have knowledge or information.

11. “IDENTIFY” with respect to a person that is not an individual means to state its: full name, legal form, date of organization, state of incorporation or organization or other business or license authority, present or last known address and telephone number, and the identity of its chief executive officer, partners, or persons in equivalent positions.

12. "IDENTIFY" with respect to a document means to give, to the extent known, the

- (a) type of document(letter, memorandum, tape recording, etc.);
- (b) general subject matter;
- (c) date of the document;
- (d) author(s), addressee(s) and recipient(s);
- (e) person(s) who approved the document;
- (f) its date;
- (g) present location: and
- (h) present custodian.

In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Rule 33 of the Federal Rules of Civil Procedure.

13. "IDENTIFY" with respect to communications means to give, to the extent known,

- (a) a description of the substance of the communication;
- (b) the form of the communication (e.g., telephone, facsimile, email, etc.);
- (c) the identity of each person that was a party to and/or present at the time of the communication, as well as the full name, present or last known address, and the current or last known place of employment of each person;
- (d) the identity of the person whom you contend initiated the communication; and
- (e) the time, date, and place of the communication.

14. "IDENTIFY" with respect to source of information means to give, to the extent known,

- (a) identify the person from whom you obtained the information; and
- (b) identify each communication from such person constituting, summarizing, reflecting, or otherwise referring to or relating to the information.

15. "IDENTIFY" with respect to person, means to give with respect to each such individual or person, to the extent known,

- (a) Name of the person;
- (b) Present business and home address;
- (c) Present business, home, and telephone number;
- (d) Present or last known employer and present or last known position with such employer; and
- (e) Relationship with you (including the dates each such relationship commenced and terminated, and a brief description of the relationship).

16. A reference to a “PERSON” includes an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity and includes all of that person's principals, employees, agents, attorneys, consultants, and other representatives.

17. The terms “and” and “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of the request all responses that might otherwise fall outside the scope of this request.

18. The terms “all,” “any,” or “each” encompass any and all of the matter discussed.

19. The use of singular form includes plural, and *vice versa*.

20. The use of present tense includes past tense, and *vice versa*.

21. The masculine form shall also be construed to include the feminine and *vice versa*.

INSTRUCTIONS

1. Answers to these interrogatories shall be served upon the undersigned attorneys at CARR Law Firm, PLLC within thirty (30) days of service of these interrogatories.

2. Each interrogatory is to be answered fully based on information in Applicant’s possession, custody, or control, or in the possession, custody, or control of Applicant’s representatives, agents, or attorneys.

3. If you object to any interrogatory or any portion of an interrogatory on the ground that the answer reflects or would reveal the substance of a privileged communication, identify:

- (a) the nature of the privilege claimed;
- (b) the person who made the communication, whether oral or in writing;
- (c) if the communication was oral, all persons present while the communication was made;
- (d) if the communication was written, the author, addressees, and any other recipients;
- (e) the relationship of the author of the communication to each recipient;
- (f) the relationship of the persons present to the person who made the communication;

- (g) the date and place of the communication; and
- (h) the general subject matter of the communication.

OR

If you object to any interrogatory, in whole or in part, on the grounds of privilege, provide all information required by Federal Rule of Civil Procedure 26(b)(5) and TBMP § 405.04(b).

4. If, after a reasonable and thorough investigation using due diligence, you are unable to answer any interrogatory or any part thereof, on the ground of lack of information available to you, please state what has been done to locate such information. In addition, specify what knowledge or belief you do have concerning the unanswered portion of any interrogatory and set forth the facts upon which knowledge or believe is based.

5. Where an interrogatory does not specifically requests a particular fact, but where such fact or facts are necessary to make the answer to said interrogatory either comprehensible, complete, or not misleading, you should include such fact or facts as part of said answer and said interrogatory shall be deemed specifically to request such fact or facts.

6. Unless otherwise stated herein, these interrogatories cover the time period from January 1, 2017 to and including the date Applicant signs its responses to these interrogatories.

7. If you respond to an interrogatory by reference to documents pursuant to Federal Rule of Civil Procedure 33(d), identify with specificity, such as, for example, identifying the applicable Bates Numbers assigned to such documents.

8. For the convenience of the Board and the parties, each interrogatory should be quoted in full immediately preceding the response.

9. These interrogatories are continuing in nature. If you receive or otherwise become aware of information responsive to any interrogatory after you have signed the response to that interrogatory, you

must promptly supplement your response to provide such information, as required by Federal Rule of Civil Procedure 26(e) and TBMP § 408.03.

