

ESTTA Tracking number: **ESTTA1000978**

Filing date: **09/10/2019**

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

Proceeding	91243006
Party	Defendant Thirdlove, Inc.
Correspondence Address	JEFFREY L SNOW PRYOR CASHMAN LLP 7 TIMES SQUARE NEW YORK, NY 10036-6569 UNITED STATES jsnow@pryorcashman.com, rklarberg@pryorcashman.com, jweigenberg@pryorcashman.com 212-421-4100
Submission	Other Motions/Papers
Filer's Name	Ryan S. Klarberg
Filer's email	rklarberg@pryorcashman.com, jsnow@pryorcashman.com, tmdocketing@pryorcashman.com
Signature	/ryan s. klarberg/
Date	09/10/2019
Attachments	Declaration of Ryan Klarberg iso Motion for Summary Judgment - 9.10.19.pdf(156377 bytes) Ex. 1 - TSDR for Petitioner Application.pdf(38053 bytes) Ex. 2 - Respondent Application.pdf(29525 bytes) Ex. 3 - Respondent SOU.pdf(258800 bytes) Ex. 4 - Respondent Response to Interrogatories.pdf(231912 bytes) Ex. 5 - Respondent Response to Document Requests.pdf(220797 bytes) Ex. 6 - SUBMITTED UNDER SEAL.pdf(8608 bytes) Ex. 7 - SUBMITTED UNDER SEAL.pdf(8608 bytes) Ex. 8 - SUBMITTED UNDER SEAL.pdf(8613 bytes) Ex. 9 - Parties email correspondence.pdf(198489 bytes) Ex. 10 - Letter to Kim Klibert - 8.12.19.pdf(112020 bytes) Ex. 11 - Parties email correspondence 2.pdf(71911 bytes)

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

In the Matter of Trademark Application
Serial No. 86/710,362
Mark: 24/7

DOLCE VITA INTIMATES LLC,

Opposer/Respondent,

-against-

THIRDLOVE, INC.,

Applicant/Petitioner.

Proceeding No. 91/243,006

**DECLARATION OF RYAN S. KLARBERG IN SUPPORT OF
APPLICANT/PETITIONER'S MOTION FOR SUMMARY JUDGMENT**

I, RYAN S. KLARBERG, hereby declare as follows:

1. I am an attorney with the law firm of Pryor Cashman LLP, counsel for Applicant/Petitioner ThirdLove, Inc. ("ThirdLove") and have personal knowledge of all of the facts and circumstances set forth herein. I submit this declaration in support of Applicant/Petitioner ThirdLove's Motion for Summary Judgment and against Opposer/Respondent Dolce Vita Intimates LLC ("Dolce Vita").

2. A true and correct printout from the TSDR (Trademark Status and Document Retrieval) electronic database reflecting the current status of and current title to Applicant/Petitioner ThirdLove's application for the mark 24/7, U.S. Trademark Application Serial No. 86/710,362, filed on July 30, 2015, is attached hereto as Exhibit 1.

3. A true and correct printout from the USPTO.gov website reflecting Opposer/Respondent Dolce Vita's application for the mark 24/7 COMFORT, U.S. Application Serial No. 77/252,645, filed on August 10, 2007, as an intent-to-use application for

“Undergarments” in International Class 25, is attached hereto as Exhibit 2.

4. A true and correct printout from the USPTO.gov website reflecting Opposer/Respondent Dolce Vita’s Statement of Use filed on January 16, 2009, alleging first use of the mark 24/7 COMFORT in December 2008, is attached hereto as Exhibit 3.

5. Applicant/Petitioner ThirdLove served its First Set of Interrogatories upon Opposer/Respondent Dolce Vita on May 28, 2019.

6. A true and correct copy of Opposer/Respondent Dolce Vita’s response to Applicant/Petitioner Third Love’s First Set of Interrogatories, served on July 10, 2019, is attached hereto as Exhibit 4.

7. Applicant/Petitioner ThirdLove served its First Request for the Production of Documents upon Opposer/Respondent Dolce Vita on May 28, 2019.

8. A true and correct copy of Opposer/Respondent Dolce Vita’s response to Applicant/Petitioner Third Love’s First Request for the Production of Documents, served on July 10, 2019, is attached hereto as Exhibit 5.

9. Opposer/Respondent Dolce Vita served its first document production on July 10, 2019, which included customer invoices dated from June 7, 2017, through April 26, 2019. Opposer/Respondent Dolce Vita served its second document production on August 8, 2019, which consisted entirely of customer invoices dated from January 29, 2015, through September 29, 2016.

10. With respect to the documents and things Opposer/Respondent Dolce Vita served upon Applicant/Petitioner ThirdLove in response to Applicant/Petitioner ThirdLove’s discovery requests, Opposer/Respondent Dolce Vita’s production is limited to (1) alleged purchase orders to its manufacturer bearing dates from October 18, 2017, through April 22, 2019, (2) alleged invoices to its customers bearing dates from August 1, 2012, to April 26, 2019, with no reference to “24/7

COMFORT” or “24/7,” and (3) undated alleged samples of bras that I inspected at Opposer/Respondent Dolce Vita’s counsel’s offices on July 22, 2019.

11. Opposer/Respondent Dolce Vita’s document production includes no purchase orders, no invoices, no communications with U.S. customers, no images showing products bearing the mark 24/7 COMFORT for sale in any U.S. retail establishment, no sales records reflecting any U.S. sales, no business plans or projections, and no advertising or promotion expenditures or plans relating to the 24/7 COMFORT mark, dated prior to August 1, 2012.

12. Of the documents and discovery responses produced by Opposer/Respondent Dolce Vita, the earliest document including the term “24/7 COMFORT” is an alleged purchase order dated October 18, 2017. Opposer/Respondent has produced only four such purchase orders dated from October 18, 2017 through April 22, 2019.

13. A true and correct copy of Opposer/Respondent Dolce Vita’s alleged purchase order with the date October 18, 2017, bearing Bates No. DV000000001, is attached hereto as Exhibit 6 (filed under seal because Dolce Vita designated the production “CONFIDENTIAL – ATTORNEY’S EYES ONLY”).

14. True and correct copies of Opposer/Respondent Dolce Vita’s alleged invoices, bearing Bates Nos. DV000000005-14, are attached hereto as Exhibit 7 (filed under seal because Dolce Vita designated the production “CONFIDENTIAL – ATTORNEY’S EYES ONLY”).

15. True and correct copies of Opposer/Respondent Dolce Vita’s alleged invoices, bearing Bates Nos. DV000000078-83, are attached hereto as Exhibit 8 (filed under seal because Dolce Vita designated the production “CONFIDENTIAL – ATTORNEY’S EYES ONLY”).

16. None of the alleged invoices in Opposer/Respondent Dolce Vita’s document production include any recitation or reference whatsoever to “24/7 COMFORT” or “24/7”.

17. A true and correct printout of the email correspondence between counsel for Opposer/Respondent Dolce Vita and myself from March 22, 2019 to September 3, 2019 is attached hereto as Exhibit 9.¹

18. A true and correct copy of my letter sent on August 12, 2019 letter to counsel for Opposer/Respondent Dolce Vita is attached hereto as Exhibit 10.

19. A true and correct printout of Opposer/Respondent Dolce Vita's counsel's email sent on September 4, 2019 is attached hereto as Exhibit 11.

20. On September 4, 2019, Opposer/Respondent Dolce Vita served its third document production, producing its alleged "representative invoices for 2012-2015" including invoices dated from August 1, 2012, through November 24, 2014, having no reference to "24/7 COMFORT," but no further purchase orders or any other documents.

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

Dated: New York, New York
September 10, 2019



RYAN S. KLARBERG

¹ Certain earlier emails in the chain of emails in Exhibit 9 have been redacted because they contain the parties' confidential settlement communications.

EXHIBIT 1

Generated on: This page was generated by TSDR on 2019-09-09 17:38:07 EDT

Mark: 24/7

24/7

US Serial Number: 86710362

Application Filing Date: Jul. 30, 2015

Filed as TEAS Plus: Yes

Currently TEAS Plus: Yes

Register: Principal

Mark Type: Trademark

TM5 Common Status Descriptor:



LIVE/APPLICATION/Opposition Pending

The pending trademark application has been examined by the Office and was published for opposition, at which time one or more oppositions were filed but they have not yet been decided.

Status: An opposition after publication is pending at the Trademark Trial and Appeal Board. For further information, see TTABVue on the Trademark Trial and Appeal Board web page.

Status Date: Aug. 15, 2018

Publication Date: Jun. 19, 2018

Mark Information

Mark Literal Elements: 24/7

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis ((.)) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Bras; Lingerie; Women's underwear

International Class(es): 025 - Primary Class

U.S Class(es): 022, 039

Class Status: ACTIVE

Basis: 1(b)

Basis Information (Case Level)

Filed Use: Yes

Currently Use: No

Filed ITU: No

Currently ITU: Yes

Filed 44D: No

Currently 44E: No

Filed 44E: No

Currently 66A: No

Filed 66A: No

Currently No Basis: No

Filed No Basis: No

Current Owner(s) Information

Owner Name: THIRDLOVE, INC.

Owner Address: 350 RHODE ISLAND ST
STE 360
SAN FRANCISCO, CALIFORNIA UNITED STATES 94103

Legal Entity Type: CORPORATION

State or Country DELAWARE
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Kent M. Walker

Docket Number: 987.312US

Attorney Primary Email Address: kwalker@lewiskohn.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: JEFFREY L SNOW
PRYOR CASHMAN LLP
7 TIMES SQUARE
NEW YORK, NEW YORK UNITED STATES 10036-6569

Correspondent e-mail: kwalker@lewiskohn.com kmoyerhenry@lewiskohn.com
n.com.ilumanlan@lewiskohn.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Aug. 15, 2018	OPPOSITION INSTITUTED NO. 999999	243006
Jul. 12, 2018	EXTENSION OF TIME TO OPPOSE RECEIVED	
Jun. 19, 2018	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jun. 19, 2018	PUBLISHED FOR OPPOSITION	
May 30, 2018	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
May 16, 2018	AUTOMATIC UPDATE OF ASSIGNMENT OF OWNERSHIP	
May 14, 2018	APPROVED FOR PUB - PRINCIPAL REGISTER	
Apr. 24, 2018	TEAS/EMAIL CORRESPONDENCE ENTERED	68171
Apr. 24, 2018	CORRESPONDENCE RECEIVED IN LAW OFFICE	68171
Apr. 20, 2018	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Apr. 20, 2018	TEAS RESPONSE TO SUSPENSION INQUIRY RECEIVED	
Mar. 09, 2018	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Mar. 09, 2018	LETTER OF SUSPENSION E-MAILED	6332
Mar. 09, 2018	SUSPENSION LETTER WRITTEN	92464
Feb. 15, 2018	TEAS/EMAIL CORRESPONDENCE ENTERED	88889
Feb. 14, 2018	CORRESPONDENCE RECEIVED IN LAW OFFICE	88889
Feb. 14, 2018	TEAS RESPONSE TO SUSPENSION INQUIRY RECEIVED	
Feb. 14, 2018	TEAS CHANGE OF CORRESPONDENCE RECEIVED	
Jan. 17, 2018	ATTORNEY/DOM.REP.REVOKED AND/OR APPOINTED	
Jan. 17, 2018	TEAS REVOKE/APP/CHANGE ADDR OF ATTY/DOM REP RECEIVED	
Dec. 12, 2017	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	
Jun. 12, 2017	REPORT COMPLETED SUSPENSION CHECK CASE STILL SUSPENDED	
Apr. 13, 2017	APPLICANT/CORRESPONDENCE CHANGES (NON-RESPONSIVE) ENTERED	88888
Apr. 13, 2017	TEAS CHANGE OF OWNER ADDRESS RECEIVED	
Dec. 12, 2016	NOTIFICATION OF LETTER OF SUSPENSION E-MAILED	6332
Dec. 12, 2016	LETTER OF SUSPENSION E-MAILED	6332
Dec. 12, 2016	SUSPENSION LETTER WRITTEN	92464
Jun. 15, 2016	NOTIFICATION OF FINAL REFUSAL EMAILED	
Jun. 15, 2016	FINAL REFUSAL E-MAILED	
Jun. 15, 2016	FINAL REFUSAL WRITTEN	92464
May 25, 2016	TEAS/EMAIL CORRESPONDENCE ENTERED	68171
May 25, 2016	CORRESPONDENCE RECEIVED IN LAW OFFICE	68171
May 24, 2016	ASSIGNED TO LIE	68171

