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

Proceeding	91249394
Party	Plaintiff Instagram, LLC
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Date	06/17/2021
Attachments	IG Motion for Sanctions.pdf(1824099 bytes )

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

*In the Matter of* Application Serial No.: 88/163,595  
Mark: VANNAGRAM  
Filing Date: October 22, 2018  
Publication Date: March 12, 2019

INSTAGRAM, LLC.,  Opposer,  v.  VANNAGRAM & CO., LLC.,  Applicant.
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Opposition No. 91249394

**OPPOSER’S MOTION FOR SANCTIONS FOR FAILURE TO COMPLY THE  
BOARD’S DISCOVERY ORDER**

Pursuant to 37 C.F.R. § 2.120(h)(1), Fed. R. Civ. P. 37(b)(2), and TBMP § 527.01(a), Opposer Instagram, LLC (“Opposer” or “Instagram”) respectfully moves the Board for an order sanctioning Applicant Vannagram & Co., LLC (“Applicant” or “Vannagram”) in the form of judgment for its repeated failure to comply with the Board’s discovery orders.

**I. INTRODUCTION**

As Instagram has made clear in its prior two discovery motions to this Board, Vannagram has continuously disregarded its most basic discovery obligations and the Board’s rules and orders in this proceeding. After this Board generously offered Vannagram a second chance to serve amended and adequate responses and document production, Vannagram continued its pattern of dilatory behavior and failed to provide so much as a single amended response or document to Instagram. Vannagram began the discovery process with an insufficient and meaningless document production and insufficient discovery responses to feign compliance with

the discovery process. Since that time, Vannagram has forced Instagram to burden the Board with not two, but now three discovery motions to try to move this case forward. Instagram has been severely prejudiced by Vannagram's evasive and dilatory conduct.

In its most recent order, the Board expressly stated that it "will not tolerate any further failure to respond to Opposer's proper discovery requests, and sanctions, including judgment, are likely to result from further violations." Dkt. 24 at 9. Vannagram decided to completely ignore this Board's order. As such, the time for judgment sanctions has come. Instagram respectfully requests the Board enter judgment against Vannagram for its pervasive discovery misconduct and sustain Instagram's opposition.

## **II. RELEVANT FACTS AND PROCEDURAL HISTORY**

Instagram commenced this proceeding on July 10, 2019, by filing a Notice of Opposition to Vannagram's application to register the VANNAGRAM Mark (U.S. Appl. No. 88/163,595) ("Applicant's Mark" or the "VANNAGRAM Mark"). TTABVUE Doc., ("Dkt.") 1.

On March 18, 2020, Instagram timely served its initial disclosures, First Set of Interrogatories ("ROG"), First Set of Requests for Production of Documents ("RFP"), and its First Set of Admissions ("RFA") after Vannagram's Rule 12(b)(6) motion was denied by the Board. Declaration of Kollin J. Zimmermann ("Zimmermann Decl."), ¶ 3, Exs. A-C. After receiving a 10-day extension, Vannagram served its discovery responses to Instagram on April 27, 2020. *Id.* at ¶ 7, Exs. D-F.

On June 2, 2020, after Vannagram repeatedly failed to satisfy its discovery obligations in response to Instagram's requests, Instagram filed its motion to compel.<sup>1</sup> Dkt. 13. The Board

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<sup>1</sup> As explained in further detail in Instagram's first motion to compel, Vannagram repeatedly agreed to supplement its insufficient discovery responses and document production yet never did so despite numerous meet and confer calls and good-faith follow-ups from Instagram.

granted the entirety of Instagram's motion on November 18, 2020. Dkt. 17 at 11-13. Specifically, the Board ordered Vannagram to provide full and complete written, supplemental, verified responses to Instagram's ROG Nos. 1, 3-4, 6-8, 11, 13-16, 18-20 and 23-27; full and complete written, supplemental responses to Instagram's RFA No. 22; full and complete written, supplemental responses to Instagram's RFP Nos. 1-4, 7-28, 30-38, 40-41, and 43-50; to produce all unproduced, non-privileged documents responsive to Instagram's RFPs; and a privilege log to the extent that Vannagram claims privilege in response to any of Instagram's discovery requests. *Id.* at 11-13. All of the foregoing was due within 30 days of the Board's order, making the deadline December 18, 2020. *Id.* Finally, the Board explicitly stated that Instagram may seek appropriate sanctions if Vannagram failed to comply with the Board's orders. *Id.* at 13.

