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Filing date: **09/11/2019**

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

Proceeding	91244034
Party	Plaintiff Sean Griffin and GriffinWorx, Inc.
Correspondence Address	TODD A NELSON GABLEGOTWALS 100 WEST 5TH ST STE 1100 TULSA, OK 74103 UNITED STATES iplaw@gablelaw.com 918-595-4800
Submission	Reply in Support of Motion
Filer's Name	Todd A. Nelson
Filer's email	tnelson@gablelaw.com
Signature	/todd a. nelson/
Date	09/11/2019
Attachments	Reply.pdf(299017 bytes ) ExhibitA.pdf(430744 bytes ) ExhibitB.pdf(125265 bytes )

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

In re: 87/237,986  
Filed: November 15, 2016



Mark:  
Published: April 17, 2018

SEAN GRIFFIN, and  
GRIFFINWORX, INC.,

Opposers,

v.

FENOX VENTURE CAPITAL, INC. DBA  
FENOX VENTURE CAPITAL,

Applicant.

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Opposition No. 91244034

**OPPOSERS' REPLY IN SUPPORT OF MOTION TO COMPEL**

Opposers, Sean Griffin and Griffinworx, Inc. (collectively, “Opposers”), hereby submit their reply in support of their motion to compel with respect to their First Requests for Production of Documents and First Set of Interrogatories to Applicant, Fenox Venture Capital, Inc. DBA Fenox Venture Capital (“Applicant”), pursuant to 37 C.F.R. § 2.120 and TBMP §§ 411 and 523. In support of their reply, Opposers state as follows:

**OVERVIEW**

First, Applicant’s response does not dispute or otherwise address any of the authorities cited by Opposers in their opening brief. In fact, Applicant cites no rule, case or other authority whatsoever in its response. Second, Applicant expressly admits that it did not submit its responses timely and does not dispute that its objections have been waived. Third, Applicant does not dispute

that its responses and production were at best, very limited, and agrees to supplement/produce additional documents with respect to the majority of the requests at issue. However, to date, Applicant has not done so and, instead, served its own discovery requests while the proceedings are suspended. To the extent Applicant addressed any of Opposer's arguments, its position is unpersuasive and unsupported as set forth below.

**APPLICANT'S SERVING OF DISCOVERY REQUESTS  
WHILE THE PROCEEDINGS ARE SUSPENDED IS IMPROPER**

Instead of supplementing its responses and production, Applicant served its first set of Interrogatories and Requests for Production of Documents on counsel for Opposers on August 16, 2019. *See* Exhibit A. This was done well after the Board entered its order suspending the proceedings and prohibited precisely what Applicant did. Opposers' counsel sent the following email to Applicant's counsel.

This acknowledges receipt of your email on Friday, August 16 at 1:58 AM with accompanying Applicant's first set of interrogatories and first request for production of documents. Serving these discovery requests violates the TTAB order entered August 8 that suspended the proceedings. The order expressly provides that "The parties may not serve any additional discovery until the period of suspension is lifted or expires by or under order of the Board." There are also other issues related to the timing<sup>1</sup> which are not necessary to discuss at this point. Please advise whether Applicant will withdraw these improper discovery requests.

Nelson, Todd A. "RE: Applicant's Discovery Request - First Set" Message to Herbert Patty. 16 August 2019. E-Mail. *See* Exhibit B. To date, Applicant has not withdrawn the improper discovery requests, nor has there been any other response by Applicant.

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<sup>1</sup> In addition to violating the Board's order, one such timing issue is serving the first set of discovery three days prior to the date scheduled for the close of discovery under the Scheduling Order.

