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

Proceeding	91242460
Party	Plaintiff Luxco, Inc.
Correspondence Address	MICHAEL R ANNIS HUSCH BLACKWELL LLP 190 CARONDELET PLAZA, SUITE 600 SAINT LOUIS, MO 63105 UNITED STATES mike.annis@huschblackwell.com, jonathan.schmalfeld@huschblackwell.com, petrina.bailey@huschblackwell.com, pto-sl@huschblackwell.com 314-480-1500
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Michael R. Annis
Filer's email	mike.annis@huschblackwell.com, petrina.bailey@huschblackwell.com, jonathan.schmalfeld@huschblackwell.com
Signature	/s/ Michael R. Annis
Date	02/01/2019
Attachments	Luxco-Nuevo Rebelde - Motion to Compel.pdf(19448 bytes) Exhibit A.pdf(160469 bytes) Exhibit B.pdf(25526 bytes) Exhibit C.pdf(28459 bytes) Exhibit D.pdf(26256 bytes) Exhibit E.pdf(167962 bytes)

CERTIFICATE OF MAILING VIA ELECTRONIC TRANSMISSION

I hereby certify that this correspondence is being filed with the United States Patent and Trademark Office via the Electronic System for Trademark Trials and Appeals on February 1, 2019.

/s/Michel R. Annis

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

Mark: NUEVO REBELDE
U.S. Application Serial No. 87687183

LUXCO, INC.,)	
)	
Opposer,)	
)	
v.)	Opposition No. 91242460
)	
CB SPIRITS S.À R.L,)	
)	U.S. App. No. 87/687,183
)	
Applicant.)	

**OPPOSER’S MOTION TO COMPEL RESPONSE TO DISCOVERY AND
PRODUCTION OF DOCUMENTS**

COMES NOW Luxco, Inc. (“Luxco” or “Opposer”), by and through its undersigned attorneys, pursuant to 37 C.F.R. §2.120(f) and TBMP §523.01, and hereby moves the Board to issue an Order compelling Applicant CB SPIRITS S.À R.L (“Applicant”) to: (1) fully and completely respond without objection to Luxco’s prior Interrogatories, and (2) produce all documents responsive to Luxco’s prior Requests for Production of Documents. In support of this Motion, Luxco states as follows:

INTRODUCTION

As detailed more fully below, Applicant has refused to abide by its discovery obligations in this matter and equally refuses to meet and confer in good faith with Luxco regarding these

discovery deficiencies despite Luxco's request that Applicant do so. Applicant should not be allowed to drag its feet and run out the clock on remaining discovery time in this proceeding. The Board should order that Applicant satisfy its discovery obligations or else face sanctions for continued refusal to do so.

BACKGROUND

1. Discovery was originally set to open in this matter on September 26, 2018. (*See* Order [Dkt. 2], p. 3.) . However, due to Applicant's failure to Answer a Notice of Default was entered against Applicant on September 6, 2018 (*see* Order [Dkt. 4], p. 1.) which Applicant requested be set aside on September 10, 2018 (*see* Motion for Relief from Entry of Default Judgment [Dkt. 5], p. 1.).

2. On October 9, 2018 Default against Applicant was set aside and discovery was reset to open on November 8, 2018. (*See* Order [Dkt. 6], p. 1-2.).

3. Thereafter, on or about December 10, 2018, Luxco served Applicant with Luxco's Initial Disclosures as well as its First Set of Interrogatories and First Requests for Production of Documents. True and accurate copies of Luxco's service correspondence, Initial Disclosures, First Interrogatories and First Requests for Production of Documents are attached hereto as Exhibits A-D, respectively. Pursuant to applicable Board Rules of Practice, Applicant's responses to Luxco's discovery requests were due on or before January 9, 2019.

4. On January 8, 2019 counsel for Applicant requested a 10 day extension to respond to Luxco's Discovery Requests, which Luxco consented to. A true and accurate copy of that correspondence is attached hereto as Exhibit E. This would make Applicant's responses due on January 19, 2019.¹

¹ January 19, 2019 was the Saturday of Martin Luther King, Jr. Day weekend, further extending Applicants' actual time to answer to January 22, 2019.

5. On January 23, 2019, having still not received Applicant's responses to Luxco's Discovery Responses, counsel for Luxco sent counsel for Applicant a request to promptly provide responses to Luxco's Discovery Requests. A true and accurate copy of that correspondence is attached hereto as Exhibit F. Applicant neither responded to this correspondence nor did Applicant provide responses to Luxco's Discovery Responses.