On December 18, Vannagram served amended responses to Instagram's ROGs and RFA No. 22, as well as a mere 148 pages of documents, all of which were publicly available online. Zimmermann Decl, ¶¶ 11-14, Exs G-H. Vannagram's production consisted of: screenshots of Vannagram's Instagram and Twitter accounts/posts; screenshots of blog posts from the Vannagram website; screenshots of online articles that mention Vannagram; Vannagram's publicly available LLC certification record; and a screenshot of the Vannagram Logo design from the Pinclip Art website. *Id.* Vannagram failed, however, to provide written responses to any of Instagram's RFPs as required by the Board. *Id.* Similarly, Vannagram failed to produce a privilege log, failed to produce numerous documents in response to a multitude of Instagram's RFPs, and failed to adequately supplement and verify its ROG responses. *Id.* Instagram did not receive any additional correspondence from Vannagram nor did it receive supplemental document production or discovery responses. *Id.* at ¶ 15.

On January 15, 2021, Instagram filed a motion for discovery sanctions in the form of judgment, or in the alternative, a motion to compel Vannagram’s supplemental discovery responses. That motion was granted in part and denied in part on May 6, 2021,<sup>2</sup> with the Board declining to enter terminating sanctions but granting the further motion to compel, and requiring that Vannagram serve its amended discovery responses and document production within 30 days of the order (i.e., by June 5, 2021). Dkt. 24. Specifically, the Board ordered Vannagram to produce the following within 30 days: *verified* written responses to Instagram’s Interrogatory Nos. 1, 3-4, 6-8, 11, 13-16, 18-20, and 23-27 including further supplemental responses to Interrogatory Nos. 7 and 20; written responses to Instagram’s Request for Production Nos. 1-4, 7-28, 30-38, 40-41, and 43-50; all responsive, non-privileged documents to Instagram’s Requests for Production of Documents by copying them at Applicant’s own expense; and a privilege log to the extent necessary. *Id.* The Board made clear that if Vannagram failed to comply, “sanctions, including judgment, are likely to result.” *Id.*

Instagram patiently waited for 30 days to receive *any* of the required production or discovery responses from Vannagram, but yet again, Vannagram completely ignored the Board’s order and did not produce or serve any documents or responses. Zimmermann Decl, ¶ 16. As such, Instagram must again request discovery sanctions in the form of judgment based on Vannagram’s complete failure to comply with this Board’s May 6th order.

### III. ARGUMENT

#### **A. The Board Should Enter Sanctions In the Form of Judgment Against Vannagram for Its Failure to Comply with the Board’s May 6th Order.**

The Board has already made clear that sanctions, specifically judgment sanctions, would likely result from any further failure to respond to Instagram’s discovery requests. Dkt. 24 at 9.

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<sup>2</sup> The Board issued an order on May 5, but that order was superseded by a new order on May 6 that included an expert disclosure deadline. Dkt. 23, 24.

“[I]f a party fails to comply with an order of the Trademark Trial and Appeal Board relating to disclosure or discovery . . . the Board may make any appropriate order, including those provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure, except that the Board will not hold any person in contempt or award expenses to any party.” 37 C.F.R. § 2.120(h)(1). The Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) sets forth the Board’s broad authority to enter sanctions against a party that “fails to comply with an order of the Board relating to discovery.” As explained in TBMP § 527.01(a):

The sanctions which may be entered by the Board include, inter alia, striking all or part of the pleadings of the disobedient party; refusing to allow the disobedient party to support or oppose designated claims or defenses; prohibiting the disobedient party from introducing designated matters in evidence; and **entering judgment against the disobedient party**. Default judgment is a harsh remedy, but may be justified where no less drastic remedy would be effective and there is a strong showing of willful evasion.