## CERTAIN REQUESTS AT ISSUE

Because Applicant is deemed to have waived its objections and also because Applicant asserted no argument and agreed to supplement with regard to most of the discovery requests in its response, including Requests for Production 1, 2, 3, and 4 and Interrogatories 2, 4, 6 and 8, it is not necessary to further discuss them here. See, e.g., *Envirotech Corp. v. Compagnie Des Lampes*, 219 U.S.P.Q. (BNA) 448 (TTAB 1979); *No Fear, Inc. v. Rule*, 54 U.S.P.Q.2d 1551, 1554 (TTAB 2000). Opposer's motion should therefore be deemed conceded as to Requests for Production 1, 2, 3, and 4 and Interrogatories 2, 4, 6 and 8. Other discovery requests at issue are addressed below.

### INTERROGATORY 3

Interrogatory No. 3 requested that Applicant:

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's substantive answer to Interrogatory No. 3 consisted of only:

ANSWER: a) Applicant conducted a selection campaign using 99Designs.  
b) 99Design campaign records

Applicant's response to the motion to compel was merely that Applicant has met its "duty," for Interrogatory No. 3. This is clearly not the case. Applicant provided no information at all about selection and clearance of the mark(s). The same is true for the minimal documents produced. As shown below, Applicant produced part of a form submitted to 99 Designs.



We are hosting a global startup competition, called Startup World Cup. The audience will be investors and entrepreneurs from around the globe. We want to incorporate the flags of all of the regions we are reaching out to: Chile, USA, India, Indonesia, Japan, Korea, Singapore, Bangladesh, Israel, Australia, UK, Brazil, South Africa, China, Taiwan, Luxembourg, and Czech Republic, etc. The desired location for each flag is shown in the **sample image**.

This form demonstrates that, among other things, a “sample image” had been created and was provided by Applicant to 99 Designs.

Applicant provided essentially nothing about clearance, selection and adoption of the marks. The “sample image” and other information submitted to 99 Designs were not produced. The corresponding images and communications from 99 Designs to Applicant were also not produced.

### **INTERROGATORIES 14 AND 19**

Applicant states in its response that Opposers have not shown how the documents produced by Applicant contradict its answers to Interrogatory Nos. 14 and 19. This is not correct. According to Applicant’s answers to Interrogatory Nos. 14 and 19, Pegasus Tech Ventures is either a separate entity owned by Applicant or a successor entity to Applicant. These answers are inconsistent with and are contradicted by the corporate name change document produced by Applicant as shown below.

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

ANSWER: Pegasus Tech Ventures is another entity owned and operated by Applicant.

**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.

ANSWER:

- a) Applicant contends that Pegasus Tech Ventures is a successor in interest of Applicant.

**DOCUMENT PROVIDED BY APPLICANT**

	Secretary of State	ASDC
	Amended Statement by Foreign Corporation (Name Change ONLY)	

1. Corporate Name (Enter the exact name of the foreign corporation as it is recorded with the California Secretary of State.)

Fenox Venture Capital, Inc.

2. New Corporate Name (Enter the new name of the foreign corporation. Note: The certificate from the government agency where the corporation was formed, as noted in the "Additional Requirements" section above, is not required if legal corporate name has not changed and you are merely filing this form to delete or change a "doing business as" name.)

Pegasus Tech Ventures, Inc.

Pegasus Tech Ventures is either a different entity owned by Applicant, a successor in interest to Applicant or the same entity as Applicant with a name change - it is not all three.

**INTERROGATORY 20**

Applicant refused to answer Interrogatory No. 20 which requested as follows:

**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 filed a use-based application and claims use dating to 2017, although it has not produced any documents demonstrating such first use. Applicant contends it is not required to respond in any respect to questions relating to the Pegasus mark/version 3 (the mark Applicant is apparently presently using) on the grounds it is not relevant. As explained in the opening brief, Applicant has utilized either different marks or different versions of the mark. It is apparent Applicant is not using version 1 or version 2 and is currently using version 3 (Pegasus). See, [www.startupworldcup.io](http://www.startupworldcup.io).