INTERROGATORIES

INTERROGATORY NO. 1: DESCRIBE in detail the facts and circumstances CONCERNING YOUR conception, creation, selection, and adoption of the CHALLENGED MARK.

INTERROGATORY NO. 2: IDENTIFY all PERSONS who were or are, responsible for or participated in, the conception, creation, selection, or adoption of any CHALLENGED MARK.

INTERROGATORY NO. 3: IDENTIFY each trademark search, investigation, review or any other inquiry conducted by or for APPLICANT CONCERNING the availability to use or register the CHALLENGED MARK.

INTERROGATORY NO. 4: IDENTIFY each PERSON involved in the review of any trademark search, investigation, review or other inquiry conducted by or for APPLICANT CONCERNING the availability to use or register the CHALLENGED MARK.

INTERROGATORY NO. 5: IDENTIFY all “toy vehicle” and “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods that APPLICANT has promoted, advertised, offered for sale, sold, or provided under or in connection with the CHALLENGED MARK in the United States.

INTERROGATORY NO. 6: For each “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” good that YOU have promoted, advertised, offered, sold, or provided under or in connection with the CHALLENGED MARK, state the date ranges of actual and planned use of the CHALLENGED MARK in connection with the good or service, including the specific DATE of first use or intended first use of the MARK for each good or service, and the nature of the use whether by affixing the MARK to the good or service or otherwise.

INTERROGATORY NO. 7: For each “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” good that YOU have promoted, advertised, offered, sold, or provided under or in connection with the CHALLENGED MARK, please DESCRIBE such advertising, promoting, offering for sale, selling and providing activities, including, without limitation, the PERSONS involved, DATE, type, geographic area of distribution, and cost.

INTERROGATORY NO. 8: IDENTIFY all PERSONS who were or are, responsible for or participated in, the promoting, marketing or advertising of any “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods offered for sale, sold, or intended to be offered for sale or sold by or for APPLICANT under or in connection with the CHALLENGED MARK.

INTERROGATORY NO. 9: IDENTIFY all website(s) displaying the CHALLENGED MARK that are owned, operated, or controlled by APPLICANT, and all PERSONS who have been or are, responsible for or participating in, the creation and development of each website.

INTERROGATORY NO. 10: DESCRIBE all market research conducted by or on behalf of APPLICANT CONCERNING the CHALLENGED MARK or any “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods marketed or proposed to be marketed under the CHALLENGED MARK, including the results of such research.

INTERROGATORY NO. 11: DESCRIBE all channels of trade in the United States through which APPLICANT has been or is promoting, advertising, offering for sale, selling, or intends to offer for sale or sell goods or services under or in connection with the CHALLENGED MARK.

INTERROGATORY NO. 12: DESCRIBE all classes and/or types of customers/consumers (for example, age, gender, occupation, socioeconomic group, etc.) that comprise the past, current and intended markets for the “toy vehicle” or “toy environments in the nature of play sets for use with toy vehicles, model hobby craft kits for making model toy vehicles, radio control and remote control toy vehicles, battery operated road racing toy car sets, electronic toy slot cars” goods promoted, advertised, offered for sale, sold, or intended to be offered for sale or sold under or in connection with the CHALLENGED MARK.

INTERROGATORY NO. 13: IDENTIFY the geographic regions in the United States in which advertising, promoting, marketing, displaying, distributing, offering for sale, or selling, either directly by APPLICANT or by or through others, of any goods or services under or in connection with the CHALLENGED MARK, has occurred or has been planned.

INTERROGATORY NO. 14: IDENTIFY by name and location all trade shows in the United States where goods or services under the CHALLENGED MARK have been, will be, or are intended to be advertised, displayed, promoted, offered for sale or sold.

INTERROGATORY NO. 15: DESCRIBE the DATE and circumstances of APPLICANT first becoming aware of OPPOSER'S use and registration of OPPOSER'S MARKS.

ANSWER:

INTERROGATORY NO. 16: IDENTIFY all agreements CONCERNING the CHALLENGED MARK by DATE, parties to the agreement, and the subject matter of the agreement. Agreements CONCERNING the CHALLENGED MARK include any formal or informal contractual relationship, whether written, implied-in fact, or oral, between the APPLICANT and any third parties pertaining to the manufacture, marketing, development, sale, distribution, trademark registration, and/or licensing of (e.g., of any intellectual property used in connection with) product(s) bearing the CHALLENGED MARK.