ARGUMENT AND AUTHORITIES

I. LUXCO'S MOTION TO COMPEL SHOULD BE GRANTED

A motion to compel is appropriate here as Applicant, a party to this *inter partes* opposition proceeding, has failed and refused to comply with its discovery obligations. 37 C.F.R. §2.120(f); TBMP §523.01. A motion to compel is timely where filed prior to the commencement of the first testimony period. 37 C.F.R. §2.120(f)(1); TBMP §523.03. Luxco has timely filed this Motion well in advance of the opening of the testimony periods, and in fact over three months prior to the close of discovery. Luxco has attempted to work in good faith with Applicant to resolve these discovery deficiencies, but Applicant has failed to provide any response or otherwise communicate with Luxco regarding these discovery deficiencies. In order to preserve its right to receive full and complete discovery responses and document production in this matter, Luxco has no choice but to move the Board to compel Applicant to provide same. Applicant should not be allowed to drag its feet and run out the clock on remaining discovery time in this proceeding. This is especially true where Applicant's failure to participate in this opposition proceeding has caused a Notice of Default to be issued against it once already. The Board should order that Applicant make full and complete disclosures, responses and production, without objection, or else face sanctions for continued failure and refusal to do so.

CONCLUSION

For the foregoing reasons, Luxco respectfully requests that the Board enter an order compelling Applicant to provide its written responses without objection to Luxco's prior Interrogatories and to produce those documents responsive to Luxco's prior production requests. At a minimum, the Board should order that Applicant provide its disclosures, responses and document production as discussed above, without objection, within twenty (20) days of entry of the Board's order, and further order that if Applicant violates any portion of the Board's forthcoming order that it will be subject to sanctions for Applicant's continued failure to abide by its discovery obligations or otherwise participate in this opposition proceeding. Pursuant to 37 C.F.R. §2.120(f)(2), Luxco requests that the Board suspend this proceeding with respect to all matters not germane to the present motion to ensure that no prejudice ensues with respect to remaining discovery time under the Board Scheduling Order. Upon entering its Order on the present Motion, Luxco prays that the Board extend all outstanding periods, including the expert disclosure and discovery periods, by at least sixty (60) days so that Luxco is not prejudiced in accomplishing any necessary further discovery upon receipt of Applicant's responses and production.

DATED: February 1, 2018

LUXCO, INC.

By: /s/Michael R. Annis
Michael R. Annis
Jonathan E. Schmalfeld
HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63108
Telephone: (314) 480-1500
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing was served via email on this 1st day of February, 2019, upon:

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(908) 722-5640
jmr@br-tmlaw.com
s.baker@br-tmlaw.com

Attorneys for Applicant

/s/Michel R. Annis

Bailey, Petrina

From: Bailey, Petrina
Sent: Monday, December 10, 2018 8:34 AM
To: 'jmr@br-tmlaw.com'; 's.baker@br-tmlaw.com'
Cc: Schmalfeld, Jonathan; Annis, Michael
Subject: Luxco v. CB Spirits (NUEVO REBELDE) - Discovery Requests
Attachments: First Interrogatories to Applicant.pdf; Luxco's Initial Disclosures.pdf; First Request for Production to Applicant.pdf

Counsel-

Attached please find copies of the following documents:

1. Luxco's Initial Disclosures;
2. Luxco's First Set of Interrogatories to Applicant; and
3. Luxco's First Request for Production to Applicant.

Very truly yours,

Petrina Bailey
Senior Paralegal

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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Mark: NUEVO REBELDE
U.S. Application Serial No. 87687183

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v.)	Opposition No. 91242460
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CB SPIRITS S.À R.L,)	
)	U.S. App. No. 87/687,183
)	
Applicant.)	

LUXCO’S INITIAL DISCLOSURES

Opposer Luxco, Inc. (“Luxco” or “Opposer”), pursuant to the Board’s Order of October 9, 2018 [Dkt. 6], Rule 26(a)(1) of the Federal Rules of Civil Procedure and Trademark Rule of Practice 2.120, and submit the following initial disclosures in the above captioned cause.

INTRODUCTORY STATEMENT

Representations of fact and law herein are made in good faith and without waiving its right to protect from disclosure: (a) any and all attorney-client communications, and (b) any and all work-product conclusions, opinions, or legal theories of its attorneys or other representatives concerning this litigation.