VERSION 1	VERSION 2	VERSION 3
The stylized mark Applicant applied to register:	The mark as improperly amended/broadened by Applicant:	The mark as presently used by Applicant:
		

It is relevant to these proceedings whether Applicant is claiming that version 3 (Pegasus) is the same or substantially the same as the applied-for mark (version 1) or the mark that published (version 2). If Applicant contends it is a different mark, it raises, among other things, issues of abandonment. If Applicant contends it is a different version of the same mark, it raises, among other things, issues of material alternation. Applicant cannot refuse to respond and wait to surprise Opposer with its position at trial. Applicant must take a position as to whether the Pegasus mark (version 3) is the same mark as applied for or a different one.

### CONCLUSION

For the reasons set forth herein and in Opposers' opening brief, Opposers, Griffinworx, Inc. and Sean Griffin, respectfully request that the Board enter its order compelling Applicant, Fenox Venture Capital, Inc. to fully supplement its answers to Opposer's interrogatories and produce all documents responsive to Opposers' requests for production of documents forthwith and without objections.

Date: September 11, 2019

Respectfully Submitted,

/todd a. nelson/

Todd A. Nelson

Paul E. Rossler, Reg. No. 60409

Scott R. Zingerman, Reg. No. 35422

GABLEGOTWALS

100 West Fifth Street, Suite 1100

Tulsa, OK 74103

Telephone: (918) 595-4800

Facsimile: (918) 595-4990

Attorneys for Opposers,

*Griffinworx, Inc. and Sean Griffin*

**CERTIFICATE OF TRANSMITTAL - ESTTA**

Date of Deposit September 11, 2019

I hereby certify that this correspondence is being transmitted to the UNITED STATES PATENT AND TRADEMARK OFFICE via the ESTTA system on September 11, 2019.

/todd a. nelson/

Todd A. Nelson

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing Reply in Support of Motion to Compel has been served on Applicant, by mailing said copy on September 11, 2019, via First Class Mail, postage prepaid to:

Herbert Patty, Esq.  
The Law Office of Herbert T. Patty  
1625 The Alameda, Ste 407  
San Jose, California 95126

/todd a. nelson/

Todd A. Nelson

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

In re: 87/237,986  
Filed: November 15, 2016



Mark:  
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SEAN GRIFFIN, AND  
GRIFFINWORX, INC.,

*Opposer,*

v.

FENOX VENTURE CAPITAL, INC. DBA  
FENOX VENTURE CAPITAL

*Applicant*

Opposition No. 91244034

**APPLICANT'S FIRST SET OF INTERROGATORIES**

TO: Sean Griffin and GriffinWorx, Inc.  
c/o Todd Nelson, Esq.  
GableGotwals  
One Leadership Square, 15th Floor  
211 N. Robinson  
Oklahoma City, OK 73102

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R. 2.120, the Applicant, Fenox Venture Capital., hereby requests that the Opposer, Sean Griffin and Griffinworx, serve upon the undersigned attorneys at major@mwzb.com answers, under oath, to each of the following interrogatories within thirty (30) days of service of these interrogatories.

DEFINITIONS

1. "Applicant" means Fenox Venture Capital, the Applicant in the above-captioned proceeding, and all predecessors, successors, related companies, affiliates, and/or each of the foregoing's employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any person who served in any such capacity at any time during the relevant time period specified herein.

2. "Applicant's Mark" means the mark specified in trademark application serial number 87/237,986 which is the subject of this proceeding.

3. "Opposer" means Sean Griffin and Griffinworx.

4. "Opposer's Marks" means the marks specified in Registration numbers 4140496, 4603445, and 5642389, and trademark application serial number 87917283.

5. "Concerning" means consisting of, referring to, relating to, reflecting, or being in any way logically or factually connected with the matter discussed.

6. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

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

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

9. "Document" is synonymous in meaning and equal in scope to its usage in FRCP 34(a)(1)(A). The term "document" refers to any document now or at any time in

Applicant's possession, custody, or control. A person is deemed in control of a document if the person has any ownership, possession, or custody of the document, or the right to secure the document or a copy thereof from any person or public or private entity having physical possession thereof.