INTERROGATORY NO. 17: DESCRIBE in detail any COMMUNICATIONS between APPLICANT and any third party CONCERNING OPPOSER or OPPOSER'S MARKS, and any actions taken by APPLICANT as a result of such COMMUNICATIONS.

INTERROGATORY NO. 18: DESCRIBE in detail any COMMUNICATIONS between APPLICANT and OPPOSER.

INTERROGATORY NO. 19: DESCRIBE each and every instance of which APPLICANT is aware in which any PERSON has been in any way confused, mistaken, or deceived as to the source, origin, or sponsorship of any goods or services advertised, promoted, sold, offered for sale, or provided under or in connection with the CHALLENGED MARK.

INTERROGATORY NO. 20: DESCRIBE all facts that would support a contention that APPLICANT owns any rights in the CHALLENGED MARK.

INTERROGATORY NO. 21: DESCRIBE all facts that YOU contend demonstrate that the CHALLENGED MARK has been used as an identification of the source of goods or services.

INTERROGATORY NO. 22: IDENTIFY all PERSONS that furnished information for the responses to these interrogatories, designating the number of each interrogatory for which each such PERSON furnished information.

INTERROGATORY NO. 23: As to each of OPPOSER TRAXXAS, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION NOS. 1-28, if any DOCUMENT was, but no longer is, in YOUR possession, subject to YOUR control, or in existence, include a statement (a) IDENTIFYING the DOCUMENT; (b) Describing where the DOCUMENT is now; (c) IDENTIFYING the PERSON who has control of the DOCUMENT; (d) Describing how the DOCUMENT became lost or destroyed or was transferred; and (e) IDENTIFYING each of those PERSONS responsible for or having knowledge of the loss, destruction, or transfer of this document from YOUR possession, custody, or control.

INTERROGATORY NO. 24: As to each of OPPOSER TRAXXAS, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION NOS. 1-28, if YOUR response is that the DOCUMENTS are not within YOUR possession or custody, describe in detail the unsuccessful efforts YOU made to locate each such DOCUMENT. If YOUR response is that the DOCUMENTS are not under YOUR control, identify the PERSON who has the control and the location of the DOCUMENT.

INTERROGATORY NO. 25: As to each of OPPOSER TRAXXAS, L.P.'S FIRST SET OF REQUESTS FOR PRODUCTION NOS. 1-28, if any DOCUMENT was, but no longer is, in your possession, subject to YOUR control, or in existence, provide the governing document retention policy DESCRIBING why the DOCUMENT was but no longer is in YOUR possession, subject to YOUR control, or in existence.

Dated: January 21, 2020

Respectfully Submitted,

/s/ Gregory W. Carr

Gregory W. Carr
Attorney for Opposer
Carr Law Firm PLLC
6170 Research Road
Suite 111
Frisco, Texas 75033
Telephone: (214) 760-3000
Email: gcarr@carrip.com

ATTORNEY'S FED. R. CIV. P. CERTIFICATION

The undersigned attorney for Applicant has read the foregoing responses to OPPOSER TRAXXAS, L.P.'S FIRST SET OF INTERROGATORIES NOS. 1-25, and they are in compliance with Fed. R. Civ. P. 26(g).

DATED: _____

Law Office of Victoria Newland APC

Respectfully Submitted,

By _____
Victoria Newland
3460 Marron Road Suite 103-356
Oceanside, CA 92056
Attorney for Applicant,
Dennis Caco

VERIFICATION

I, _____, declare under penalty of perjury under the laws of the United States that I am the _____ of Applicant in this matter, and I have reviewed the foregoing responses to OPPOSER TRAXXAS, L.P.'S FIRST SET OF INTERROGATORIES NOS. 1-25, know the contents thereof, and believe them to be true and correct

DATED: _____

[Applicant]

CERTIFICATE OF SERVICE

I hereby declare under penalty of perjury that **on January 21, 2020** a true copy of the foregoing OPPOSER TRAXXAS, L.P.'S FIRST SET OF INTERROGATORIES NOS. 1-25 was served **via email** on Victoria Newland at Law Offices of Victoria Newland APC, 3460 Marron Road Suite 103-356, Oceanside, CA 92056, attorney of record for Applicant, sent to the addresses noted below:

victoria@vnewlandlaw.com

/s/ Gregory W. Carr
Gregory W. Carr
Attorney for Opposer
CARR Law Firm, PLLC
6170 Research Rd, Suite 111
Frisco, TX 75033
Telephone: (214) 760-3000
Email: gcarr@carrlp.com