I. Individuals From Whom Luxco May Take Testimony and List of Subjects on Which the Witness Might to Testify

David Bratcher* Chief Operating Officer Luxco, Inc. 1000 Clark Ave. St. Louis, MO 63102 (314)-772-2626 Ext. 265	Mr. Lux has personal knowledge of and may testify to the following subjects: <ul style="list-style-type: none">• Luxco’s creation, adoption, registration, use, and advertising of the REBEL YELL and REBEL RESERVE marks and logos (collectively the “REBEL brands”), as well as sales and manufacture
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	<p>of goods bearing those brands.</p> <ul style="list-style-type: none">• Luxco’s acquisition by assignment of the BAND OF REBELS, REBELLION, REBELLION RUM, and CRAFTED IN THE SPIRIT OF REBELLION marks and applications (collectively with REBEL YELL and REBEL RESERVE referred to herein as the “REBEL marks”).• Luxco's enforcement efforts relating to those trademarks.• Luxco’s use and advertising of the Rebel trademarks (as defined in the Notice of Opposition [Dkt. 1])• Luxco's sales, revenues and expenses relating to Luxco's use, offer for sale, advertising, promotion, and sales of products bearing the REBEL marks.• Luxco's operations relating to the REBEL brands, as well as sales and distribution of the same products.• The alcoholic beverage business in the United States, channels of trade for those products, regulations and laws relating to those products, and classes of customers for various distilled spirits.• Competitors and competitive products in the distilled spirits market within the United States, as well as merchandising practices of vendors selling distilled spirits products.• The notoriety of Luxco’s REBEL brands, including various awards and recognition received by these brands, the geographic scope of such sales, historical marketing efforts and sales of products bearing those brands.• Common merchandising practices of vendors selling distilled spirits products in the United States, including but not limited to the varying ways in which such products are categorized in stores and other retail establishments.• Luxco’s marketing and sales efforts for its REBEL brands, including brand development, sales
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	<p>strategies, customer relations, marketing, sales and market-share data analysis, developing and implementing marketing strategies and brand plans, advertising and promotional materials and strategies, rebates, as well as media including website content and budget.</p> <ul style="list-style-type: none"> • Luxco’s efforts to market its REBEL-branded goods under the concept of being a “rebel,” including by way of its “Band of Rebels” campaign. • Competitors and competitive products in the distilled spirits market within the United States, as well as merchandising practices of vendors selling distilled spirits products. • Luxco's sales, revenues and expenses relating to Luxco's use, advertising, promotion and sales of products bearing the REBEL brands.
<p>Custodian of Records* Luxco, Inc. 5050 Kemper Avenue St. Louis, MO 63139 (314) 772-2626</p>	<ul style="list-style-type: none"> • Luxco’s custodian of records has knowledge and may be called to testify, if necessary, as to the contents and authenticity of certain corporate documents and records created and held in the ordinary of Luxco’s normal business operations.

*All current and former Luxco personnel may be contacted through counsel.

Further, in addition to the above-listed individuals, Luxco identifies and incorporates herein all individuals and entities disclosed by Applicant in its initial and/or pre-trial disclosures. The foregoing list is also not exhaustive with respect to individuals Luxco may call solely for rebuttal or impeachment. Luxco reserves the right to supplement and/or amend these disclosures in accordance with and as required by the Federal Rules of Civil Procedure and the Board’s Rules of Practice and Orders.

II. General Summary of the Types of Documents and Things which Luxco may Introduce as Exhibits During its Testimony Period.

Pursuant to Federal Rule of Civil Procedure 26(a)(1), Trademark Rule of Practice 2.120 and TBMP §702.01, Luxco identifies the following categories of documents, data compilations, and tangible things that it may introduce as exhibits during the testimony of any of the witnesses identified above. In identifying these categories, Luxco expressly reserves the right to assert any privilege attached to the same documents, data compilations or tangible things, as well as any objection to the production of those documents, data compilations or tangible things except as pursuant to the protective order entered by the Board in this matter. Luxco also reserves the right to supplement these disclosures and the documents accompanying them as necessary and appropriate.