10. "Identify" with respect to a person who is an individual means to state that person's full name, present or last known address, and current or last known place of employment.

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

"Identify" with respect to a document means to give, to the extent known, the (a) type of document; (b) general subject matter; (c) date of the document; and (d) author(s), addressee(s) and recipient(s). In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Rule 33 of the Federal Rules of Civil Procedure.

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

13. The term "mark" means any trademark, service mark, trade name, word, name, symbol, logo or device (including any key word or metatag) or any combination thereof.

14. The term "person" means any natural person or any legal entity, including, but not limited to, any business or governmental entity, organization, or association.

15. The terms "and" and "or" shall be construed either conjunctively or disjunctively as necessary to bring within the scope of the interrogatory all responses that might otherwise fall outside the scope of this interrogatory.

16. The terms "all," "any," or "each" encompass any and all of the matter discussed.

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

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

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

INSTRUCTIONS

1. Answers to these interrogatories shall be served upon the undersigned attorneys at hpatty@nolteip.com within thirty (30) days of service of these interrogatories under oath.

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

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

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

4. Unless otherwise stated herein, these interrogatories cover the time period from 1946 up to and including the present.
5. Unless otherwise stated herein, these interrogatories apply to activities in or in connection with the United States.
6. If Applicant responds to an interrogatory by reference to documents pursuant to Federal Rule of Civil Procedure 33(d), identify the documents with specificity, including by identifying the applicable Bates Number range to the extent the documents are produced in response to document requests in this proceeding.
7. For the convenience of the Board and the parties, each interrogatory should be quoted in full immediately preceding the response.
8. These interrogatories are continuing in nature. If Applicant receives or otherwise becomes aware of information responsive to any interrogatory after it has served answers to these interrogatories, Applicant must promptly supplement its answers to these interrogatories to provide such information, as required by Federal Rule of Civil Procedure 26(e) and TBMP § 408.03.

**INTERROGATORIES**

INTERROGATORY NO. 1:

Identify fully: (a) any and all persons answering or assisting in answering these Interrogatories, including their name and current business and residential addresses; (b) any and all persons from whom information was sought or obtained in connection with the preparation of the answers to these Interrogatories; and (c) each Interrogatory that such person(s) answered, assisted in answering or was sought for and/or provided information.

INTERROGATORY NO. 2:

State the date (month, day, year) of Opposer's first use of Opposer's Marks and the manner and the extent of such first use.

INTERROGATORY NO. 3:

Describe in detail all of the circumstances surrounding clearance, selection and an adoption of Opposer's Marks, and identify all documents referring or related thereto.

INTERROGATORY NO. 4:

Identify and describe the circumstances under which Opposer first became aware of any Applicant's Mark, including but not limited to the date on which Opposer first became aware of Applicant's use or adoption of said mark and the identity of all persons with knowledge of such facts and circumstances.

INTERROGATORY NO. 5:

Identify whether Opposer is aware of any circumstances in which any person has been confused or mistaken as to the source of services provided by Applicant or as to any affiliation between either Opposer and Applicant. If Applicant's answer is in the

affirmative, describe each instance or occurrence, including identifying persons with knowledge of such occurrence and documents referring or relating thereto.

INTERROGATORY NO. 6:

Identify all persons who you may call to testify on your behalf in connection with this action, including for each person:

- (a) Their residence address, employer, business address, and telephone number;
- (b) The subject matter on which each witness is expected to testify and the substance of each person's testimony; and
- (c) How each person acquired the information that will be the subject of their testimony.

INTERROGATORY NO. 7:

Describe in full detail as to why Opposer failed to register Opposer's Marks on the Principal Register at the U.S. Trademark Office.

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.

INTERROGATORY NO. 9:

Identify and describe all channels of trade and trade territories in which Opposer's goods and/or services are offered under or in connection with Opposer's Marks.