(emphasis added). Default judgment is commonly entered when a party repeatedly fails to comply with the Board’s order or otherwise fails to satisfy its discovery obligations. *See, e.g., Benedict v. Superbakery Inc.*, 665 F.3d 1263, 101 USPQ2d 1089, 1093 (Fed. Cir. 2011) (affirming Board’s entry of judgment as a discovery sanction for repeated failures to comply with Board’s reasonable orders), *aff’g* 96 USPQ2d 1134 (TTAB 2010); *MHW Ltd. v. Simex, Aussenhandelsgesellschaft Savelsberg KG*, 59 USPQ2d 1477, 1478-79 (TTAB 2000) (repeated failure to comply with orders and unpersuasive reasons for delay resulted in entry of judgment); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Manufacturing Co.*, 55 USPQ2d 1848, 1854 (TTAB 2000) (pattern of dilatory conduct indicated willful disregard of Board order and resulted in entry of judgment).

Terminating sanctions are appropriate in this case because Vannagram has repeatedly failed to comply with the Board’s orders. Vannagram failed to comply with the Board’s first

order compelling Vannagram to serve supplemental discovery responses and produce responsive documents, resulting in the Board's second order requiring Vannagram to do so and warning that further failure to comply would likely result in terminating sanctions. Vannagram then wholly disregarded this Board's second order. Accordingly, terminating sanctions are appropriate and justified, so the Board should enter judgment against Vannagram.

**B. This Proceeding Should Be Suspended Pending Resolution of This Motion.**

Pursuant to 37 C.F.R. § 2.117(c) and TBMP § 510.01, the Board has inherent authority to suspend a proceeding, and may also do so upon a motion showing good cause. In addition, according to 37 C.F.R. § 2.127(d), “[w]hen any party files a motion to dismiss, or a motion for judgment on the pleadings, or a motion for summary judgment, or *any other motion which is potentially dispositive of a proceeding*, the case will be suspended by the Trademark Trial and Appeal Board with respect to all matters not germane to the motion. . . .” (emphasis added); *see also* TBMP § 510.03(a). Here, Instagram is seeking entry of judgment against Vannagram, which would be “potentially dispositive of [the] proceeding,” thus justifying an automatic suspension. Accordingly, Instagram requests that the Board issue an order suspending this proceeding until resolution of the motion.

**IV. CONCLUSION**


Vannagram's disregard for the Board's orders and continuous failure to satisfy its discovery obligations has placed an undue burden on the Board and on Instagram, and has prejudiced Instagram's ability to pursue its claims. The Board originally warned Vannagram that a failure to comply with its order on Instagram's first motion to compel could result in sanctions, and more explicitly stated that judgment sanctions were likely if Vannagram failed to comply with the second order. Dkt. 17 at 13; Dkt. 24 at 9. In light of Vannagram's willful disregard for this Board's orders, Instagram again respectfully requests the Board enter judgment against

Vannagram. Finally, Instagram requests that the Board suspend this proceeding pending resolution of this motion.

Respectfully submitted,

Dated: June 17, 2021

KILPATRICK TOWNSEND & STOCKTON LLP

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

*In the Matter of* Application Serial No.: 88/163,595  
Mark: VANNAGRAM  
Filing Date: October 22, 2018  
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INSTAGRAM, LLC.,

Opposer,

v.

VANNAGRAM & CO., LLC.,

Applicant.