May 12, 2016	TEAS RESPONSE TO OFFICE ACTION RECEIVED	
Nov. 16, 2015	NOTIFICATION OF NON-FINAL ACTION E-MAILED	6325
Nov. 16, 2015	NON-FINAL ACTION E-MAILED	6325
Nov. 16, 2015	NON-FINAL ACTION WRITTEN	92464
Nov. 10, 2015	ASSIGNED TO EXAMINER	92464
Aug. 06, 2015	NOTICE OF PSEUDO MARK E-MAILED	
Aug. 05, 2015	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Aug. 03, 2015	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information

TM Attorney: WILLIAMS, KRISTIN MARI

Law Office Assigned: LAW OFFICE 105

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: May 16, 2018

Assignment Abstract Of Title Information

Summary

Total Assignments: 1

Applicant: MeCommerce, Inc.

Assignment 1 of 1

Conveyance: CHANGE OF NAME

Reel/Frame: [6323/0842](#)

Pages: 28

Date Recorded: May 01, 2018

Supporting Documents: [assignment-tm-6323-0842.pdf](#)

Assignor

Name: [MECOMMERCE INC.](#)

Execution Date: Feb. 21, 2018

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Assignee

Name: [THIRDLOVE, INC.](#)

Legal Entity Type: CORPORATION

State or Country Where Organized: DELAWARE

Address: 350 RHODE ISLAND ST
STE 360
SAN FRANCISCO, CALIFORNIA 94103

Correspondent

Correspondent Name: LEWIS KOHN & WALKER LLP

Correspondent Address: 15030 AVENUE OF SCIENCE
SUITE 201
SAN DIEGO, CA 92128

Domestic Representative - Not Found

Proceedings

Summary

Number of Proceedings: 3

Type of Proceeding: Opposition

Proceeding Number: [91243006](#)

Filing Date: Aug 14, 2018

Status: Pending

Status Date: Mar 25, 2019

Interlocutory Attorney: MIKE WEBSTER

Defendant**Name:** Thirdlove, Inc.**Correspondent Address:** JEFFREY L SNOW
PRYOR CASHMAN LLP
7 TIMES SQUARE
NEW YORK NY UNITED STATES , 10036-6569**Correspondent e-mail:** jsnow@pryorcashman.com , rkларberg@pryorcashman.com , jweigensberg@pryorcashman.com**Associated marks**

Mark	Application Status	Serial Number	Registration Number
24/7	Opposition Pending	86710362	

Plaintiff(s)**Name:** Dolce Vita Intimates LLC**Correspondent Address:** ROBERT L EPSTEIN
EPSTEIN DRANGEL LLP
60 E 42ND STREET, STE 2520
NEW YORK NY UNITED STATES , 10165**Correspondent e-mail:** mail@ipcounselors.com**Associated marks**

Mark	Application Status	Serial Number	Registration Number
24/7 COMFORT	Section 8 and 15 - Accepted and Acknowledged	77252645	3599363

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Aug 14, 2018	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Aug 15, 2018	Sep 24, 2018
3	PENDING, INSTITUTED	Aug 15, 2018	
4	STIP FOR EXT	Sep 19, 2018	
5	EXTENSION OF TIME GRANTED	Oct 02, 2018	
6	D APPEARANCE / POWER OF ATTORNEY	Oct 23, 2018	
7	D MOT FOR EXT W/ CONSENT	Oct 23, 2018	
8	EXTENSION OF TIME GRANTED	Oct 29, 2018	
9	D MOT FOR EXT W/ CONSENT	Nov 06, 2018	
10	EXTENSION OF TIME GRANTED	Nov 08, 2018	
11	D MOT FOR EXT W/ CONSENT	Nov 20, 2018	
12	EXTENSION OF TIME GRANTED	Nov 21, 2018	
13	D MOT FOR EXT W/ CONSENT	Dec 20, 2018	
14	EXTENSION OF TIME GRANTED	Dec 20, 2018	
15	D MOT FOR EXT W/ CONSENT	Jan 18, 2019	
16	EXTENSION OF TIME GRANTED	Jan 18, 2019	
17	D MOT TO SUSP W/ CONSENT PEND SETTL NEGOTIATIONS	Feb 15, 2019	
18	SUSPENDED	Feb 15, 2019	
19	ANSWER AND COUNTERCLAIM (FEE)	Mar 22, 2019	
20	ANSWER TO COUNTERCLAIM DUE (DUE DATE)	Mar 25, 2019	Apr 24, 2019
21	ANSWER TO COUNTERCLAIM	Apr 24, 2019	

Type of Proceeding: Extension of Time**Proceeding Number:** [86710362](#)**Filing Date:** Jul 12, 2018**Status:** Terminated**Status Date:** Aug 18, 2018**Interlocutory Attorney:****Defendant****Name:** THIRDLOVE, INC.**Correspondent** Kent M. Walker

Address: Lewis Kohn & Walker LLP
Suite 201 15030 Avenue of Science
San Diego CA , 92128

Correspondent e-mail: kwalker@lewiskohn.com , kmoyerhenry@lewiskohn.com , jumanlan@lewiskohn.com

Mark	Application Status	Serial Number	Registration Number
24/7	Opposition Pending	86710362	

Potential Opposer(s)

Name: Dolce Vita Intimates LLC

Correspondent Address: Robert L. Epstein
Epstein Drangel LLP
60 E. 42nd Street, Ste. 2520
New York NY UNITED STATES , 10165

Correspondent e-mail: mail@ipcounselors.com

Mark	Application Status	Serial Number	Registration Number
Prosecution History			
Entry Number	History Text	Date	Due Date
1	INCOMING - EXT TIME TO OPPOSE FILED	Jul 12, 2018	
2	EXTENSION OF TIME GRANTED	Jul 12, 2018	

Type of Proceeding: Cancellation

Proceeding Number: [92064188](#)

Filing Date: Aug 09, 2016

Status: Terminated

Status Date: Dec 26, 2018

Interlocutory Attorney: ANDREW P BAXLEY

Defendant

Name: Leonard Rubin Associates, Inc.

Correspondent Address: DONNA L MIRMAN
GOTTLIEB RACKMAN & REISMAN PC
270 MADISON AVENUE
NEW YORK NY UNITED STATES , 10016

Correspondent e-mail: dmirman@grr.com , efiling@grr.com , cquintero@grr.com , jsnow@pryorcashman.com

Mark	Application Status	Serial Number	Registration Number
24/7	Section 8 - Accepted	76545244	3886495

Plaintiff(s)

Name: Thirdlove, Inc.

Correspondent Address: JEFFREY L SNOW
PRYOR CASHMAN LLP
7 TIMES SQUARE
NEW YORK NY UNITED STATES , 10036

Correspondent e-mail: jsnow@pryorcashman.com , dfinguerre-ducharme@pryorcashman.com , rklarbreg@pryorcashman.com , jeischeid@pryorcashman.com , tmdocketing@pryorcashman.com

Mark	Application Status	Serial Number	Registration Number
24/7	Opposition Pending	86710362	

Prosecution History

Entry Number	History Text	Date	Due Date
1	FILED AND FEE	Aug 09, 2016	
2	NOTICE AND TRIAL DATES SENT; ANSWER DUE:	Aug 09, 2016	Sep 18, 2016

3	PENDING, INSTITUTED	Aug 09, 2016	
4	ANSWER	Sep 14, 2016	
5	RESPONSE DUE 30 DAYS (DUE DATE)	Jan 16, 2018	Feb 15, 2018
6	P RESP TO BD ORDER/INQUIRY	Feb 15, 2018	
7	SUSPENDED	Mar 09, 2018	
8	RESPONSE DUE 30 DAYS (DUE DATE)	Aug 27, 2018	Sep 26, 2018
9	D RESP TO BD ORDER	Sep 24, 2018	
10	PROC REMAIN SUSPENDED	Sep 27, 2018	
11	BD DECISION: CAN DENIED	Oct 31, 2018	
12	TERMINATED	Dec 26, 2018	

EXHIBIT 2

Trademark/Service Mark Application, Principal Register

Serial Number: 77252645

Filing Date: 08/10/2007

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77252645
MARK INFORMATION	
*MARK	24/7 COMFORT
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	24/7 COMFORT
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Dolce Vita Intimates LLC
*STREET	183 Madison Avenue
*CITY	New York
*STATE (Required for U.S. applicants)	New York
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants only)	10016
LEGAL ENTITY INFORMATION	
TYPE	limited liability company
STATE/COUNTRY WHERE LEGALLY ORGANIZED	New York
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	025
*IDENTIFICATION	Undergarments
FILING BASIS	SECTION 1(b)
ATTORNEY INFORMATION	
NAME	Robert L. Epstein
ATTORNEY DOCKET NUMBER	2081-505US
FIRM NAME	Epstein Drangel Bazerman & James, LLP
STREET	60 East 42nd Street, Suite 820
CITY	New York
STATE	New York

COUNTRY	United States
ZIP/POSTAL CODE	10165
PHONE	212-292-5390
FAX	212-292-5391
EMAIL ADDRESS	mail@ipcounselors.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Jason M. Drangel and William C. Wright and Dermot M. Sheridan
CORRESPONDENCE INFORMATION	
NAME	Robert L. Epstein
FIRM NAME	Epstein Drangel Bazerman & James, LLP
STREET	60 East 42nd Street, Suite 820
CITY	New York
STATE	New York
COUNTRY	United States
ZIP/POSTAL CODE	10165
PHONE	212-292-5390
FAX	212-292-5391
EMAIL ADDRESS	mail@ipcounselors.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
NUMBER OF CLASSES	1
FEE PER CLASS	325
*TOTAL FEE DUE	325
*TOTAL FEE PAID	325
SIGNATURE INFORMATION	
SIGNATURE	NOT PROVIDED
SIGNATORY'S NAME	NOT PROVIDED
SIGNATORY'S POSITION	NOT PROVIDED
DATE SIGNED	NOT PROVIDED

Trademark/Service Mark Application, Principal Register

Serial Number: 77252645

Filing Date: 08/10/2007

To the Commissioner for Trademarks:

MARK: 24/7 COMFORT (Standard Characters, see [mark](#))

The literal element of the mark consists of 24/7 COMFORT.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Dolce Vita Intimates LLC, a limited liability company legally organized under the laws of New York, having an address of
183 Madison Avenue
New York, New York 10016
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended.