INTERROGATORY NO. 10:

Identify all goods and/or services for which Opposer has ever used Opposer's Mark, and for all goods and/or services provide: the date of first use; the geographic areas in which the goods and/or services have been offered, marketed and/or distributed; and the customers to whom the goods and/or services were offered or sold.

INTERROGATORY NO. 11:

With respect to advertising or other such promotional activities relevant to Opposer's goods and/or services provided in relation to Opposer's marks:

- (a) Indicate the types of media used in such advertising or such other promotional activities;
- (b) In what states in the United States are such advertising or other such promotional activities found;
- (c) State approximately and separately any amount of money expended for each six month period from inception of use to the present time; and
- (d) Identify each publication, e.g., magazine, newspaper or trade journal which Opposer or its customers has advertised products and/or services sold under Opposer's mark.

INTERROGATORY NO. 12:

What rights does Griffinworx have to use Opposer's Marks.

INTERROGATORY NO. 13:

Does Opposer contend that it has priority of use for the mark "STARTUP WORLD CUP," and if so, identify and describe the entire basis for its contention.

INTERROGATORY NO. 14:

Identify and describe in full detail the rights that Griffinworx has in Opposers Marks including the beginning and ending dates.

INTERROGATORY NO. 15:

Does Applicant contend that likelihood of confusion exists between Applicant's Mark and Opposer's Marks, and if so, identify and describe the entire basis for this contention.

INTERROGATORY NO. 16:

Identify and describe all documents related to the rights that Griffinworx has in Opposer's Marks including the beginning and ending dates.

INTERROGATORY NO. 17:

Identify and describe any and all changes, amendments, and/or modifications to Opposer's Marks.

INTERROGATORY NO. 18:

Please explain in detail why Opposer amended Opposer's trademark application serial number 85408196 to seek registration on the Supplemental Register.

INTERROGATORY NO. 19:

Please explain in detail why Opposer amended Opposer's trademark application serial number 86088281 to seek registration on the Supplemental Register.

INTERROGATORY NO. 20:

Does Opposer concede that at any point during the use of its Marks, any of these Marks were merely descriptive under Trademark Act, 15 U.S.C. §1052(e)(1) in relation to its respective goods/services as applied for, and if so, which of these Marks were merely descriptive.

INTERROGATORY NO. 21:

Identify and describe in detail the manner in which Sean Griffin engaged in arranging and conducting online business competitions for entrepreneurs and startup companies to compete for prizes to facilitate business activities; business training in the field of entrepreneurship; business training services, namely, arranging and conducting competitions among start-up companies featuring professional coaching and mentoring in the fields of business, business management, and business operations; educational services, namely, conducting programs in the field of business to support the successful development of entrepreneurial companies; and online business competition.

INTERROGATORY NO. 22:

Identify and describe the time periods, in calendar dates, in which Sean Griffin engaged in arranging and conducting online business competitions for entrepreneurs and startup companies to compete for prizes to facilitate business activities; business training in the field of entrepreneurship; business training services, namely, arranging and conducting competitions among start-up companies featuring professional coaching and mentoring in the fields of business, business management, and business operations; educational services, namely, conducting programs in the field of business to support the successful development of entrepreneurial companies; and online business competition.

INTERROGATORY NO. 23:

Identify all intellectual property owned by Griffinworx.

INTERROGATORY NO. 24:

Please describe what is meant by “[t]he Startup Cup Challenge is locally driven” as stated in the Startup Cup Overview document posted at <https://griffinworx.org/product-details/startup-cup/>.

INTERROGATORY NO. 25:

Besides providing a Comprehensive Step-by-Step Guide, Online Project Management Tool, Judging and Coaching Module, Website and Submission Process • Design Thinking Tools, Email Based Q&A, and VizToolz® what other goods and services does Opposer provide to its customers under Opposer’s marks.

INTERROGATORY NO. 26:

What does Opposer mean when it stated in its Starup Cup Overview document that customers can Launch their own Startup Cup in their Community?