Opposition No. 91249394

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing **OPPOSER'S MOTION FOR SANCTIONS FOR FAILURE TO COMPLY THE BOARD'S DISCOVERY ORDER** by email to Vannagram's counsel of record, Benton Williams, at benton.williams@bentonwilliamspllc.com on June 17, 2021.



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Donna Boss

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

INSTAGRAM, LLC.,

Opposer,

v.

VANNAGRAM & CO., LLC.,

Applicant.

Opposition No. 91249394

**DECLARATION OF KOLLIN J.  
ZIMMERMANN IN SUPPORT OF  
OPPOSER'S MOTION FOR  
SANCTIONS FOR FAILURE TO  
COMPLY THE BOARD'S  
DISCOVERY ORDER**

I, Kollin J. Zimmermann, hereby declare as follows:

1. I am an attorney with the law firm of Kilpatrick Townsend and Stockton LLP, counsel of record for Opposer Instagram, LLC ("Instagram") in this proceeding. I have personal knowledge of, and am familiar with, the matters described in this Declaration, and could testify competently to these matters if called upon to do so.

2. This Declaration is being submitted in support of Instagram's motion ("Motion") for sanctions against Vannagram & Co., LLC ("Applicant" & "Vannagram").

3. On March 18, 2020, Instagram served on Applicant via email its First Set of Requests for Production, Interrogatories, and Requests for Admission (collectively, "Discovery Requests").

4. Attached as **Exhibit A** is a true and correct copy of Opposer Instagram, LLC's First Set of Interrogatories, served on March 18, 2020.

5. Attached as **Exhibit B** is a true and correct copy of Opposer Instagram, LLC's First Set of Requests for Admissions, served on March 18, 2020.

6. Attached as **Exhibit C** is a true and correct copy of Opposer Instagram, LLC's First Set of Requests for Production, served on March 18, 2020.

7. Applicant's responses to Instagram's Discovery Requests were due on April 18, 2020. After requesting a 10-day extension, which Instagram granted, Vannagram served its responses to Instagram's Discovery Requests.

8. Attached as **Exhibit D** is a true and correct copy of Applicant's Objections and Responses to Instagram's First Set of Interrogatories, served on April 27, 2020.

9. Attached as **Exhibit E** is a true and correct copy of Applicant's Objections and Responses to Instagram's First Set of Requests for Admission, served on April 27, 2020.

10. Attached as **Exhibit F** is a true and correct copy of Applicant's Objections and Responses to Instagram's First Set of Requests for Production, served on April 27, 2020.

11. On December 18, 2020, following the Trademark Trial and Appeal Board's ("Board") grant of Instagram's motion to compel, Applicant served amended responses to Instagram's Interrogatories and Request for Admission, as well as new documents. Applicant did not produce amended written Responses to Instagram's First Set of Requests for Production, a verification page for its Interrogatories, or a privilege log.

12. Attached as **Exhibit G** is a true and correct copy of Applicant's Amended Responses to Instagram's First Set of Interrogatories, served on December 18, 2020.

13. Attached as **Exhibit H** is a true and correct copy of Applicant's Amended Response to Instagram's First Set of Admission Number 22, served on December 18, 2020.

14. I have reviewed Vannagram's document production served on December 18, 2020, and it primarily, if not entirely, consists of: Instagram posts from the @vannagramATX Vannagram account, the Vannagram owners' account, and Instagram posts from the old Instagram account, @vagabond.diaries, solely dedicated to the Vannagram Van; tagged Instagram posts of @vannagramATX or #vannagram; Twitter posts from the @vannagramATX account; posts from the Vannagram website; WayBack Machine screenshots from the Vannagram website; articles and websites that mention or feature Vannagram; the Vannagramtx.com domain information; Applicant's LLC certification; Applicant's Texas

Franchise Tax Public Information Report; and a screenshot of the Vannagram Logo design from the Pinclip Art website.

15. On December 18, 2020 Applicant sent an email stating it would provide a signed verification page. This page was never received. Since its production on December 18, 2020, Instagram has received no additional correspondence from Applicant.