- Documents evidencing the selection, design, development, use, and enforcement of the REBEL YELL, REBEL RESERVE, BAND OF REBELS, REBELLION, REBELLION RUM, and CRAFTED IN THE SPIRIT OF REBELLION trademarks;
- The U.S. Patent and Trademark Office file histories for the REBEL trademarks in the possession of the United States Patent and Trademark Office and other official USPTO papers such as Status and Title pages and file wrappers for these registrations;
- The U.S. Patent and Trademark Office file history for U.S. Trademark Application Serial No 87/687,183 in the possession of the United States Patent and Trademark Office;
- Documents relating to Luxco's sales, marketing, advertising, and promotion under and/or in association with its REBEL brands;
- Documents relating to Luxco's product mix, customer type, competition, and channels of trade for product bearing the REBEL marks;
- Exemplars of advertisements, website pages, packaging, bottle labels, bottle tags, shelf talkers, neck tags, magazines, catalogues and other publications showing Luxco's use of its REBEL brands, as well as gratuitous promotions of the same;
- Documents relating to awards and recognition received by Luxco brands featuring the REBEL marks;

- Documents showing consumer recognition of Luxco's REBEL brands.

Luxco hereby reserves the right to amend the foregoing Initial Disclosures as necessary and upon reasonable notice to Applicant.

DATED: December 10, 2018

LUXCO, INC.

By: /s/Michael R. Annis
Michael R. Annis
Jonathan E. Schmalfeld
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing was served via email on this 10th day of December, 2018, upon:

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s.baker@br-tmlaw.com

Attorneys for Applicant

/s/Michel R. Annis

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LUXCO INC.'S FIRST SET OF INTERROGATORIES TO APPLICANT

Opposer Luxco, Inc. (“Luxco” or “Opposer”), by and through its attorneys, Husch Blackwell LLP, pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 33 of the Federal Rules of Civil Procedure, and submits the following interrogatories to Applicant CB Spirits S.À R.L. (“CB Spirits” or “Applicant”) to be answered under oath by written response and delivered to the offices of Husch Blackwell LLP, 190 Carondelet Plaza, Suite 600, St. Louis, MO 63105, within 30 days after service of this request, pursuant to the attached instructions and definitions.

DEFINITIONS

1. “Person” means any individual, sole proprietorship, association, partnership, corporation or other legal entity.
2. “Document” means the originals (or any copies when originals are not available) unless otherwise stated and any non-identical copies (whether different from the originals because of notes made on such copies or otherwise), of writings of every kind and description whether inscribed by hand or by mechanical, electronic, microfilm, photographic or other means,

as well as phonic (such as tape recordings) or visual reproductions or oral statements, conversations or events, and including, but not limited to, correspondence, teletype messages, internal memoranda, notes, reports, compilations, studies, tabulations, tallies, maps, diagrams, plans, pictures, computer-stored data, computer printouts, all information stored electronically, including but not limited to e-mails, search requests, stored files or folders, meta data, telephone records, internet records, prior drafts of records, files, folders, or correspondence.

3. “Identify”, “identity” or “identification” when used in reference to a natural person means to state his/her/its full name and present or last known residence, present or last known position and business affiliation and each position held in the applicable time period; when used in reference to a document or communication, means to state its date, its subject and substance, its authority, the type of document (e.g., letter, memorandum, telegrams, charts, computer input or printout, etc.) or, if the above information is not available, some other means of identifying it, and its present location, and the names of each of its present custodians.

4. “Describe in detail” means:

(a) Describe fully by reference to underlying facts rather than ultimate facts;

and

(b) Particularize as to:

(i) Time;

(ii) Place, irrespective of whether it is in the United States, its possessions and territories or anywhere else in the world;

(iii) Manner; and

(iv) Identity of person involved including the present address and name and address of his or her employer

5. The term “concerning” or “concern”, when used herein, means in any way related to, containing, contained in, referring to, regarding, embodied in, connected to or part of, in whole or in part.

6. “You”, “your” or “Applicant” refers to CB Spirits S.À R.L, any predecessor-in-interest to the applied from trademark, and any agent, employee or other person acting on its behalf.

7. The term “NUEVO REBELDE” shall mean any mark, logo, signage or other form as referenced in U.S. Trademark Applicant Serial No. 87/687,183 in singular, plural, or otherwise.