Respectfully submitted,

Date: August 15, 2019

/Herbert T. Patty/

Herbert T. Patty, Esq.

Reg. No. 62,083

Nolte IP Law Group

24610 Kingsland Blvd.

Katy, TX 77494

Telephone: (866) 201-2030

Telephone: (408) 823-0640

Facsimile: (408) 549-9931

*Counsel for Applicant*

*Fenox Venture Capital*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15<sup>th</sup> day of August, 2019, a true and correct copy of the foregoing was e-mailed and mailed, via first-class mail, to:

/Herbert T. Patty/

Todd Nelson, Esq.  
GableGotwals  
One Leadership Square, 15th Floor  
211 N. Robinson  
Oklahoma City, OK 73102

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE  
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FENOX VENTURE CAPITAL, INC. DBA  
FENOX VENTURE CAPITAL

*Applicant*

Opposition No. 91244034

**APPLICANT'S FIRST SET OF REQUESTS FOR DOCUMENTS**

TO: Sean Griffin and GriffinWorx, Inc.  
c/o Todd Nelson, Esq.  
GableGotwals  
One Leadership Square, 15th Floor  
211 N. Robinson  
Oklahoma City, OK 73102

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DEFINITIONS

1. "Applicant" means Fenox Venture Capital, the Applicant in the above-captioned proceeding, and all predecessors, successors, related companies, affiliates, and/or each of the foregoing's employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any person who served in any such capacity at any time during the relevant time period specified herein.

2. "Applicant's Mark" means the mark specified in trademark application serial number 87/237,986 which is the subject of this proceeding.

3. "Opposer" means Sean Griffin and Griffinworx.

4. "Opposer's Marks" means the marks specified in Registration numbers 4140496, 4603445, and 5642389, and trademark application serial number 87917283.

5. "Concerning" means consisting of, referring to, relating to, reflecting, or being in any way logically or factually connected with the matter discussed.

6. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

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

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

9. "Document" is synonymous in meaning and equal in scope to its usage in FRCP 34(a)(1)(A). The term "document" refers to any document now or at any time in

Opposer's possession, custody, or control. A person is deemed in control of a document if the person has any ownership, possession, or custody of the document, or the right to secure the document or a copy thereof from any person or public or private entity having physical possession thereof.

10. "Identify" with respect to a person who is an individual means to state that person's full name, present or last known address, and current or last known place of employment.

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

"Identify" with respect to a document means to give, to the extent known, the (a) type of document; (b) general subject matter; (c) date of the document; and (d) author(s), addressee(s) and recipient(s). In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Rule 33 of the Federal Rules of Civil Procedure.

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

13. The term "mark" means any trademark, service mark, trade name, word, name, symbol, logo or device (including any key word or metatag) or any combination thereof.

14. The term "person" means any natural person or any legal entity, including, but not limited to, any business or governmental entity, organization, or association.

15. The terms "and" and "or" shall be construed either conjunctively or disjunctively as necessary to bring within the scope of the interrogatory all responses that might otherwise fall outside the scope of this interrogatory.

16. The terms "all," "any," or "each" encompass any and all of the matter discussed.

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

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

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

INSTRUCTIONS

1. All documents are to be produced as they are kept in the usual course of business with any identifying labels, file markings, or similar identifying features, and shall be organized and labeled to correspond to the categories requested herein. If there are no documents in response to a particular request or if Opposer withholds any responsive documents or categories of documents based on any objections, it shall state so in writing.
2. Electronically stored information (ESI) must be produced in its original native format with its accompanying metadata.
3. These requests call for the production of all responsive documents in Opposer's possession, custody, or control, or in the possession, custody, or control of Opposer's employees, predecessors, successors, parents, subsidiaries, divisions, affiliates, partners, joint venturers, brokers, accountants, financial advisors, representatives, and agents or other persons acting on its behalf, without regard to the physical location of such documents.
4. If any document was, but no longer is, in Opposer's possession, subject to its control, or in existence, include a statement:
  - (a) identifying the document;
  - (b) describing where the document is now;
  - (c) identifying who has control of the document;
  - (d) describing how the document became lost or destroyed or was transferred;and,

(e) identifying each of those persons responsible for or having knowledge of the loss, destruction, or transfer of this document from Opposer's possession, custody, or control.