For specific filing basis information for each item, you must view the display within the Input Table.

International Class 025: Undergarments

Intent to Use: The applicant has a bona fide intention to use or use through the applicant's related company or licensee the mark in commerce on or in connection with the identified goods and/or services. (15 U.S.C. Section 1051(b)).

The applicant hereby appoints Robert L. Epstein and Jason M. Drangel and William C. Wright and Dermot M. Sheridan of Epstein Drangel Bazerman & James, LLP

60 East 42nd Street, Suite 820
New York, New York 10165
United States

to submit this application on behalf of the applicant. The attorney docket/reference number is 2081-505US.

Correspondence Information: Robert L. Epstein

60 East 42nd Street, Suite 820
New York, New York 10165
212-292-5390(phone)
212-292-5391(fax)
mail@ipcounselors.com (authorized)

A fee payment in the amount of \$325 has been submitted with the application, representing payment for 1 class(es).

RAM Sale Number: 1420

RAM Accounting Date: 08/13/2007

Serial Number: 77252645

Internet Transmission Date: Fri Aug 10 16:42:36 EDT 2007

TEAS Stamp: USPTO/BAS-XXX.XX.XX.XXX-2007081016423632

0052-77252645-3805e98bc2ae884c75c3290204

ef1ff415b-CC-1420-20070810163719662845

24/7 COMFORT

EXHIBIT 3

Trademark/Service Mark Statement of Use (15 U.S.C. Section 1051(d))

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	77252645
LAW OFFICE ASSIGNED	LAW OFFICE 101
EXTENSION OF USE	NO
MARK SECTION	
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	24/7 COMFORT
OWNER SECTION (no change)	
GOODS AND/OR SERVICES SECTION	
INTERNATIONAL CLASS	025
CURRENT IDENTIFICATION	Undergarments
GOODS OR SERVICES	KEEP ALL LISTED
FIRST USE ANYWHERE DATE	12/00/2008
FIRST USE IN COMMERCE DATE	12/00/2008
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT5\IMAGEOUT5\772\526\77252645\xml1\SO U0002.JPG
SPECIMEN DESCRIPTION	specimen tags showing use of the mark thereon
REQUEST TO DIVIDE	NO
PAYMENT SECTION	
NUMBER OF CLASSES IN USE	1
SUBTOTAL AMOUNT [ALLEGATION OF USE FEE]	100
TOTAL AMOUNT	100
SIGNATURE SECTION	
SIGNATORY FILE NAME(S)	\\TICRS\EXPORT5\IMAGEOUT5\772\526\77252645\xml1\SO U0003.JPG
SIGNATORY'S NAME	Jack Thekkekara
SIGNATORY'S POSITION	President
FILING INFORMATION	
SUBMIT DATE	Fri Jan 16 16:52:54 EST 2009
TEAS STAMP	USPTO/SOU-XXX.XX.XX.XXX-2 0090116165254245619-77252 645-440a92da22b8e4652d92e

89895993914a8e-CC-2521-20
090116162428410519

**Trademark/Service Mark Statement of Use
(15 U.S.C. Section 1051(d))**

To the Commissioner for Trademarks:

MARK: 24/7 COMFORT
SERIAL NUMBER: 77252645

The applicant, Dolce Vita Intimates LLC, having an address of
183 Madison Avenue
New York, New York 10016
United States

is submitting the following allegation of use information:

For International Class 025:
Current identification: Undergarments

The mark is in use in commerce on or in connection with all goods or services listed in the application or Notice of Allowance or as subsequently modified for this specific class

The mark was first used by the applicant, or the applicant's related company, licensee, or predecessor in interest at least as early as 12/00/2008, and first used in commerce at least as early as 12/00/2008, and is now in use in such commerce. The applicant is submitting one specimen for the class showing the mark as used in commerce on or in connection with any item in the class, consisting of a(n) specimen tags showing use of the mark thereon.

[Specimen File-1](#)

The applicant is not filing a Request to Divide with this Allegation of Use form.

A fee payment in the amount of \$100 will be submitted with the form, representing payment for the allegation of use for 1 class.

Declaration

[Signature](#)

Signatory's Name: Jack Thekkekara
Signatory's Position: President

RAM Sale Number: 2521
RAM Accounting Date: 01/21/2009

Serial Number: 77252645
Internet Transmission Date: Fri Jan 16 16:52:54 EST 2009
TEAS Stamp: USPTO/SOU-XXX.XX.XX.XXX-2009011616525424
5619-77252645-440a92da22b8e4652d92e89895
993914a8e-CC-2521-20090116162428410519

- 24/7 comfort[®]

- 24/7 comfort[®]

- 24/7 comfort[®]

- 24/7 comfort[®]

- 24/7 comfort[®]

Declaration

Applicant requests registration of the above-identified trademark/service mark in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq., as amended). Applicant is the owner of the mark sought to be registered, and is using the mark in commerce on or in connection with the goods/services identified above, as evidenced by the attached specimen(s) showing the mark as used in commerce.

The undersigned being hereby warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of this document, declares that he/she is properly authorized to execute this document on behalf of the Owner; and all statements made of his/her own knowledge are true and that all statements made on information and belief are believed to be true.

Signature Section:

Signature: 

Signatory's Name: JACK THEKKAKARA

Signatory's Position: PRESIDENT

Date Signed: 1/13/09

NOTE TO APPLICANT: When filed as part of the electronic form (i.e., scanned and attached as an image file), the signature page **must** include both the signature information **and** the boilerplate declaration language. Do **not** include the entire application, but do ensure that the boilerplate declaration language actually appears; *a signature by itself will not be acceptable*. If, due to browser limitations, the boilerplate declaration language appears on a previous page when printed, you must "merge" the declaration and signature block onto a single page prior to signing, so that the *one complete page* can be scanned to create an acceptable image file. It is recommended that you copy-and-paste the entire text form into another document, manipulate the spacing there to move the declaration and signature section to a separate page, and then print this new version of the text form to send to the signatory.

FEE RECORD SHEET

Serial Number: 77252645



RAM Sale Number: 2521

Total Fees: \$100

RAM Accounting Date: 20090121

<u>Transaction</u>	<u>Fee Code</u>	<u>Transaction Date</u>	<u>Fee per Class</u>	<u>Number of Classes</u>	<u>Total Fee</u>
Statement of Use (SOU)	7003	20090116	\$100	1	\$100

Transaction Date: 20090116



EXHIBIT 4

Robert L. Epstein
William C. Wright
Kimberly A. Klibert
EPSTEIN DRANGEL LLP
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New York, NY 10165
Tel: 212-292-5390
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Attorney for Registrant

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

Dolce Vita Intimates LLC,
Opposer,

v.

Thirdlove, Inc.,
Applicant.

Opposition No. 91243006

OPPOSER’S RESPONSE TO APPLICANT’S INTERROGATORIES

Pursuant to 37 C.F.R. §§ 2.116 and 2.120 and Federal Rules of Civil Procedure 26 and 34, Opposer Dolce Vita Intimates LLC (“Opposer”), by its undersigned counsel, hereby responds to Applicant’s Interrogatories (“Applicant’s Interrogatories”) as follows.

I. DEFINITIONS

1. “**Applicant**”, “**You**” and “**Your**” means Applicant Thirdlove, Inc. and (where applicable) its present or former officers, directors, agents, employees, consultants, representatives, members and attorneys and any fictitious names by which Applicant is or has been doing business; all predecessor or successor companies, corporations or other business Entities (defined below)

and the present or former officers, directors, agents, employees, consultants, representatives, members and attorneys of any of them, and any division, company, corporation or any other business Entity (defined below) affiliated with Applicant or owned by Applicant, in whole or in part, or which owns Applicant, in whole or in part, and the present or former officers, directors, agents, employees, consultants, representatives, members and attorneys of any of them.

2. “**Registrant**” or “**Opposer**” means Registrant Dolce Vita Intimates LLC, along with (where applicable) its present or former officers, directors, agents, employees, partners, representatives, consultants, independent contractors, corporate parent(s), subsidiaries or affiliates.
3. “**Action**” means the above-captioned Opposition proceeding (Proceeding No. 91243006), filed with the Trademark Trial and Appeal Board on August 14, 2018.
4. “**Notice of Opposition**” means the Notice of Opposition filed in the Action on August 14, 2018.
5. “**Answer**” means the Answer filed in the Action on March 22, 2019.
6. “**Registrant’s Mark**” means 24/7 COMFORT, as reflected in U.S. Trademark Registration No. 3599363.
7. “**Applicant’s Mark**” means 24/7, as reflected in U.S. Trademark Application Ser. No. 86710362.
8. “**Applicant’s Goods**” mean “*Bras; Lingerie; Women's underwear*”, as listed in the application for Applicant’s Marks.

9. “**Service(s)**” and “**Product(s)**” mean any services provided by Applicant and the items marketed, sold and/or distributed or intended and/or planned to be marketed, sold and/or distributed by Applicant.
10. “**Mark(s)**” means and includes trademarks, service marks, trade names, corporation names, and any other symbol or device used to identify the source, affiliation, or identity of any product, service or person.
11. “**Advertisement**” means and includes all communications to third parties fixed in a tangible medium of expression and intended to promote or encourage the purchase or sale of goods or services in the United States.
12. “**Advertising**” means and includes all advertisement and all other communications to third parties intended to promote or encourage the purchase or sale of goods or services in the United States.
13. “**Media Outlet**” is defined as any individual printed publication such as a newspaper or magazine; broadcast television or radio station; cable channel; or Internet website.
14. “**Include**”, “**Includes**” or “**Including**” means including without limitation.
15. “**Relate to**” and “**Relating to**” means and Includes any information concerning, comprising, identifying, involving, summarizing, stating, referring to, evidencing, containing, discussing, mentioning, describing, defining, being relevant, logically or factually, directly or indirectly, to the subject matter of the Request in which such term is used.
16. “**Identify**”, “**Identifying**”, “**Identified**”, “**Identity**” and “**Specify**”, or any related term, means a complete identification to the full extent known or ascertainable by Applicant, whether or not in possession of Applicant, and whether or not alleged to be privileged, Including the following information:

- a. The present depository or depositories and the name and address of the Person or Persons (defined below) having custody of any item to be Identified unless the item is a patent, public Document (defined below) or Person (defined below);
- b. If the item to be Identified is a Person – his or her full name, address, job title, and present employer(s) as well as the basis of that Person’s knowledge, Including but not limited to, a description of that Person’s personal involvement and/or role in any matters which are the subject of the Document Request and/or any other activity in any way Relating to the allegations of the Notice of Opposition and any of Applicant’s defenses;
- c. If the Person to be Identified is a corporation or other legal Entity – the laws under which it is organized and the date of organization;
- d. If the item to be Identified is a Document – the date of the Document, its author(s), its sender(s), all Persons copied, the type of Document (e.g., letter, memorandum, electronic mail, telegram, drawing, etc.), its title, subject line, subject matter or other Identifying information, its source of publication, the substance of the Document, its present location, and the name and address of any Person(s) presently having possession, custody or control of the Document. If the Document is no longer in Applicant’s possession, custody or control, please state what disposition was made of the Document and when;
- e. If the item to be Identified is printed material – its title, author, publication date, volume and relevant page numbers;
- f. If the item to be Identified is an oral Communication (defined below) – provide a complete description of such oral Communication, Including but not limited to: the

speaker(s), actual or intended recipient(s) or witnesses of the Communication, the date of the Communication and the substance of the Communication; and

- g. If the Identity sought is information about a situation or set of circumstances – all of the facts Relating to and/or relevant to such a situation Including the Identity of Person(s) with knowledge of such situation and the Identity of all Documents and Communications Relating to, referring to, or otherwise pertinent to such a situation.