8. The terms “Opposer” or “Luxco” refers to Luxco, Inc., and any agent, employee or representative acting on its behalf.

9. The term "Luxco's Marks" or “REBEL Marks” refers collectively to the REBEL YELL, REBEL RESERVE, BAND OF REBELS, REBELLION, REBELLION RUM, and CRAFTED IN THE SPIRIT OF REBELLION which are the subject of U.S. Registration Numbers 4,267,267; 727,786; 1,970,590; 4,708,400; 3,632,812; 4,407,601; 4,609,989; and 4,984,691 as well as any common law rights attached to Luxco's use of the REBEL Marks

INSTRUCTIONS

(A) These interrogatories shall be deemed continuing pursuant to Rule 33 of the Federal Rules of Civil Procedure as to request additional answers if Applicant requires additional information between the time the answers are served and the time of trial. Such additional answers shall be served seasonably, but not later than thirty (30) days after such further information is received. Information requested is to include all information in the possession of the party, its attorney, insurance investigators, agents, or others in privity with Applicant.

(B) Each interrogatory is to be considered as having been asked individually of Applicant, and Applicant shall file separate answers, first giving the question, followed by the answering party's response.

(C) Whenever used herein, the singular shall be deemed to include the plural, the feminine shall be deemed to include the masculine, the disjunctive ("or") shall be deemed to include the conjunctive ("and"), and the conjunctive ("and") shall be deemed to include the disjunctive ("or"), and each of the functional words, "each", "every", "any", and "all" shall be deemed to include each of the other functional words.

(D) Interrogatories which cannot be answered in full shall be answered as completely as possible, an incomplete answer shall be accompanied by a specification of the reasons for the incompleteness of the answer, as well as by a statement of whatever knowledge, information or belief you possess with respect to each unanswered or incompletely answered interrogatory.

INTERROGATORIES

INTERROGATORY 1: Describe in detail the business conducted by Applicant and any entities Applicant has a controlling ownership in, including but not limited to any licensees, in which the NUEVO REBELDE Mark is currently used, or is intended to be used.

ANSWER:

INTERROGATORY 2: Describe in detail each and every product and/or service ever branded or marketed by Applicant, or any licensees, at any time under the NUEVO REBELDE Mark.

ANSWER:

INTERROGATORY 3: For each product and service identified in response to Interrogatory No. 2, above, set forth for each year since the first date of use of the mark:

- a) The quantity of products sold by Applicant (or its licensees) under the NUEVO REBELDE Mark; and
- b) The dollar amount of annual sales for each such product.

ANSWER:

INTERROGATORY 4: For each product and/or service identified in response to Interrogatory No. 2, above, set forth for each of the past five years the dollar amount expended by Applicant and any licensees on advertising and promotion of the NUEVO REBELDE and products branded under that Mark.

ANSWER:

INTERROGATORY 5: Set forth the date of first use of the NUEVO REBELDE Mark on, or in connection with, each product identified in Answer to Interrogatory No. 2, above, and identify all documents relating to or evidencing such first use.

ANSWER:

INTERROGATORY 6: Fully identify any license that you have granted for use of the NUEVO REBELDE Mark, including parties to the license, date, duration, substance of the license, and all products for which each such license was granted.

ANSWER:

INTERROGATORY 7: For any NUEVO REBELDE-branded products sold by or on your behalf, set forth for each year since the first use of the mark the quantity and dollar amount of products sold under the NUEVO REBELDE Mark.

ANSWER:

INTERROGATORY 8: For any NUEVO REBELDE-branded products sold by or on your behalf, set forth for each of the past five years the dollar amount expended on advertising the NUEVO REBELDE Mark.

ANSWER:

INTERROGATORY 9: If use of the NUEVO REBELDE Mark has ever been interrupted describe in detail each such interruption.

ANSWER:

INTERROGATORY 10: Identify with particularity any entity other than Applicant who has used the NUEVO REBELDE mark to brand any beverage alcohol product.

ANSWER:

INTERROGATORY 11: Identify any documents in your possession that support your alleged bona fide intention to use the NUEVO REBELDE Mark in U.S. commerce.

ANSWER:

INTERROGATORY 12: State whether you are aware of any instances of confusion involving the source or sponsorship of NUEVO REBELDE-branded goods, including any

inquiry regarding whether Applicant's NUEVO REBELDE -branded goods were associated with any REBEL-branded goods offered by Luxco. If so, identify:

- c) The person(s) confused or mistaken;
- d) The verbatim content of any inquiry;
- e) The date on which any inquiry was made; and
- f) Any documents relating to any such inquiry.