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

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

(a) the ground of privilege or protection claimed;

(b) each and every basis under which the document is withheld;

(c) the type of document;

(d) its general subject matter;

(e) the document's date; and,

(f) other information sufficient to enable a full assessment of the applicability of the privilege or protection claims, as required by FRCP 26(b)(5) and TBMP § 406.04(c).

7. To the extent Opposer asserts that a document contains information that should be protected from disclosure (based on the attorney-client privilege, work product doctrine, or another protection) and non-privileged information, the non-privileged portions of the document must be produced. For each such document, indicate the portion of the document withheld by stamping the words "MATERIAL REDACTED" on the document in an appropriate location that does not obscure the remaining text.

8. Unless otherwise stated herein, all documents requested are for the period commencing 1946 up to and including the present.

9. Unless otherwise stated herein, all document requests apply to activities in or in connection with the United States.

10. For the convenience of the Board and the parties, each document request should be quoted in full immediately preceding the response.

11. These requests are continuing, and Opposer's responses to these requests must be promptly supplemented when appropriate or necessary in accordance with Federal Rule of Civil Procedure 26(e) and TBMP § 408.03.

**REQUESTS FOR DOCUMENTS**

**DOCUMENT REQUEST NO. 1:** All documents relied upon by Applicant in drafting the Answer, including all documents supporting or tending to support the contention by Applicant that there is likelihood of confusion.

**DOCUMENT REQUEST NO. 2:** All documents showing the annual sales in terms of dollar volume of Opposer's goods and services under Opposer's Marks for each year since 2011.

**DOCUMENT REQUEST NO. 3:** All documents showing the annual sales in terms of dollar volume of all goods and services under Opposer's Marks for each year since 2011.

**DOCUMENT REQUEST NO. 4:** All documents showing the annual expenditures for advertising and promoting Opposer's goods and services under Opposer's Marks for each year since 2011.

**DOCUMENT REQUEST NO. 5:** All documents showing the annual expenditures for advertising and promoting all goods and services under Opposer's Marks for each year since 2011.

**DOCUMENT REQUEST NO. 6:** All documents showing the annual expenditures for advertising and promoting all goods and services under Opposer's Marks for each year since 2011.

**DOCUMENT REQUEST NO. 7:** All agreements concerning Opposer's Marks and any other mark consisting in whole or in part of the term STARTUP CUP, including but not limited to licenses, assignments, distribution agreements, manufacturing agreements, settlement agreements, consents and security interests.

**DOCUMENT REQUEST NO. 8:** All agreements concerning registration numbers 4140496, 4603445, and 5642389 and trademark serial number 87917283 between Sean Griffin and Griffinworx.

**DOCUMENT REQUEST NO. 9:** All documents since 2011 showing the advertising or promotion of, or packaging for, Opposer's goods and services under Opposer's Marks.

**DOCUMENT REQUEST NO. 10:** All documents referring or relating to any surveys, studies, analyses and/or polls with respect to Opposer's Marks, including any criteria, strategy or market plan with respect to said marks.

**DOCUMENT REQUEST NO. 11:** All documents referring or relating to (A) any actual confusion with respect to Opposer's Marks and Applicant's Mark; and (B) any instance when a person mistakenly made any affiliation, association or connection between Applicant and Opposer or their respective marks, goods or services.

**DOCUMENT REQUEST NO. 12:** All documents relating to the creation, meaning, selection, and/or adoption of the Opposer's mark.

**DOCUMENT REQUEST NO. 13:** All documents relating to any investigation, trademark search, and/or other inquiry conducted by Opposer and/or on Opposer's behalf, in connection with assessing the availability, registrability, or use of the Opposer's Mark.