17. **“Document”** and **“Documents”** are used in the broadest sense permissible under the Federal Rules of Civil Procedure and the Trademark Rules of Practice for the United States Patent and Trademark Office and shall Include, without limitation: tangible things and written, typed, printed, recorded (Including audio or videotape or both), graphic, photographic matter (Including negatives), tapes, records, or other devices, facsimile transmissions, or computerized materials in whatever form, Including originals, copies, drafts, and reproductions thereof, however produced or reproduced, in Applicant’s actual or constructive possession, custody, or control, or of which Applicant has knowledge, wherever located, Including copies of such Documents on which appear any commentary, notations, marks, alterations or writings placed thereon after the Document was first prepared or produced. Pursuant to Federal Rule of Evidence 1001(3), where the information requested is data stored in a computer or similar device, an “original” is a printout or other output readable by sight, shown to accurately reflect the data. The following are non-limiting examples of Documents: correspondence, agreements, financial statements, invoices, minutes, memoranda, notes, diaries, records, computer readable files, interoffice communications, electronic mail, electronic data processing cards and tapes, tapes or other recordings, telegrams, photographs, drawings, reports, Advertising and promotional materials, packaging materials, printed matter and

publications. Each copy of a Document embodying, or having attached to it any alterations, notes, comments, or other material not embodied in or attached to the original or any other copy being Identified, shall be deemed as separate Documents.

18. **“Communication”** and **“Communications”** are used in the broadest sense permissible under the Federal Rules of Civil Procedure and the Trademark Rules of Practice for the United States Patent and Trademark Office and shall Include, without limitation: any oral or written transmittal of information (in the form of facts, ideas, inquiries or otherwise) or request for information made from one Person (defined below) to another, whether made in person, by telephone, letter, facsimile, electronic mail and/or other internet transmissions, web pages, or by any other means, or a Document made for the purpose of recording a Communication, idea, statement, opinion or belief, or notes or memoranda Relating to written or oral Communications.
19. **“Person”, “Persons”, “Entity”** or **“Entities”** means and Includes natural persons acting as individuals, groups of natural persons acting in a collegial capacity (e.g., as a board of directors or committee of such a board), and any other incorporated or unincorporated business, organization, association, partnership, limited partnership, firm, joint venture, governmental body, agency, department or division, or any other incorporated or unincorporated business, governmental or social entity.
20. **“Financial Statements”** or **“Financial Records”** means balance sheets, statements of income, earnings, retained earnings, sources and applications of funds, cash flow statements and projections, and any other Documents that pertain to the financial condition of Applicant, whether any of the foregoing is audited or unaudited, whether final, interim or pro forma, complete or partial, consolidated or non-consolidated, yearly, monthly, quarterly, or otherwise.

21. Unless otherwise noted, the terms “**sell**,” “**license**,” “**advertise**,” “**market**,” and “**promote**” are to be interpreted as encompassing both the present act and the future intended act (e.g., “sell” shall also mean “intend to sell”).
22. “The terms “**all**,” “**any**,” and “**each**” shall be construed as encompassing any and all.
23. The connectives “**and**” and “**or**” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside of its scope.
24. The use of the singular form of any word Includes the plural and vice versa.
25. Unless otherwise noted, the geographic scope of these Interrogatories is limited to the United States.

GENERAL OBJECTIONS

Registrant hereby asserts the following general objections (“General Objections”) and hereby incorporates its General Objections in each of its individual responses set forth below:

1. Registrant objects to each definition included in Applicant’s Interrogatories to the extent that they conflict with or are less encompassing than Registrant’ definitions.
2. Registrant objects to each definition, instruction and interrogatory in Applicant’s Interrogatories to the extent that they impose obligations on Registrant beyond those required by the Federal Rules of Civil Procedure and the Trademark Rules of Practice for the United States Patent and Trademark Office.
3. Registrant objects to Applicant’s Interrogatories to the extent that they seek information that is neither relevant to the claims or defenses of any party nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, in responding to Applicant’s Interrogatories, Registrant concedes neither the relevance nor the materiality of the

responsive information. Registrant reserves the right to object to: (i) any further discovery on any of the topics contained in Applicant's Interrogatories, (ii) the admissibility of Applicant's Interrogatories, and (iii) the admissibility of any response to Applicant's Interrogatories in any filing or proceeding, including at trial.

4. Registrant objects to each definition, instruction and interrogatory in Applicant's Interrogatories to the extent that they seek information protected by the attorney-client privilege, the work-product doctrine, or any other privilege or evidentiary principle available under constitutional, federal or state statutory or common law. Nothing in Registrant's responses to Applicant's Interrogatories is intended as, or shall in any way be deemed, a waiver of any attorney-client privilege, work-product doctrine, or any other privilege or evidentiary principle available under constitutional, federal or state statutory or common law.
5. Registrant objects to each definition, instruction and interrogatory in Applicant's Interrogatories to the extent that they require Registrant to disclose confidential or proprietary business information concerning itself or a third party or the content of any part of any agreement between Registrant and a third party which, by its terms, may not be disclosed by Registrant. Registrant will not disclose any such information absent a Protective Order and the consent of the third party in question or a court order.
6. Registrant objects to each definition, instruction and interrogatory in Applicant's Interrogatories to the extent that they seek information that is not in the possession, custody, or control of Registrant.
7. Registrant objects to each definition, instruction and interrogatory in Applicant's Interrogatories as being unduly burdensome to the extent that they seek information that is

a matter of public record or that is equally available to Applicant from other sources.

8. Registrant objects to each definition, instruction and interrogatory in Applicant's Interrogatories as being unduly burdensome to the extent that they seek information that could be obtained more efficiently through other methods of discovery.
9. Registrant objects to each definition, instruction and interrogatory in Applicant's Interrogatories to the extent that they ask for duplicative or cumulative information.
10. Registrant objects to each definition, instruction and interrogatory in Applicant's Interrogatories as unduly burdensome insofar as they may be construed to require Registrant to create or compile documents or things.
11. Registrant objects to each definition, instruction and interrogatory in Applicant's Interrogatories to the extent that they require interpretation and/or application of the legal conclusions and contentions of the parties.
12. Registrant objects to each definition, instruction and interrogatory in Applicant's Interrogatories to the extent that they contain any factual or legal misrepresentation.
13. Registrant objects to each definition, instruction and interrogatory in Applicant's Interrogatories to the extent that they call for information that is not now known by Registrant nor reasonably available from sources within the custody or control of Registrant. Registrant's search for responsive information is ongoing. Registrant reserves the right to rely on facts, documents or other evidence that may be discovered by Registrant at a later time or come to Registrant's attention at a later time. Registrant's responses are based on information presently known to Registrant and are set forth without prejudice to Registrant's right to assert additional objections and/or provide supplemental responses, should Registrant discover additional grounds for objections and/or additional information,

documents and/or other evidence.

14. Registrant reserves the right to supplement or amend its responses to Applicant's Interrogatories at any time prior to the trial in this action. Any statement made herein is not an admission of any factual or legal contention contained in any interrogatory in Applicant's Interrogatories.

15. Registrant's responses and objections are made solely for the purpose of discovery in this action. Nothing herein is intended to waive the following objections, which are expressly reserved: all objections as to competency, relevancy, materiality, and admissibility of the subject matter of Applicant's Interrogatories; all objections as to vagueness, ambiguity, or undue burden; all objections to the use of any information, document or thing identified or provided in response to Applicant's Interrogatories; all objections to any request for further responses to Applicant's Interrogatories or other discovery requests; all objections to any information, document or thing that is privileged or classified as work-product; and any other objections, all of which are reserved and may be interposed at the time of trial, which would require or permit the exclusion from evidence of any information, document or thing provided in response to Applicant's Interrogatories.

RESPONSES TO INTERROGATORIES

1. Identify all persons who provided information or documents for responses to these Interrogatories and Thirdlove, Inc.'s First Request for the Production of Documents.

ANSWER: Opposer objects to this interrogatory as overly broad and unduly burdensome, including to the extent it requires production of "all" persons. Subject to and without waiving that objection, Allan Solomon, CFO, c/o Dolce Vita Intimates,

183 Madison Avenue, New York, New York 10016 provided the information and documents.

2. Identify each good that is currently being sold under Respondent's Mark in the United States, whether by Respondent or by a third party.

ANSWER: Bras and scrubs.

3. Identify each good that is intended to be sold under Respondent's Mark in the United States, whether by Respondent or by a third party

ANSWER: Bras and scrubs.

4. Identify all Persons allegedly authorized or allowed by Respondent to use Respondent's Mark or any variation thereof in U.S. commerce.

ANSWER: None other than Opposer and its customers.

5. Identify the exact date (month, day, and year) that Respondent's Goods were first sold in U.S. commerce, if any.

ANSWER: December 2008

6. Identify the name and provide the contact information for the first U.S. customer that Respondent has sold goods under Respondent's Mark, if any.

ANSWER: Unknown.

7. Identify Respondent's gross sales for 2008 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer does not keep records reflecting gross sales by trademark.

8. Identify Respondent's gross sales for 2009 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer does not keep records reflecting gross sales by trademark.

9. Identify Respondent's gross sales for 2010 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer does not keep records reflecting gross sales by trademark.

10. Identify Respondent's gross sales for 2011 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer does not keep records reflecting gross sales by trademark.

11. Identify Respondent's gross sales for 2012 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer does not keep records reflecting gross sales by trademark.

12. Identify Respondent's gross sales for 2013 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer does not keep records reflecting gross sales by trademark.

13. Identify Respondent's gross sales for 2014 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer does not keep records reflecting gross sales by trademark.

14. Identify Respondent's gross sales for 2015 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer does not keep records reflecting gross sales by trademark.

15. Identify Respondent's gross sales for 2016 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer does not keep records reflecting gross sales by trademark.

16. Identify Respondent's gross sales for 2017 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer does not keep records reflecting gross sales by trademark.

17. Identify Respondent's gross sales for 2018 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer does not keep records reflecting gross sales by trademark.

18. Identify Respondent's gross sales for 2019 (to date) for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer does not keep records reflecting gross sales by trademark.