ANSWER:

INTERROGATORY 13: Identify the first company to whom you sold NUEVO REBELDE-branded goods and two customers for each year since your stated first use date under the NUEVO REBELDE Mark.

ANSWER:

INTERROGATORY 14: State whether you are aware of any third-party use of any mark containing the term " NUEVO REBELDE," or any variation thereof, in conjunction with the sale of any alcoholic beverage. If so, identify:

- g) The party or parties using the mark;
- h) The dates of such use; and
- i) The geographic area(s) of such use.

ANSWER:

INTERROGATORY 15: Identify any trademark registrations, applications for registration or Certificates of Label Approval ("COLA")'s issued by the TTB for marks

containing the term "NUEVO REBELDE" or any variation thereof which you believe to be relevant to the issues presented in this proceeding.

ANSWER:

INTERROGATORY 16: Identify all forms of media through which Applicant and/or your licensees have advertised the NUEVO REBELDE Mark since its first use in commerce.

ANSWER:

INTERROGATORY 17: If the NUEVO REBELDE Mark is not used by Applicant, identify with particularity each and every entity which does, or has used, the subject mark.

ANSWER:

INTERROGATORY 18: State whether a trademark search or any other type of search was conducted by Applicant in connection with its adoption, application for registration or use of the trademark NUEVO REBELDE. If so, describe in detail all documents relating or referring to such search(es) and identify the person(s) most knowledgeable thereof.

ANSWER:

INTERROGATORY 19: Identify the person(s) most knowledgeable regarding the creation, adoption, and use of the NUEVO REBELDE Mark in connection with Applicant's goods.

ANSWER:

INTERROGATORY 20: Identify the person(s) most knowledgeable regarding the manufacture, production, promotion and sale of the goods offered under Applicant's NUEVO REBELDE Mark.

ANSWER:

INTERROGATORY 21: Identify the retail price or intended retail price of all goods currently sold or intended to be sold under the NUEVO REBELDE Mark.

ANSWER:

INTERROGATORY 22: Identify by name and address each company, wholesaler, dealer or distributor to whom you sell your goods under the NUEVO REBELDE Mark.

ANSWER:

INTERROGATORY 23: State all facts relating to Applicant's adoption of the term "NUEVO REBELDE" including without limitation the circumstances surrounding such adoption, any significance or meaning of the term " NUEVO REBELDE " to those involved in said adoption, and the origin of the mark, and identify those person(s) most knowledgeable or such adoption.

ANSWER:

INTERROGATORY 24: Identify the date you or any of your agent(s) involved in seeking registration of the NUEVO REBELDE Mark first became aware of any of Luxco's REBEL Marks.

ANSWER:

DATED: December 10, 2018

LUXCO, INC.

By: /s/Michael R. Annis
Michael R. Annis
Jonathan E. Schmalfeld
HUSCH BLACKWELL LLP
190 Carondelet Plaza, Suite 600
St. Louis, MO 63108
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing was served via email on this 10th day of December, 2018, upon:

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(908) 722-5640
jmr@br-tmlaw.com
s.baker@br-tmlaw.com

Attorneys for Applicant

/s/Michel R. Annis

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LUXCO INC.'S FIRST REQUESTS FOR PRODUCTION TO APPLICANT

Opposer Luxco, Inc. (“Luxco” or “Opposer”), by and through its attorneys, Husch Blackwell LLP, pursuant to Rule 2.120 of the Trademark Rules of Practice and Rule 34 of the Federal Rules of Civil Procedure, and submits the following Request for Production of Documents to Applicant CB Spirits S.À R.L. (“CB Spirits” or “Applicant”) to produce the documents and things set forth below for inspection and copying at the offices of Husch Blackwell LLP, 190 Carondelet Plaza, Suite 600, St. Louis, MO 63105, within 30 days after service of this request, pursuant to the attached instructions and definitions.

INSTRUCTIONS AND DEFINITIONS

Opposer hereby incorporates the Instruction and Definitions contained in its First Set of Interrogatories served concurrently herewith. Those Instructions and Definitions shall apply to these Requests.

REQUESTS FOR PRODUCTION OF DOCUMENTS

1. Produce all documents identified or asked to be identified in response to Luxco's First Set of Interrogatories served concurrently herewith.

