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

Proceeding	91244034
Party	Defendant Fenox Venture Capital, Inc. DBA Fenox Venture Capital
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Attachments	APPLICANT RESPONSE TO MOTION TO COMPEL.pdf(147559 bytes )

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

SEAN GRIFFIX, AND  
GRIFFINWORX, INC.

Opposers,

v.

FENOX VENTURE CAPITAL, INC.  
DBA FENOX VENTURE CAPITAL

Applicant.

OPPOSITION NO.: 91244034

**RESPONSE TO OPPOSER'S MOTION TO COMPEL**

In Opposer's motion to compel discovery filed at the TTAB 8/7/2019, Opposer made several allegations implying that Applicant has attempted to disrupt the discovery process by the several delays and alleged inadequacies in its responses to Opposer's propounded discovery.

Although there were delays in Applicant's response to Opposer's propounded discovery, Applicant did submit the responses to Opposer in good

faith. As Opposer alleged on page 8 of its motion to compel, Applicant's counsel held a conference call with Opposer's counsel to discuss any follow-up to Opposer's propounded discovery requests. During this conference call, Applicant's attorney agreed to consult Applicant as to whether existing information, including documents, exist to supplement Applicant's responses to Opposer's discovery.

As further alleged by Opposer on page 6 of its motion to compel, Applicant provided additional information to Opposer to supplement Applicant's responses to Opposer's propounded discovery. Applicant understands its legal duty to comply with the discovery process. However, Applicant has no duty to respond to Opposer's discovery requests which exceed what is allowed by the TTAB Manual of Procedure (TBMP), Trademark Rules of Practice, or the Federal Rules of Civil Procedure.

### **1. SPECIFIC REQUESTS AT ISSUE**

REQUEST FOR PRODUCTION NO. 1: Produce all documents identified, described, examined, consulted, used or relied upon by you in responding to Opposers' Interrogatories to Applicant, or which support any factual response or contention set forth in a Response to Opposers' Interrogatories to Applicant.

Applicant understood that this request was completed as implicit in Applicant's submission of documents. Applicant can readily produce the documents which satisfy this request.

REQUEST FOR PRODUCTION NO. 2: Produce all documents relating to the first use of Applicant's Mark and Applicant's Prior Mark.

Applicant can perform an additional search for these documents. However, Applicant submits that Opposer has mis-stated the law that Applicant must either produce documents reflecting its use or forfeit its claimed priority use prior to the filings of its application.

REQUEST FOR PRODUCTION NO. 3: Produce all documents relating to the first use of Applicant's Mark and Applicant's Prior Mark in commerce.

Applicant can perform an additional search for these documents. However, Applicant submits that Opposer has mis-stated the law that Applicant must either produce documents reflecting its use or forfeit its claimed priority use prior to the filings of its application.

REQUEST FOR PRODUCTION NO. 4: Produce all documents which refer or relate to Applicant's selection of Applicant's Mark and/or Applicant's Prior Mark, including but not limited to any communications between Applicant and any consultant, design firm, advertising agency, advertising media, printer, supplier, search firm, web site designer, Internet registry, Internet provider or other third party.

In Opposer's motion to compel, Opposer stated there can be no doubt additional documents exist - they are referenced in the few documents produced.

Applicant will continue to search for additional documents. As Applicant's counsel relayed to Opposer's counsel, a search was conducted which did not produce the requested document. However, Applicant is amenable to conduct a new search for the document at issue.

INTERROGATORY NO. 2: State the date (month, day, year) of Applicant's first use of Applicant's Mark and the manner and the extent of such first use.

Applicant will supplement its response with respect to the manner and extent of the use of its mark.

INTERROGATORY NO. 3: Describe in detail all of the circumstances surrounding clearance, selection and an adoption of Applicant's Mark and Applicant's Prior Mark, and identify all documents referring or related thereto.

Applicant met its legal duty with respect to its response to Interrogatory number 3.

INTERROGATORY NO. 4: Identify and describe the circumstances under which Applicant first became aware of any Opposers' Marks, including but not limited to the date on which Applicant first became aware of Opposers' use or adoption of said marks and the identity of all persons with knowledge of such facts and circumstances.

According to Opposer's statements in its motion to compel, Opposer states is no explanation as to when it occurred, or the nature or reason for the search.

Applicant will supplement its response with respect to the manner and extent of the use of its mark.

INTERROGATORY NO. 6: Identify all persons who you may call to testify on your behalf in connection with this action, including for each person:

Applicant can supplement its response as to the nature or substance of Harumi Akimoto's testimony.

INTERROGATORY NO. 8: Identify all other persons who have knowledge or information regarding the matters at issue in this case, including their last known address, place of employment, telephone number, and a summary of the knowledge or information of such person.

Applicant can supplement its response to identify persons who have knowledge or information regarding the matters at issue in this case.

INTERROGATORY NO. 14: Identify and describe the relationship between Applicant and Pegasus Tech Ventures.

Opposer has not shown as to how the documents submitted by Applicant contradicts its answers to Opposer's propounded interrogatories.

INTERROGATORY NO. 19: Does Applicant contend that Pegasus Tech Ventures is a licensee, assignee or other successor in interest of Applicant to Applicant's Mark and if so, identify and describe the basis for your contention, including all facts and evidence supporting your contention.

Opposer has not shown as to how the documents submitted by Applicant contradicts its answers to Opposer's propounded interrogatories.

INTERROGATORY NO. 20: Does Applicant contend that the Pegasus Mark is the same or substantially the same as Applicant's Mark, and if so identify and describe the basis for your contention, including all facts and evidence supporting your contention.

Applicant submits that the Pegasus mark is not relevant to this appellate action and has chosen not to answer this interrogatory. Applicant submits that the Pegasus mark or any other mark owned by Applicant has no bearing on the issues in question in this appellate action.

### CONCLUSION

Although Applicant did not submit its responses to Opposer's propounded discovery requests timely, Applicant fully has intended to comply with its legal obligations. Applicant, via its counsel, is willing to work with Opposer's counsel to supplement Applicant's responses, to the extent of its legal obligations, to provide Opposer with the information requested without the future assistance of the Trademark Trial and Appeal Board.

Date: August 27, 2019

Respectfully Submitted,

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**CERTIFICATE OF TRANSMITTAL - ESTTA**

Date of Deposit August 27, 2019

I hereby certify that this correspondence is being transmitted to the UNITED STATES PATENT AND TRADEMARK OFFICE via the ESTTA system on August 27, 2019.

/Herbert T. Patty/  
Herbert T. Patty, Reg. No. 255,502

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Motion to Compel has been served on Applicant, by mailing said copy on August 27, 2019, via First Class Mail, postage prepaid to:

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