19. Identify Respondent's yearly U.S. expenditures to date for the advertising and promotion of Respondent's Goods sold under Respondent's Mark.

ANSWER: None.

20. Identify Respondent's yearly U.S. planned future expenditures for the advertising and promotion of each of Respondent's Goods sold under Respondent's Mark.

ANSWER: None.

21. Identify all U.S. territories in which Respondent sells, has sold, or will sell Respondent's Goods under Respondent's Mark.

ANSWER: Opposer objects to this interrogatory as overly broad and unduly burdensome, including to the extent it requires production of "all" U.S. territories. Subject to and without waiving that objection, Dolce Vita sells, has sold, or will sell Respondent's Goods under Respondent's Mark to any U.S. retail establishment that sells undergarments and wishes to purchase same.

22. Identify all channels of trade in the United States through which Respondent sells, has sold, or will sell Respondent's Goods under Respondent's Mark.

ANSWER: Opposer objects to this interrogatory as overly broad and unduly burdensome, including to the extent it requires production of "all" channels of trade. Subject to and without waiving that objection, Dolce Vita sells, has sold, or will sell

Respondent's Goods under Respondent's Mark to any U.S. retail establishment that sells undergarments and wishes to purchase same.

23. Describe with particularity any business plans or projections, revenue projections, cost projections and/or product plans or proposals as they relate to Respondent's Goods and the intended use of Respondent's Mark.

ANSWER: Dolce Vita has no business plans or projections, revenue projections, cost projections and/or product plans or proposals which relate to Respondent's Goods and the intended use of Respondent's Mark.

24. Identify all Persons that assisted, or consulted with, Respondent in advertising, promoting and/or selling Respondent's Goods under Respondent's Mark in the United States.

ANSWER: Opposer objects to this interrogatory as overly broad and unduly burdensome, including to the extent it requires production of "all" Persons. Subject to and without waiving that objection, none.

25. Identify all customers, whether prospective or actual, to whom Respondent has or will market, advertise, promote and/or provide Respondent's Goods under Respondent's Mark in the United States, including without limitation, mailing lists, customer profiles, and demographics.

ANSWER: Opposer objects to this interrogatory as overly broad and unduly burdensome, including to the extent it requires production of "all" customers. Subject to and without waiving that objection, Dolce Vita will produce representative invoices

showing sales to customers of bras to which the 24/7 COMFORT label is attached and samples of the bras.

26. Identify each and every instance of alleged actual confusion between Petitioner and Respondent relating to the goods offered under Petitioner's Mark and Respondent's Mark.

ANSWER: Dolce Vita is not currently aware of any actual confusion.

27. Identify all agreements between Respondent and any other person concerning Respondent's Mark.

ANSWER: None, other than purchase orders to the factory and invoices to customers.

28. Identify all assignments, licenses or other transfers to or from Respondent of any right in Respondent's Mark.

ANSWER: None.

[signature page follows]

As to Interrogatory Responses:

DOLCE VITA INTIMATES, LLC

Allan Solomon

Title: Chief Financial Officer

Dated: _____

As to Objections:

EPSTEIN DRANGEL, LLP

/ Robert L. Epstein /

Robert L. Epstein

Kimberly A. Klibert

60 East 42nd Street, Suite 2520

New York, New York 10165

Phone: 212-292-5390

E-Mail: mail@ipcounselors.com

Dated: July 10, 2019

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing OPPOSER’S RESPONSE TO APPLICANT’S INTERROGATORIES was served by e-mail on this this 10th day of July, 2019 upon Applicant’s counsel at the following address:

JEFFREY L SNOW
PRYOR CASHMAN LLP
7 TIMES SQUARE
NEW YORK, NY 10036-6569
UNITED STATES

jsnow@pryorcashman.com, rklarberg@pryorcashman.com, jweigensberg@pryorcashman.com
Phone: 212-421-4100

Dated: July 10, 2019

By: / Kimberly A. Klibert /
Kimberly A. Klibert
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60 East 42nd Street, Suite 2520
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EXHIBIT 5

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William C. Wright
Kimberly A. Klibert
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Attorney for Registrant

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

Dolce Vita Intimates LLC,
Opposer,

v.

Thirdlove, Inc.,
Applicant.

Opposition No. 91243006

RESPONSE TO FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to 37 C.F.R. §§ 2.116 and 2.120 and Federal Rules of Civil Procedure 26 and 34, Opposer Dolce Vita Intimates LLC (“Opposer”), by its undersigned counsel, hereby responds to Thirdlove, Inc.’s First Set of Document Requests (“Applicant’s Doc. Requests”) as follows.

I. DEFINITIONS

1. “**Applicant**”, “**You**” and “**Your**” means Applicant Thirdlove, Inc. and (where applicable) its present or former officers, directors, agents, employees, consultants, representatives, members and attorneys and any fictitious names by which Applicant is or has been doing business; all predecessor or successor companies, corporations or other business Entities (defined below) and the present or former officers, directors, agents, employees, consultants, representatives,

members and attorneys of any of them, and any division, company, corporation or any other business Entity (defined below) affiliated with Applicant or owned by Applicant, in whole or in part, or which owns Applicant, in whole or in part, and the present or former officers, directors, agents, employees, consultants, representatives, members and attorneys of any of them.

2. **“Registrant”** or **“Opposer”** means Registrant Dolce Vita Intimates LLC, along with (where applicable) its present or former officers, directors, agents, employees, partners, representatives, consultants, independent contractors, corporate parent(s), subsidiaries or affiliates.
3. **“Action”** means the above-captioned Opposition proceeding (Proceeding No. 91243006), filed with the Trademark Trial and Appeal Board on August 14, 2018.
4. **“Notice of Opposition”** means the Notice of Opposition filed in the Action on August 14, 2018.
5. **“Answer”** means the Answer filed in the Action on March 22, 2019.
6. **“Registrant’s Mark”** means 24/7 COMFORT, as reflected in U.S. Trademark Registration No. 3599363.
7. **“Applicant’s Mark”** means 24/7, as reflected in U.S. Trademark Application Ser. No. 86710362.
8. **“Applicant’s Goods”** mean *“Bras; Lingerie; Women’s underwear”*, as listed in the application for Applicant’s Marks.
9. **“Service(s)”** and **“Product(s)”** mean the services provided by Applicant and the items marketed, sold and/or distributed or intended and/or planned to be marketed, sold and/or distributed by Applicant.

10. **“Mark(s)”** means and includes trademarks, service marks, trade names, corporation names, and any other symbol or device used to identify the source, affiliation, or identity of any product, service or person.
11. **“Advertisement”** means and includes all communications to third parties fixed in a tangible medium of expression and intended to promote or encourage the purchase or sale of goods or services in the United States.
12. **“Advertising”** means and includes all advertisement and all other communications to third parties intended to promote or encourage the purchase or sale of goods or services in the United States.
13. **“Media Outlet”** is defined as any individual printed publication such as a newspaper or magazine; broadcast television or radio station; cable channel; or Internet website.
14. **“Include”, “Includes” or “Including”** means including without limitation.
15. **“Relate to” and “Relating to”** means and Includes any information concerning, comprising, identifying, involving, summarizing, stating, referring to, evidencing, containing, discussing, mentioning, describing, defining, being relevant, logically or factually, directly or indirectly, to the subject matter of the Request in which such term is used.
16. **“Identify”, “Identifying”, “Identified”, “Identity” and “Specify”**, or any related term, means a complete identification to the full extent known or ascertainable by Applicant, whether or not in possession of Applicant, and whether or not alleged to be privileged, Including the following information:
 - a. The present depository or depositories and the name and address of the Person or Persons (defined below) having custody of any item to be Identified unless the item is a patent, public Document (defined below) or Person (defined below);

- b. If the item to be Identified is a Person – his or her full name, address, job title, and present employer(s) as well as the basis of that Person’s knowledge, Including but not limited to, a description of that Person’s personal involvement and/or role in any matters which are the subject of the Document Request and/or any other activity in any way Relating to the allegations of the Notice of Opposition and any of Applicant’s defenses;
- c. If the Person to be Identified is a corporation or other legal Entity – the laws under which it is organized and the date of organization;
- d. If the item to be Identified is a Document – the date of the Document, its author(s), its sender(s), all Persons copied, the type of Document (e.g., letter, memorandum, electronic mail, telegram, drawing, etc.), its title, subject line, subject matter or other Identifying information, its source of publication, the substance of the Document, its present location, and the name and address of any Person(s) presently having possession, custody or control of the Document. If the Document is no longer in Applicant’s possession, custody or control, please state what disposition was made of the Document and when;
- e. If the item to be Identified is printed material – its title, author, publication date, volume and relevant page numbers;
- f. If the item to be Identified is an oral Communication (defined below) – provide a complete description of such oral Communication, Including but not limited to: the speaker(s), actual or intended recipient(s) or witnesses of the Communication, the date of the Communication and the substance of the Communication; and

- g. If the Identity sought is information about a situation or set of circumstances – all of the facts Relating to and/or relevant to such a situation Including the Identity of Person(s) with knowledge of such situation and the Identity of all Documents and Communications Relating to, referring to, or otherwise pertinent to such a situation.

17. **“Document”** and **“Documents”** are used in the broadest sense permissible under the Federal Rules of Civil Procedure and the Trademark Rules of Practice for the United States Patent and Trademark Office and shall Include, without limitation: tangible things and written, typed, printed, recorded (Including audio or videotape or both), graphic, photographic matter (Including negatives), tapes, records, or other devices, facsimile transmissions, or computerized materials in whatever form, Including originals, copies, drafts, and reproductions thereof, however produced or reproduced, in Applicant’s actual or constructive possession, custody, or control, or of which Applicant has knowledge, wherever located, Including copies of such Documents on which appear any commentary, notations, marks, alterations or writings placed thereon after the Document was first prepared or produced. Pursuant to Federal Rule of Evidence 1001(3), where the information requested is data stored in a computer or similar device, an “original” is a printout or other output readable by sight, shown to accurately reflect the data. The following are non-limiting examples of Documents: correspondence, agreements, financial statements, invoices, minutes, memoranda, notes, diaries, records, computer readable files, interoffice communications, electronic mail, electronic data processing cards and tapes, tapes or other recordings, telegrams, photographs, drawings, reports, Advertising and promotional materials, packaging materials, printed matter and publications. Each copy of a Document embodying, or having attached to it any alterations,

notes, comments, or other material not embodied in or attached to the original or any other copy being Identified, shall be deemed as separate Documents.

18. **“Communication”** and **“Communications”** are used in the broadest sense permissible under the Federal Rules of Civil Procedure and the Trademark Rules of Practice for the United States Patent and Trademark Office and shall Include, without limitation: any oral or written transmittal of information (in the form of facts, ideas, inquiries or otherwise) or request for information made from one Person (defined below) to another, whether made in person, by telephone, letter, facsimile, electronic mail and/or other internet transmissions, web pages, or by any other means, or a Document made for the purpose of recording a Communication, idea, statement, opinion or belief, or notes or memoranda Relating to written or oral Communications.
19. **“Person”**, **“Persons”**, **“Entity”** or **“Entities”** means and Includes natural persons acting as individuals, groups of natural persons acting in a collegial capacity (e.g., as a board of directors or committee of such a board), and any other incorporated or unincorporated business, organization, association, partnership, limited partnership, firm, joint venture, governmental body, agency, department or division, or any other incorporated or unincorporated business, governmental or social entity.
20. **“Financial Statements”** or **“Financial Records”** means balance sheets, statements of income, earnings, retained earnings, sources and applications of funds, cash flow statements and projections, and any other Documents that pertain to the financial condition of Applicant, whether any of the foregoing is audited or unaudited, whether final, interim or pro forma, complete or partial, consolidated or non-consolidated, yearly, monthly, quarterly, or otherwise.