16. Despite the Board's May 6, 2021 order, Instagram has not received any further communications, discovery responses, or document production from Applicant.

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

Executed on June 17, 2021, in Los Angeles, California.



Kollin J. Zimmermann

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

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VANNAGRAM & CO., LLC.,

Applicant.

Opposition No. 91249394

**CERTIFICATE OF SERVICE**

I hereby certify that I served a true and correct copy of the foregoing **DECLARATION OF KOLLIN J. ZIMMERMANN IN SUPPORT OF OPPOSER'S MOTION FOR SANCTIONS FOR FAILURE TO COMPLY THE BOARD'S DISCOVERY ORDER** by email to Vannagram's counsel of record, Benton Williams, at benton.williams@bentonwilliamspllc.com on June 17, 2021.



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Donna Boss

# **EXHIBIT A**

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

INSTAGRAM, LLC,

Opposer,

vs.

VANNAGRAM & CO. LLC,

Applicant.

Opposition No. 91249394

**OPPOSER INSTAGRAM, LLC'S  
FIRST SET OF  
INTERROGATORIES**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, 37 C.F.R. § 2.120, Opposer Instagram, LLC (“Opposer” or “Instagram”) requests that Vannagram & Co. LLC (“Applicant”) respond to this First Set of Interrogatories (the “Interrogatories”) by answering each Interrogatory separately and completely in writing under oath within thirty (30) days from the date of service in accordance with the definitions and instructions set forth below.

**DEFINITIONS**

1. The terms “YOU,” “YOUR”, and “YOURS” mean Applicant, as well as any business entity owned or operated by Applicant that uses or will use the VANNAGRAM MARK, including any such business entity’s officers, directors, corporate parent, subsidiaries, and affiliates, as well as anyone acting on Applicant’s behalf, including without limitation, all present and former partners, employees, officers, directors, agents, representatives, attorneys, or consultants.

2. The term “VANNAGRAM APPLICATION” means the United States Application No. 88/163,595.

3. The term “VANNAGRAM MARK” means the alleged trademark that is the subject of United States Application No. 88/163,595.

4. The term “INSTAGRAM MARKS” means, individually and collectively, any and all of Opposer’s trademarks that consist of or incorporate the term INSTAGRAM, including without limitation the INSTAGRAM marks in U.S. Registration Nos. 4,146,057; 4,756,754; 4,795,634; 4,822,600; 4,827,509; 4,856,047; 4,863,594; 4,863,595; and 5,019,151.

5. The term “VANNAGRAM WEBSITE” means the website accessible at <http://www.vannagramatx.com/>.

6. The term “VANNAGRAM LOGO” means the logo displayed in, among other places, the VANNAGRAM WEBSITE, and which is depicted below:



7. The term “SHUTTERBUS” refers to any PERSON who owns or owned the following Instagram account <https://www.instagram.com/shutterbus/?hl=en>, including any such PERSON’s officers, directors, corporate parent, subsidiaries, and affiliates, as well as anyone acting on such PERSON’s behalf, including without limitation, all present and former partners, employees, officers, directors, agents, representatives, attorneys, or consultants.

8. The term “SHUTTERBUS LOGO” means the logo displayed in <https://www.instagram.com/shutterbus/?hl=en>, and which is depicted below:



9. The term “OPPOSITION” means Opposition No. 91249394, filed by Opposer on July 10, 2019.



10. The term “ANSWER” means the Answer YOU filed in this OPPOSITION on February 13, 2020.

11. The terms “TRADEMARK” and “MARK” mean federally registered and state registered trademarks, service marks, and trade names; unregistered trademarks, service marks, and trade names; and trademarks, service marks, and trade names at common law in any jurisdiction.