RESPONSE:

2. Produce those documents that evidence the first use of the NUEVO REBELDE Mark by Applicant or any licensee.

RESPONSE:

3. Produce those documents that evidence the first use in interstate commerce of the NUEVO REBELDE Mark by Applicant or any licensee.

RESPONSE:

4. Produce those documents that evidence the first use in interstate commerce in the United States of the NUEVO REBELDE Mark by Applicant or any licensee.

RESPONSE:

5. Produce those documents that pertain to any application ever filed for registration of the NUEVO REBELDE Mark by Applicant.

RESPONSE:

6. Produce those documents that show any ownership interest by Applicant in and to any entity or business that owns trademark rights to any term or logo that includes the term "REBEL" and/or "REBELDE"

RESPONSE:

7. Produce representative sample of invoices evidencing the sale of goods under the NUEVO REBELDE Mark by Applicant or any licensee for each year from the date of first use of the mark to the present.

RESPONSE:

8. Produce those trademark search(es) conducted by Applicant or any agent(s) on behalf of Applicant with respect to the NUEVO REBELDE Mark.

RESPONSE:

9. Produce those documents that pertain to the development, creation, and/or adoption of the NUEVO REBELDE Mark.

RESPONSE:

10. Produce any trademark registration certificates owned by Applicant for the NUEVO REBELDE Mark, in any country, state or territory.

RESPONSE:

11. Produce representative samples of the advertising for any goods branded under the NUEVO REBELDE Mark and offered or sold by Applicant or its licensees.

RESPONSE:

12. Produce representative documents evidencing those goods and/or services under which the NUEVO REBELDE Mark is currently used or is intended to be used, such as labels, bottles, tags, boxes and the like.

RESPONSE:

13. Produce a list of Applicant's current customers for NUEVO REBELDE -branded goods.

RESPONSE:

14. Produce examples of any tags or labels used by Applicant or its licensees used in connection with the NUEVO REBELDE Mark.

RESPONSE:

15. Produce a sample of the complete packaging in which the product(s) sold or intended to be sold under the NUEVO REBELDE Mark as those goods:

- (a) are shipped from Applicant to Applicant's customers;
- (b) are displayed at the point of sale to the ultimate users; and/or
- (c) are contained when sold to the ultimate users.

RESPONSE:

16. Produce documents identifying or showing the channels of trade for NUEVO REBELDE-branded goods, or the intended channels of trade for such goods.

RESPONSE:

17. Produce documents identifying or showing the class of customer for NUEVO REBELDE-branded goods, or the intended class of customer for such goods.

RESPONSE:

18. Produce documents identifying and showing the retail price or intended retail price of all NUEVO REBELDE-branded goods.

RESPONSE:

19. Produce all documents Applicant relied upon or referenced by Applicant in responding to Opposer's First Set of Interrogatories.

RESPONSE:

20. Produce specimens of all current and proposed advertising, including, but not limited to, educational and promotional materials, including journals, catalogues, circulars, sale sheets, price sheets, leaflets, direct mail pieces, newspaper and magazine advertisements, telephone book advertisements, press releases, computer screen displays of websites or pages and any other materials used by Applicant or any licensee or related company bearing the NUEVO REBELDE Marks.

RESPONSE:

21. Produce those documents showing any investigation or survey undertaken by or on behalf of Applicant that relate to the terms " REBEL" or "REBELDE."

RESPONSE:

22. Produce those documents that show consent, authorization or permission given by Applicant to any individual and/or entity to use the NUEVO REBELDE Mark in US commerce.

RESPONSE:

23. Produce all documents in your possession which evidence, refer or relate to statements, inquiries, comments or other communications by or from Applicant's customers (or those of your licensees), competitors or third parties, either written or oral, evidencing any confusion, suspicion, believe or doubt on the part of said customer, competitor or other third party as to the relationship between Applicant and Luxco and their respective goods and/or services.

RESPONSE:

24. Produce all documents showing the annual sales volume of products sold in the United States under the NUEVO REBELDE Mark.

RESPONSE:

25. Produce all documents showing the annual dollar value of sales or products sold in the United States under the NUEVO REBELDE Marks.

RESPONSE:

26. Produce all documents that show the amount of money expended, on an annual basis, to advertise or promote products and/or services under Applicant's NUEVO REBELDE Mark.

RESPONSE:

27. Produce any studies, surveys, market search test or memoranda including, but not limited to, demographic or consumer profile studies, relating to the purchasers or potential purchasers of products marketed, offered for sale, advertised or promoted under the NUEVO REBELDE Mark.