21. Unless otherwise noted, the terms “**sell**,” “**license**,” “**advertise**,” “**market**,” and “**promote**” are to be interpreted as encompassing both the present act and the future intended act (e.g., “sell” shall also mean “intend to sell”).
22. “The terms “**all**,” “**any**,” and “**each**” shall be construed as encompassing any and all.
23. The connectives “**and**” and “**or**” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request all responses that might otherwise be construed to be outside of its scope.
24. The use of the singular form of any word Includes the plural and vice versa.
25. Unless otherwise noted, the geographic scope of these Document Requests is limited to the United States.

GENERAL OBJECTIONS

Opposer hereby asserts the following general objections (“General Objections”) and hereby incorporates its General Objections in each of its individual responses set forth below:

1. Opposer objects to each definition included in Applicant’s Doc. Requests to the extent that they conflict with or are less encompassing than Opposer’s definitions.
2. Opposer objects to each definition and instruction in Applicant’s Doc. Requests to the extent that they impose obligations on Opposer beyond those required by the Federal Rules of Civil Procedure and the Trademark Rules of Practice for the United States Patent and Trademark Office.
3. Opposer objects to Applicant’s Doc. Requests to the extent that they seek information that is neither relevant to the claims or defenses of any party nor reasonably calculated to lead to the discovery of admissible evidence. Moreover, in responding to Applicant’s Doc. Requests, Opposer concedes neither the relevance nor the materiality of the responsive

information. Opposer reserves the right to object to: (i) any further discovery on any of the topics contained in Applicant's Doc. Requests, (ii) the admissibility of Applicant's Doc. Requests, and (iii) the admissibility of any response to Applicant's Doc. Requests in any filing or proceeding, including at trial.

4. Opposer objects to each definition and instruction in Applicant's Doc. Requests to the extent that they seek information protected by the attorney-client privilege, the work-product doctrine, or any other privilege or evidentiary principle available under constitutional, federal or state statutory or common law. Nothing in Opposer's responses to Applicant's Doc. Requests is intended as, or shall in any way be deemed, a waiver of any attorney-client privilege, work-product doctrine, or any other privilege or evidentiary principle available under constitutional, federal or state statutory or common law.
5. Opposer objects to each definition and instruction in Applicant's Doc. Requests to the extent that they require Opposer to disclose confidential or proprietary business information concerning itself or a third party or the content of any part of any agreement between Opposer and a third party which, by its terms, may not be disclosed by Opposer. Opposer will not disclose any such information absent a Protective Order and the consent of the third party in question or a court order.
6. Opposer objects to each definition and instruction in Applicant's Doc. Requests to the extent that they seek information that is not in the possession, custody, or control of Opposer.
7. Opposer objects to each definition and instruction in Applicant's Doc. Requests as being unduly burdensome to the extent that they seek information that is a matter of public record or that is equally available to Applicant from other sources.

8. Opposer objects to each definition and instruction in Applicant's Doc. Requests as being unduly burdensome to the extent that they seek information that could be obtained more efficiently through other methods of discovery.
9. Opposer objects to each definition and instruction in Applicant's Doc. Requests to the extent that they ask for duplicative or cumulative information.
10. Opposer objects to each definition and instruction in Applicant's Doc. Requests as unduly burdensome insofar as they may be construed to require Opposer to create or compile documents or things.
11. Opposer objects to each definition and instruction in Applicant's Doc. Requests to the extent that they require interpretation and/or application of the legal conclusions and contentions of the parties.
12. Opposer objects to each definition and instruction in Applicant's Doc. Requests to the extent that they contain any factual or legal misrepresentation.
13. Opposer objects to each definition and instruction in Applicant's Doc. Requests to the extent that they call for information that is not now known by Opposer nor reasonably available from sources within the custody or control of Opposer. Opposer's search for responsive information is ongoing. Opposer reserves the right to rely on facts, documents or other evidence that may be discovered by Opposer at a later time or come to Opposer's attention at a later time. Opposer's responses are based on information presently known to Opposer and are set forth without prejudice to Opposer's right to assert additional objections and/or provide supplemental responses, should Opposer discover additional grounds for objections and/or additional information, documents and/or other evidence.
14. Opposer reserves the right to supplement or amend its responses to Applicant's Doc.

Requests at any time prior to the trial in this action. Any statement made herein is not an admission of any factual or legal contention contained in any interrogatory in Applicant's Doc. Requests.

15. Opposer's responses and objections are made solely for the purpose of discovery in this action. Nothing herein is intended to waive the following objections, which are expressly reserved: all objections as to competency, relevancy, materiality, and admissibility of the subject matter of Applicant's Doc. Requests; all objections as to vagueness, ambiguity, or undue burden; all objections to the use of any information, document or thing identified or provided in response to Applicant's Doc. Requests; all objections to any request for further responses to Applicant's Doc. Requests or other discovery requests; all objections to any information, document or thing that is privileged or classified as work-product; and any other objections, all of which are reserved and may be interposed at the time of trial, which would require or permit the exclusion from evidence of any information, document or thing provided in response to Applicant's Doc. Requests.

Subject to and without waiver of these General Objections, Opposer responds to Applicant's Doc. Requests as follows:

**OPPOSER'S RESPONSES TO APPLICANT'S REQUESTS FOR
PRODUCTION**

1. All documents and things identified, referred to, or used as a basis to respond in Respondent's responses to Applicant/Petitioner Thirdlove, Inc.'s First Set of Interrogatories.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of "all" documents and things when a

limited number of such documents would suffice. Subject to that objection, Dolce Vita will produce representative invoices showing sales to customers of bras to which the 24/7 COMFORT label is attached and samples of the bras.

2. All documents and things concerning any change or modification of Respondent's Mark since the conception of Respondent's Mark.

ANSWER: None.

3. All documents and things concerning any complaints, petitions, oppositions, objections, cancellations, administrative proceedings, legal opinions, cease and desist letters or civil actions made by or against Respondent involving Respondent's application for and/or use of Respondent's Mark.

ANSWER: None.

4. All documents and things concerning any communications between Respondent (including without limitation, through an attorney) and the Patent and Trademark Office or the Trademark Trial and Appeal Board concerning Respondent's Mark.

ANSWER: None, other than those of record.

5. All documents and things sufficient to identify Respondent's total gross sales for goods sold, from the date of first use of Respondent's Mark to the present, for Respondent's Goods.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of “all” documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita does not keep records which identify Respondent’s total gross sales for goods sold by trademark.

6. All documents and things sufficient to identify Respondent’s gross sales in 2008 for Respondent’s Goods sold under Respondent’s Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of “all” documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita does not keep records which identify Respondent’s total gross sales for goods sold by trademark.

7. All documents and things sufficient to identify Respondent’s gross sales in 2009 for Respondent’s Goods sold under Respondent’s Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of “all” documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita does not keep records which identify Respondent’s total gross sales for goods sold by trademark.

8. All documents and things sufficient to identify Respondent's gross sales in 2010 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of "all" documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita does not keep records which identify Respondent's total gross sales for goods sold by trademark.

9. All documents and things sufficient to identify Respondent's gross sales in 2011 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of "all" documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita does not keep records which identify Respondent's total gross sales for goods sold by trademark.

10. All documents and things sufficient to identify Respondent's gross sales in 2012 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of "all" documents and things when a limited number of such documents would suffice. Subject to that

objection, Dolce Vita does not keep records which identify Respondent's total gross sales for goods sold by trademark.

11. All documents and things sufficient to identify Respondent's gross sales in 2013 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of "all" documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita does not keep records which identify Respondent's total gross sales for goods sold by trademark.

12. All documents and things sufficient to identify Respondent's gross sales in 2014 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of "all" documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita does not keep records which identify Respondent's total gross sales for goods sold by trademark.

13. All documents and things sufficient to identify Respondent's gross sales in 2015 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of

type of undergarment.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of “all” documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita does not keep records which identify Respondent’s total gross sales for goods sold by trademark.

14. All documents and things sufficient to identify Respondent’s gross sales in 2016 for Respondent’s Goods sold under Respondent’s Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of “all” documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita does not keep records which identify Respondent’s total gross sales for goods sold by trademark.

15. All documents and things sufficient to identify Respondent’s gross sales in 2017 for Respondent’s Goods sold under Respondent’s Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of “all” documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita

does not keep records which identify Respondent's total gross sales for goods sold by trademark.

16. All documents and things sufficient to identify Respondent's gross sales in 2018 for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of "all" documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita does not keep records which identify Respondent's total gross sales for goods sold by trademark.

17. All documents and things sufficient to identify Respondent's gross sales in 2019 (to date) for Respondent's Goods sold under Respondent's Mark, including the gross sales for each of type of undergarment.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of "all" documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita does not keep records which identify Respondent's total gross sales for goods sold by trademark.

18. All documents and things concerning the corporate structure, organization and operation of Respondent's companies that are and/or will be offering goods or rendering

services under Respondent's Mark, including, without limitation, any certificate and articles of incorporation, charter by-laws and amendments to the organizational instrument, all annual or other periodic reports issued by Respondent, organizational flow charts, and documents identifying all related or affiliated companies, corporate officers and members of the board of directors, executive committees or governance bodies.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of "all" documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita is a limited liability company and has no certificate and articles of incorporation, charter by-laws and amendments to the organizational instrument, annual or other periodic reports issued by Respondent, organizational flow charts, and not related or affiliated companies, corporate officers and members of the board of directors, executive committees or governance bodies.

19. All documents and things sufficient to identify each good currently sold, advertised or promoted by Respondent under Respondent's Mark in the United States, if any.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of "all" documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita will produce representative samples of bras with the 24/7 COMFORT label.

20. All documents and things sufficient to identify each good that will be sold, advertised or promoted by Respondent under Respondent's Mark in the United States, if any.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of “all” documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita will produce representative samples of bras with the 24/7 COMFORT label.

21. Specimens reflecting use in commerce of each of Respondent’s Goods in the United States, if any.

ANSWER: Dolce Vita will produce representative samples of bras with the 24/7 COMFORT label.

22. All documents and things concerning the advertising or promotion of Respondent’s Goods in the United States, including without limitation, advertisements, promotional materials, sales materials, social media, videotapes, DVDs, catalogues, brochures, and mailing and price lists, whether distributed publicly or not, to the extent they exist.

ANSWER: None.

23. All documents and things concerning the proposed or planned advertising or promotion of Respondent’s Goods in the United States, including without limitation, advertisements, promotional materials, sales materials, social media, videotapes, DVDs, catalogues, brochures, and mailing and price lists, whether distributed publicly or not, to the extent they exist.