12. The terms “DOCUMENT” and “DOCUMENTS” are used in the broadest sense of Rule 34 of the Federal Rules of Civil Procedure, and encompasses all manner of recordation, such as electronically stored information, hard copy, carbon copy, photocopy, microfilm, microfiche, and machine-readable code and includes without limitation, letters, copies of letters, emails, intra-corporate communications, minutes, bulletins, specifications, instructions, advertisements, literature, trademark registrations, work assignments, reports, memoranda, memoranda of conversations, notes, notebooks, drafts, data sheets, work sheets, contracts, memoranda of agreements, assignments, licenses, sublicenses, books of accounts, orders, invoices, statements, bills, vouchers, photographs, drawings, charts, catalogues, brochures, and other written materials of whatever kind known to YOU or in YOUR possession or control.

13. The term “COMMUNICATION” refers to every manner or means of disclosure, transfer or exchange of information, whether orally or by DOCUMENT, and whether face-to-face, by telephone, facsimile transmission, mail, personal delivery, electronic mail, computer transmission, or otherwise.

14. The terms “CONCERNING” and “RELATING TO” mean referring to, pertaining to, consisting of, commenting on, discussing, analyzing, considering, describing, indicating, evidencing, supporting, refuting, constituting, reflecting, regarding, memorializing, confirming, containing, embodying, or otherwise connected to.

15. The term “APPLICANT OFFERINGS” means all goods and/or services in connection with which YOU are using or intend to use the VANNAGRAM MARK, including but not limited to the services listed in YOUR VANNAGRAM APPLICATION.

16. The term “PERSON” refers to individuals, parties, associations, partnerships, firms, corporations, and other business organizations or entities, whether formal or informal.

17. Unless otherwise indicated by the context, the term “IDENTIFY” means:

a. when used in connection with a DOCUMENT, to furnish a brief description of the subject matter of the DOCUMENT; its title or designation; its date of creation and distribution; the name and address of the author and sender; the name and address of the PERSON, if any, to whom it was directed or to whom copies or similar DOCUMENTS were directed; and the location of each copy of the DOCUMENT and the name and address of each copy’s present custodian;

b. when used in connection with a PERSON, to furnish a statement of the full name; occupation; job title; business or function thereof; last known business and home address and telephone number; place and date of incorporation; principal and other places of business; nature of business; all officers of the business entity and any other PERSONS having knowledge of the matter alleged in this OPPOSITION with respect to the business entity; executive offices of the business entity; and its relation to YOU or to YOUR goods or services or other things;

c. when used in connection with things, including and not limited to products, devices, goods or physical things, to furnish a complete description of the thing, including its common designation; its composition; its physical description; product type; any other distinguishing characteristics; the catalog, SKU, stock, or other identifying number; and the trademark, name, type, grade, and any other designation customarily used to designate the item and to distinguish it from others made or sold by the same or a different producer or vendor; and

d. when used in connection with a MARK, TRADEMARK, TRADEMARK application, or TRADEMARK registration, to identify its country or state registration number and application number; its date of first use in that country or state and the goods or services with which it is used; the PERSON owning the TRADEMARK; the United States counterpart

application or registration (if any); its date of first use in commerce in the United States, and the goods or services with which it is used.

13. Wherever used herein, the words “and”, “and/or”, and “or” refer to both the conjunctive and disjunctive meanings. The word “any” shall mean “each and every” as well as “anyone”. The present tense includes the past and future tenses. The singular shall include the plural and the plural shall include the singular. Words in the masculine, feminine, or neuter form shall include each of the other genders.

### **INSTRUCTIONS**

1. These Interrogatories seek responses that are accurate as of the date they are given and are continuing so that any additional information responsive to these Interrogatories that YOU learn at any time shall timely be furnished to Opposer in supplemental responses.

2. In responding to these interrogatories, please furnish all information known or available to YOU, including information in the possession of YOUR attorneys or other PERSONS directly or indirectly employed or retained by YOU, including but not limited to YOUR agents, officers, employees, representatives, investigators, or anyone else acting or purporting to act on YOUR behalf or under YOUR control.