RESPONSE:

28. Produce any studies, surveys, market research, test or memoranda relating to consumer recognition of the NUEVO REBELDE Mark.

RESPONSE:

29. Produce any documents that show initial and continuous use of the NUEVO REBELDE Mark in connection with Applicant's goods.

RESPONSE:

30. Produce any documents submitted or received by Applicant as part of any permitting, certifying, or applications for registration of the NUEVO REBELDE Mark, and any fictitious trade name(s) under which you have or intend to offer and sell your NUEVO REBELDE-branded products and/or labels for the same, as well as any permits or certificates of label and/or trade names approved by the Alcohol and Tobacco Tax and Trade Bureau ("TTB"), or other permitting, registering or certifying authority.

RESPONSE:

31. Produce all agreements, terms and contracts between Applicant and any other third party as well as those documents that evidence any negotiations between Applicant and any other third party relating the offer or sale of the NUEVO REBELDE-branded goods within the United States.

RESPONSE:

32. Produce all documents that show any NUEVO REBELDE -branded goods that have been sold by Applicant.

RESPONSE:

33. Produce those documents that show consent, authorization or permission given by Applicant to any individual and/or entity to use the NUEVO REBELDE Mark in US commerce.

RESPONSE:

34. Produce any and all marketing plans relating to any product(s) sold or intended to be sold in connection with the NUEVO REBELDE Mark in U.S. commerce.

RESPONSE:

35. Produce any documents reflecting or relating to any plan or intended plan to sell or offer for sale any products bearing the NUEVO REBELDE Mark in U.S. commerce.

RESPONSE:

36. Produce any documents in your possession, custody or control that reference or otherwise identify, directly or indirectly, Luxco's REBEL Marks.

RESPONSE:

37. Produce all documents in your possession, custody or control that evidence, show or otherwise relate to Applicant's claimed intent to use the NUEVO REBELDE Mark in U.S. commerce.

RESPONSE:

38. Produce all documents in your possession, custody or control that support your assertion that Applicant had a bona fide intention to use the NUEVO REBELDE Mark in U.S. commerce on November 16, 2017.

RESPONSE:

39. Produce all documents in your possession, custody or control that support your assertion that Applicant had a bona fide intention to use the NUEVO REBELDE Mark in U.S. commerce on November 16, 2017.

RESPONSE:

40. Produce all documents in your possession, custody or control that relate to Applicant's filing of the NUEVO REBELDE Mark under either section 44(e) or 1(b) of the Lanham Act.

RESPONSE:

41. All documents concerning agreements, proposals or negotiations with any person to license, produce, sell, offer for sale and/or distribute products bearing the NUEVO REBELDE Mark within the United States.

RESPONSE:

42. All documents concerning the manufacturing and/or planned manufacturing, including orders and/or samples, of products that bear or will bear the NUEVO REBELDE Mark.

RESPONSE:

43. All documents concerning: (a) searches performed with respect to all trademarks considered for products bearing Applicant's NUEVO REBELDE Mark, and (b) opinions of counsel rendered regarding these marks.

RESPONSE:

DATED: December 10, 2018

LUXCO, INC.

By: /s/Michael R. Annis
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CERTIFICATE OF SERVICE

The undersigned counsel hereby certifies that a copy of the foregoing was served via email on this 10th day of December, 2018, upon:

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/s/Michel R. Annis

Bailey, Petrina

From: Schmalfeld, Jonathan
Sent: Wednesday, January 23, 2019 4:58 PM
To: J. Rannells
Cc: Bailey, Petrina; Annis, Michael; K. Hnasko
Subject: Luxco v. CB Spirits (NUEVO REBELDE) (Opposition No. 91242460) - Discovery Requests

Jack,

In the above captioned matter, your discovery responses were due on January 9th.

On January 8th, your paralegal requested a ten (10) day extension on your behalf, which we agreed to. This made your discovery responses due on or before January 19th. It is now January 23rd, and we have still not received your discovery responses in this matter.

Please provide responses to the outstanding discovery by this Friday, January 25th. If we do not receive the discovery responses by this Friday, we will be forced to file a motion to compel.

If you have any questions for me or would like to discuss I am generally available the rest of the week to discuss.

Thank You,

Jonathan E. Schmalfeld
Attorney

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