ANSWER: None.

24. All documents and things reflecting Respondent's annual actual or intended advertising, promotion and publicity expenditures for Respondent's Goods under Respondent's Mark.

ANSWER: None.

25. All documents and things concerning the media in which Respondent advertises or promotes, or intends to advertise or promote, Respondent's Goods under Respondent's Mark in the United States, including without limitation, media schedules and budgets.

ANSWER: None.

26. All documents concerning any assistance received by Respondent from any advertising, public relations, consulting or sales entity concerning Respondent's Goods under Respondent's Mark.

ANSWER: None.

27. All documents and things concerning Respondent's yearly expenditures to date relating to the sale of Respondent's Goods under Respondent's Mark.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of "all" documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita does not advertise and does not keep records of cost of goods, shipping etc. segregated by trademark.

28. All documents and things concerning Respondent's planned future expenditures relating to the sale of Respondent's Goods under Respondent's Mark.

ANSWER: Dolce Vita does not have documents or things relating to planned expenditures.

29. All documents and things concerning any business plans or projections, revenue projections, cost projections and/or product plans or proposals as they relate to Respondent's Goods in connection with Respondent's Mark.

ANSWER: Dolce Vita does not have documents and things concerning any business plans or projections, revenue projections, cost projections and/or product plans or proposals as they relate to Respondent's Goods in connection with Respondent's Mark.

30. All documents and things concerning the sale of each of Respondent's Goods under Respondent's Mark in commerce, including, without limitation, contracts, invoices and agreements.

ANSWER: Opposer objects to this Request as overly broad and unduly burdensome, including to the extent it requires production of "all" documents and things when a limited number of such documents would suffice. Subject to that objection, Dolce Vita will produce representative invoices showing sales to customers of bras to which the 24/7 COMFORT label is attached and samples of the bras.

31. All documents and things concerning the date that Respondent's Goods were first sold in interstate commerce in the United States under Respondent's Mark, if any.

ANSWER: None.

32. All documents and things concerning each and every instance of alleged actual confusion between Petitioner and Respondent relating to the goods offered under Petitioner's Mark and Respondent's Mark.

ANSWER: Dolce Vita is not currently aware of any actual confusion.

33. All documents and things concerning any assignment, license or other transfer to or from Respondent of any right, statutory or otherwise, in Respondent's Mark.

ANSWER: None.

34. Provide all documents referring or relating to plans for steps toward expansion by Respondent of the type of goods and/or services under which Respondent's Mark is used or relating to plans to alter the present channels of trade, or to offer such goods or services to Persons other than Respondent's present purchasers, if any.

ANSWER: None.

Dated: July 10, 2019

EPSTEIN DRANGEL, LLP
By: / Robert L. Epstein /
Robert L. Epstein
William C. Wright
Kimberly A. Klibert
60 East 42nd Street, Suite 2520
New York, New York 10165
Phone: 212-292-5390
E-Mail: mail@ipcounselors.com

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing RESPONSE TO FIRST REQUEST FOR PRODUCTION OF DOCUMENTS was served by e-mail on this this 10th day of July, 2019 upon Applicant’s counsel at the following address:

JEFFREY L SNOW
PRYOR CASHMAN LLP
7 TIMES SQUARE
NEW YORK, NY 10036-6569
UNITED STATES

jsnow@pryorcashman.com, rklarberg@pryorcashman.com, jweigensberg@pryorcashman.com
Phone: 212-421-4100

Dated: July 10, 2019

By: / Kimberly A. Klibert /
Kimberly A. Klibert
Epstein Drangel LLP
60 East 42nd Street, Suite 2520
New York, New York 10165
Phone: 212-292-5390
E-Mail: mail@ipcounselors.com

EXHIBIT 6

EXHIBIT SUBMITTED UNDER SEAL

EXHIBIT 7

EXHIBIT SUBMITTED UNDER SEAL

EXHIBIT 8

EXHIBIT SUBMITTED UNDER SEAL

EXHIBIT 9

Klarberg, Ryan S.

From: Robert L. Epstein <repstein@IPCOUNSELORS.COM>
Sent: Tuesday, September 03, 2019 2:17 PM
To: Klarberg, Ryan S.
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Ryan,

I expect to have these documents to you by Thursday, the latest.

Bob



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From: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>
Sent: Friday, August 30, 2019 12:32 PM
To: Robert L. Epstein <repstein@IPCOUNSELORS.COM>; Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>
Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Bob,

Thanks for confirming the extension of time for us to respond to discovery.

With regard to your client supplementing its production, we reiterate our request that you provide to us a specific date by which your client will produce all of its responsive documents, as required by Fed. R. Civ. P. 34.

Ryan

From: Robert L. Epstein [<mailto:repstein@IPCOUNSELORS.COM>]
Sent: Monday, August 26, 2019 10:09 AM
To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>; Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>

Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Hi Ryan,
No problem with the extension until September 11, 2019 to respond to the discovery.
With regard to supplementing our responses, I will let you know as soon as I hear.
Bob



Robert L. Epstein

Epstein Drangel LLP
60 East 42nd Street, Suite 2520
New York, NY 10165

T: 212.292.5390 x 202

E: repstein@ipcounselors.com

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From: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>
Sent: Thursday, August 22, 2019 4:46 PM
To: Robert L. Epstein <repstein@IPCOUNSELORS.COM>; Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>
Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Bob,

We write to raise two discovery-related matters concerning the opposition/cancellation proceeding, Opposition/Cancellation No. 91243006.

First, ThirdLove's responses to your client's discovery requests (served on July 29, 2019) are currently due on August 28, 2019. Our client requires additional time to respond to these discovery requests. Please let us know right away if you would be amenable to extending ThirdLove's response deadline to September 11, 2019.

Please note that we granted your request for a 15-day extension of time to respond to our discovery requests on June 27, 2019 (as shown in the email chain below). We would appreciate your reciprocal courtesy of an extension.

Second, several weeks ago we granted your client additional time to ascertain whether there are any earlier invoices reflecting sales of undergarments bearing the 24/7 mark. We anticipated that your client would then search all of its records, *including any responsive documents in storage*, to produce responsive documents including those dated prior to 2015, which are highly relevant to the cancellation aspect of this proceeding.

In the interest of resolving this discovery issue amicably, we are willing to provide your client additional time to search its records in storage, but we ask that you provide to us a specific date by which your client will produce all of its responsive documents, as required by Fed. R. Civ. P. 34.

Ryan

From: Robert L. Epstein [<mailto:repstein@IPCOUNSELORS.COM>]
Sent: Wednesday, August 21, 2019 2:48 PM
To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>; Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>
Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Ryan,

I have requested that the client provide documents relating to their use of the 24/7 COMFORT mark prior to 2015.

They told me that if they have them, they are in storage.

I have asked that they look for them and provide them if they have them.

They will let me know. It will take a few days.

Bob



Disclaimer: This e-mail, and any attachments hereto, is intended only for use by the addressee(s) named herein and may contain legally privileged and/or confidential information. If you are not the intended recipient of this e-mail, you are hereby notified that any dissemination, distribution or copying of this e-mail, and any attachments hereto, is strictly prohibited. If you have received this e-mail in error, please immediately notify me at (212) 292-5390 and permanently delete the original and any copy of any email and any printout thereof.

From: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>
Sent: Wednesday, August 21, 2019 11:30 AM
To: Robert L. Epstein <repstein@IPCOUNSELORS.COM>; Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>
Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Bob,

This is in response to your message immediately following.

By producing documents from 2015 through 2019 only, you have not provided any evidence of your client's alleged use of the 24/7 COMFORT mark prior to 2015. Our requests encompassed documents directed to your client's alleged use of the mark and/or its intent to resume use during the period from 2008 through 2015. Without such proof of use or

intent to resume use, your client abandoned any rights it may allege to have had in the 24/7 COMFORT mark during the period 2008-2015.

Clearly, having provided “representative” invoices from the period 2015-2019 is inadequate to show that your client did not abandon any rights it claims to have had in the putative mark during the period 2008-2015. Your “understanding” that your client has “used this trademark extensively over the years and probably has many documents relating to that use” does not meet the burden of proof you would face to show that your client did not abandon the mark during the period 2008-2015, which abandonment would result in cancellation of the federal registration.

Your additional objections on procedural grounds do not address the inadequacy of proof that your client did not abandon the mark during the period 2008-2015. We do not assert that the Federal Rules of Civil Procedure require that you produce every document in your client’s possession relating to its alleged use of the mark. Under the Federal Rules, however, we are entitled to production of documents relating to this issue from the time period 2008-2015 or, alternatively, confirmation that there are no such documents or that your client will not produce any such documents in response to our discovery requests. If, in fact, your discovery responses are “fully in accordance with the Federal Rules,” then we must conclude, and reply upon your representation, that you have already produced all of the documents that you intend to produce in response to our discovery requests.

As you know, we have been working diligently to address this issue with you in letters and correspondence since August 12, 2019. If you have any further response to our discovery requests and inquiries herein, please provide same by the **close of business tomorrow, August 22, 2019**. If you have no further response, in light of the record in this proceeding, we plan to move for summary judgment for cancellation of your client’s mark due to abandonment during the period of 2008-2015.

Ryan

From: Robert L. Epstein [<mailto:repstein@IPCOUNSELORS.COM>]
Sent: Tuesday, August 20, 2019 5:38 PM
To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>; Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>
Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Ryan,

We objected to your requests insofar as they requested “All documents...” and initially produced invoices which are representative of the sales invoices for 2017-2019.

We had a telephone conference with you in which you asked for additional invoices for earlier years. In response, we voluntarily provided representative invoices for 2015-2017.

The invoices provided are more than adequate to show that our client has not abandoned its rights in the 24/7 COMFORT trademark.

It is my understanding that our client has used this trademark extensively over the years and probably has many documents relating to that use.

The Federal Rules do not require that we produce every document in our client’s possession relating to the use of the trademark or that we confirm that we have done so.

Our objection is proper, and the discovery responses are fully in accordance with the Federal Rules.

If you believe otherwise, we are willing to discuss and/or consider any authority you may have to the contrary.

Bob



Robert L. Epstein

Epstein Drangel LLP
60 East 42nd Street, Suite 2520
New York, NY 10165

T: 212.292.5390 x 202

E: repstein@ipcounselors.com

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From: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>

Sent: Tuesday, August 20, 2019 5:01 PM

To: Robert L. Epstein <repstein@IPCOUNSELORS.COM>; Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>

Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>

Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Bob,

Thank you for confirming your receipt of our letter. We wish the best to Kim.

Based on your response, we presume that your client will not be producing any further documents in response to our discovery requests.

Ryan

From: Robert L. Epstein [<mailto:repstein@IPCOUNSELORS.COM>]

Sent: Tuesday, August 20, 2019 4:55 PM

To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>; Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>

Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>

Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Dear Mr. Klarberg,

Kim is on maternity leave.

Kindly direct all further communications relating to this case to me.

We received your letter.

Regards,

Bob



Robert L. Epstein

Epstein Drangel LLP
60 East 42nd Street, Suite 2520
New York, NY 10165

T: 212.292.5390 x 202

E: repstein@ipcounselors.com

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From: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>

Sent: Tuesday, August 20, 2019 4:34 PM

To: Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>

Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>

Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Kim,

We are following up regarding the attached letter that we sent on August 12th. We have yet to receive a response.