**DOCUMENT REQUEST NO. 14:** All documents relating to which Sean Griffin engaged in arranging and conducting online business competitions for entrepreneurs and startup companies to compete for prizes to facilitate business activities; business training in the field of entrepreneurship; business training services, namely, arranging and conducting competitions among start-up companies featuring professional coaching and mentoring in the fields of business, business management, and business operations; educational services,

namely, conducting programs in the field of business to support the successful development of entrepreneurial companies; and online business competition.

**DOCUMENT REQUEST NO. 15:** All documents relating to intellectual property owned by Griffinworx.

**DOCUMENT REQUEST NO. 16:** All documents relating to intellectual property owned by Sean Griffin.

**DOCUMENT REQUEST NO. 17:** All documents relating to the ownership of Griffinworx.

**DOCUMENT REQUEST NO. 18:** All documents relating to federal tax returns filed by Griffinworx since 2011.

**DOCUMENT REQUEST NO. 19:** All documents relating to federal tax returns filed by Sean Griffin since 2011.

**DOCUMENT REQUEST NO. 20:** All documents relating to who or what resides at Unit 2 320 T Street NW Washington D.C. 20001.

**DOCUMENT REQUEST NO. 21:** All documents relating to Griffinworx partners as stated in Griffinworx's Startup Cup Overview document posted at <https://griffinworx.org/product-details/startup-cup/>.

**DOCUMENT REQUEST NO. 20:** All documents relating to how Sean Griffin has used Opposer's Marks in commerce.



Respectfully submitted,

Date: August 15, 2019

/Herbert T. Patty/  
Herbert T. Patty, Esq.  
Reg. No. 62,083  
Nolte IP Law Group  
24610 Kingsland Blvd.  
Katy, TX 77494  
Telephone: (866) 201-2030  
Telephone: (408) 823-0640  
Facsimile: (408) 549-9931

*Counsel for Applicant*  
*Fenox Venture Capital*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 15<sup>th</sup> day of August, 2019, a true and correct copy of the foregoing was e-mailed and mailed, via first-class mail, to:

/Herbert T. Patty/

Todd Nelson, Esq.  
GableGotwals  
One Leadership Square, 15th Floor  
211 N. Robinson  
Oklahoma City, OK 73102

**From:** Todd Nelson  
**Sent:** Friday, August 16, 2019 2:48 PM  
**To:** Herbert Patty  
**Cc:** Shellie Bailey; Scott Zingerman  
**Subject:** RE: Applicant's Discovery Request - First Set

Herbert,

This acknowledges receipt of your email on Friday, August 16 at 1:58 AM with accompanying Applicant's first set of interrogatories and first request for production of documents. Serving these discovery requests violates the TTAB order entered August 8 that suspended the proceedings. The order expressly provides that "The parties may not serve any additional discovery until the period of suspension is lifted or expires by or under order of the Board." There are also other issues related to the timing which are not necessary to discuss at this point. Please advise whether Applicant will withdraw these improper discovery requests.

Regards  
Todd

**75**  
Est. 1944



**Todd A. Nelson | Attorney At Law | GableGotwals**  
1100 ONEOK Plaza | 100 West 5th Street | Tulsa, OK 74103-4217 USA  
(w) 918.595.4882 | (f) 918.595.4990 | [www.gablelaw.com](http://www.gablelaw.com)

**This message and any attachments are for the addressee only and may contain privileged or confidential information. If you have received this in error, please notify me immediately and permanently delete the message and any prints or other copies.**

---

**From:** Herbert Patty <hpatty@nolteip.com>  
**Sent:** Friday, August 16, 2019 1:58 AM  
**To:** Todd Nelson <tnelson@gablelaw.com>  
**Cc:** Shellie Bailey <sbailey@nolteip.com>  
**Subject:** Applicant's Discovery Request - First Set

The discovery is being sent via regular mail as well.

Regards,

-HTP

**Exhibit "B"**