We will follow-up now by phone to confirm that you've received it as well.

Ryan

From: Klarberg, Ryan S.

Sent: Monday, August 12, 2019 12:46 PM

To: 'Kimberly A. Klibert' <kklibert@IPCOUNSELORS.COM>

Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <jweigensberg@pryorcashman.com>; Trademarks <trademarks@ipcounselors.com>

Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Dear Kim,

Please see the attached.

Ryan

From: Kimberly A. Klibert [<mailto:kklibert@IPCOUNSELORS.COM>]
Sent: Thursday, August 08, 2019 3:10 PM
To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>
Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Dear Ryan,

Further to our telephone call, please see enclosed for the additional documentation. Please note that the documents are marked as confidential and for attorney's eyes only.

Sincerely,
Kim



Kimberly A. Klibert

Epstein Drangel LLP
60 East 42nd Street, Suite 2520
New York, NY 10165

T: 212.292.5390

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E: kklibert@ipcounselors.com

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From: Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>
Sent: Friday, August 2, 2019 9:35 AM
To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>
Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Dear Ryan,

Further to our email dated July 10th below, please see the signed copy enclosed.

Sincerely,
Kim



Kimberly A. Klibert

Epstein Drangel LLP
60 East 42nd Street, Suite 2520
New York, NY 10165

T: 212.292.5390

F: 212.292.5391

E: kklibert@ipcounselors.com

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From: Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>

Sent: Monday, July 29, 2019 3:12 PM

To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>

Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>

Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Hi Ryan,

Further to our conversation earlier today, we will check in with the client upon his return from vacation to ascertain whether there are any earlier invoices and confirm.

Please also see enclosed.

Sincerely,
Kim



Kimberly A. Klibert

Epstein Drangel LLP
60 East 42nd Street, Suite 2520
New York, NY 10165

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From: Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>

Sent: Monday, July 29, 2019 9:40 AM

To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>

Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks

<trademarks@ipcounselors.com>

Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Hi Ryan,

Yes, we are available at noon at 212-292-5390.

Sincerely,
Kim



Kimberly A. Klibert

Epstein Drangel LLP
60 East 42nd Street, Suite 2520
New York, NY 10165

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E: kklibert@ipcounselors.com

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From: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>

Sent: Friday, July 26, 2019 10:51 AM

To: Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>

Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>

Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Jeff and I are available at noon on Monday. If that works for you, please let us know if we should call you at 212.292.5390.

Thanks

From: Kimberly A. Klibert [<mailto:kklibert@IPCOUNSELORS.COM>]

Sent: Friday, July 26, 2019 9:07 AM

To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>

Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>

Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Hi Ryan,

Are you available on Monday before 3pm?

Sincerely,
Kim



Kimberly A. Klibert

Epstein Drangel LLP
60 East 42nd Street, Suite 2520
New York, NY 10165

T: 212.292.5390

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E: kklibert@ipcounselors.com

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From: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>

Sent: Thursday, July 25, 2019 6:05 PM

To: Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>

Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>

Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Kim,

Upon our review of your client's responses to our discovery requests and your client's corresponding production, we discovered that your client has failed to produce the relevant documents that we requested in our document requests. We specifically note that your client has failed to produce any documents prior to 2017.

Accordingly, please let us know your availability next week for a meet-and-confer conference call to discuss the above. The conference call shall constitute our good faith effort to resolve this discovery dispute prior to filing a motion to compel.

Ryan

From: Kimberly A. Klibert [<mailto:kklibert@IPCOUNSELORS.COM>]

Sent: Friday, July 19, 2019 1:55 PM

To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>

Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>

Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Great. Thanks Ryan, we will see you then.



Kimberly A. Klibert

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From: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>

Sent: Friday, July 19, 2019 1:43 PM

To: Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>

Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>

Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

2:30 works for Jeff and me.

From: Kimberly A. Klibert [<mailto:kklibert@IPCOUNSELORS.COM>]

Sent: Thursday, July 18, 2019 11:15 PM

To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>

Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>

Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Hi Ryan,

Of course – we are available between 9am and 3pm on Monday, 7/22. Is there a time that day that works for you?

Sincerely,
Kim



Kimberly A. Klibert

Epstein Drangel LLP
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New York, NY 10165

T: 212.292.5390

F: 212.292.5391

E: kklibert@ipcounselors.com

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From: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>
Sent: Thursday, July 18, 2019 4:50 PM
To: Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>
Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Kim,

Jeff and I would like to schedule a time to visit your office to inspect the product samples.

Can you please let us know some dates/times next week that work for you?

Thanks,
Ryan

From: Kimberly A. Klibert [<mailto:kklibert@IPCOUNSELORS.COM>]
Sent: Wednesday, July 10, 2019 10:16 PM
To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>
Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Dear Ryan,

Please see enclosed for the responses. Please further note:

1. The documents are marked as confidential and for attorney's eyes only.
2. The client has provided product samples as mentioned in the responses – these samples are at our offices and available for your inspection at your convenience.
3. Mr. Solomon is on vacation at present, and as such we will provide a signed copy of the response upon his return.

Sincerely,
Kim



Kimberly A. Klibert
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From: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>
Sent: Thursday, June 27, 2019 10:02 AM
To: Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>
Cc: Phil Spector <phil@thirdlove.com>; Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Kim – We consent to your client having until 7/12 to serve responses to our discovery requests.

Ryan

From: Kimberly A. Klibert [<mailto:kklibert@IPCOUNSELORS.COM>]
Sent: Wednesday, June 26, 2019 3:29 PM
To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>
Cc: Phil Spector <phil@thirdlove.com>; Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Dear Ryan,

We note that your interrogatories and document requests were sent with the below email dated 5/28. As we are awaiting further documentation from the client, let us know if you would be amenable to extending the response deadline to 7/12.

Sincerely,
Kim



Kimberly A. Klibert
Epstein Drangel LLP
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New York, NY 10165
T: 212.292.5390
F: 212.292.5391
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From: Kimberly A. Klibert
Sent: Monday, June 24, 2019 2:53 PM
To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>
Cc: Phil Spector <phil@thirdlove.com>; Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Dear Ryan,

Please see enclosed.

Sincerely,
Kim



Kimberly A. Klibert

Epstein Drangel LLP
60 East 42nd Street, Suite 2520
New York, NY 10165

T: 212.292.5390

F: 212.292.5391

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From: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>
Sent: Tuesday, May 28, 2019 6:27 PM
To: Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>
Cc: Phil Spector <phil@thirdlove.com>; Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

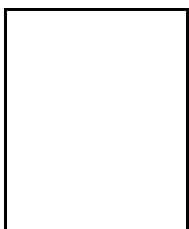
Kim,

Please see the attached.

Ryan

From: Kimberly A. Klibert [<mailto:kklibert@IPCOUNSELORS.COM>]
Sent: Monday, May 20, 2019 5:46 PM
To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>
Cc: Phil Spector <phil@thirdlove.com>; Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: Re: Coexistence Agreement — 24/7 (File: 2081-022)

Please do. Speak with you then.



Kimberly A. Klibert

Epstein Drangel LLP
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F: 212.292.5391

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On May 20, 2019, at 5:40 PM, Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com> wrote:

Yes, that works. Please let us know if we should contact you at 212.292.5390.

From: Kimberly A. Klibert [<mailto:kklibert@IPCOUNSELORS.COM>]
Sent: Monday, May 20, 2019 4:45 PM
To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>; Phil Spector <phil@thirdlove.com>
Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Hi Ryan,

I am not available tomorrow. Are you available at 3pm on Wednesday?

Sincerely,
Kim

<image001.png>

Kimberly A. Klibert
Epstein Drangel LLP
60 East 42nd Street, Suite 2520
New York, NY 10165
T: 212.292.5390
F: 212.292.5391
E: kklibert@ipcounselors.com
[website](#) | [blog](#) | [vCard](#) | [map](#)

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From: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>
Sent: Monday, May 20, 2019 10:45 AM
To: Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>; Phil Spector <phil@thirdlove.com>
Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Kim –

The parties' deadline for a discovery conference is May 24. Please let us know if you are available tomorrow (5/21) at 11:00 a.m. ET for the call.

Ryan

From: Kimberly A. Klibert [<mailto:kklibert@IPCOUNSELORS.COM>]
Sent: Wednesday, April 24, 2019 11:10 AM
To: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>; Phil Spector <phil@thirdlove.com>
Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>; Weigensberg, Joshua <JWeigensberg@PRYORCASHMAN.com>; Trademarks <trademarks@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Dear Jeff,

Please see service copy enclosed.

Sincerely,
Kim

<image001.png>

Kimberly A. Klibert
Epstein Drangel LLP
60 East 42nd Street, Suite 2520
New York, NY 10165
T: 212.292.5390
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From: Klarberg, Ryan S. <RKlarberg@PRYORCASHMAN.com>
Sent: Friday, March 22, 2019 3:37 PM
To: Kimberly A. Klibert <kklibert@IPCOUNSELORS.COM>; Phil Spector <phil@thirdlove.com>
Cc: Snow, Jeffrey <JSnow@PRYORCASHMAN.com>; Robert L. Epstein <repstein@IPCOUNSELORS.COM>; William C. Wright <bwright@ipcounselors.com>
Subject: RE: Coexistence Agreement — 24/7 (File: 2081-022)

Dear Kim,

Please see the attached.

Ryan

REDACTED

REDACTED

REDACTED

EXHIBIT 10

Ryan S. Klarberg

Direct Tel: 212-326-0183
Direct Fax: 212-326-0806
rklarberg@pryorcashman.com

August 12, 2019

VIA E-MAIL [kklibert@ipcounselors.com]

Kimberly A. Klibert, Esq.
Epstein Drangel LLP
60 East 42nd Street, Suite 2520
New York, NY 10165

Re: Opposition/Cancellation No. 91243006

Dear Kim:

We are in receipt of Opposer/Respondent's supplemental document production served via e-mail on August 8, 2019.

Please confirm that your client and its agents have reviewed all records and that your client has no further non-privileged documents responsive to Applicant/Petitioner's discovery requests in its possession, custody or control, including, but not limited to, any responsive, non-privileged documents prior to 2015.

We further request that you respond to us, in writing, by **August 14, 2019**.

Very truly yours,



Ryan S. Klarberg

EXHIBIT 11

Klarberg, Ryan S.

From: Robert L. Epstein <repstein@IPCOUNSELORS.COM>
Sent: Wednesday, September 04, 2019 10:43 AM
To: Klarberg, Ryan S.
Subject: FW: Dolce Vita v Thirdlove
Attachments: Document Production III_Invoices 2012-2015_Bates Stamped - CONFIDENTIAL ATTORNEYS' EYES ONLY.pdf

Ryan,

Attached are copies of representative invoices for 2012-2015, bate-stamped production (DV000000078 to DV000000108).

Please note all of these invoices are **CONFIDENTIAL – ATTORNEYS’ EYES ONLY**.

I am advised that earlier invoices were destroyed by hurricane Sandy.

Bob



Robert L. Epstein
Epstein Drangel LLP
60 East 42nd Street, Suite 2520
New York, NY 10165
T: 212.292.5390 x 202
E: repstein@ipcounselors.com
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