3. To the extent that YOU withhold any information in whole or in part because of a claim of privilege or immunity, please provide a privilege log setting forth the general nature of the information withheld and any other information necessary to explain YOUR claim of privilege or immunity and to allow adjudication of the propriety of such claim.

4. If YOU cannot respond to any Interrogatory in full, please respond to the fullest extent possible, explain why YOU cannot respond to the remainder, and describe the nature of the information YOU cannot provide.

5. If YOU object to any portion of an Interrogatory, please respond to all portions of the Interrogatory to which YOU do not object.

6. If YOU object to any meaning of any term in any Interrogatory herein as unclear to YOU, YOU shall assume a reasonable meaning, state what the assumed meaning is, and respond to the Interrogatory according to the assumed meaning.

7. Unless otherwise indicated in a particular Interrogatory, each Interrogatory is not limited in time or geographic location.

8. If YOU elect to produce DOCUMENTS in response to any Interrogatory, electronically stored information such as Microsoft Excel files, data files, or other financial or accounting information shall be produced in native electronic format, with all metadata intact. All other DOCUMENTS shall be produced in: (1) native electronic format, with all metadata intact; (2) searchable PDF format; or (3) electronic TIFF images with associated OCR data or extracted text files; and, as may be appropriate, with load files in Relativity, Concordance, IPro, and Summation formats.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1:**

IDENTIFY each PERSON that furnished information for any of YOUR responses to these Interrogatories, designating the number of the Interrogatory for which each PERSON furnished information.

### **INTERROGATORY NO. 2:**

For each service identified in YOUR VANNAGRAM APPLICATION, state the date YOU first used the VANNAGRAM MARK in commerce in connection with each particular service.

### **INTERROGATORY NO. 3:**

For each service identified in YOUR VANNAGRAM APPLICATION, state the Bates number of the DOCUMENT YOU produced evidencing such use as of the date stated by YOU in response to Interrogatory No. 2 above.

### **INTERROGATORY NO. 4:**

State the date on which YOU first became aware of any INSTAGRAM MARK.

**INTERROGATORY NO. 5:**

Describe every instance in which any of YOUR customers (actual or potential) inquired whether, or otherwise indicated the mistaken belief that, YOU or any of YOUR goods or services were affiliated with or sponsored or approved by Instagram. In describing every such instance, please include the date, the names of the people involved, and the context surrounding each instance.

**INTERROGATORY NO. 6:**

Describe YOUR target market for each APPLICANT OFFERING, including age range, gender distribution, geographic location, and any other demographics used by YOU to identify YOUR target market.

**INTERROGATORY NO. 7:**

Describe how YOU selected and adopted the VANNAGRAM MARK. Please include the date range in which the selection process occurred, IDENTIFY the PERSONS involved, any other MARKS that were considered, and any other context surrounding the conception and selection process.

**INTERROGATORY NO. 8:**

Describe how and why YOU selected the design of the VANNAGRAM LOGO. Please include the date range in which it was designed, IDENTIFY the PERSONS involved, any other designs that were considered, and any other context surrounding the design, conception, and selection process.

**INTERROGATORY NO. 9:**

State the channels in which YOU market or advertise, or intend to market or advertise, each APPLICANT OFFERING.

**INTERROGATORY NO. 10:**

State the channels in which YOU sell or distribute, or intend to sell or distribute, each APPLICANT OFFERING.

**INTERROGATORY NO. 11:**

State the price range in which YOU sell, or intend to sell, each APPLICANT OFFERING.

**INTERROGATORY NO. 12:**

Describe the degree of care exercised by consumers when deciding whether to purchase each APPLICANT OFFERING.

**INTERROGATORY NO. 13:**

Describe all plans YOU have to expand YOUR goods and/or services offered in connection with the VANNAGRAM MARK.

**INTERROGATORY NO. 14:**

IDENTIFY each PERSON who had any involvement in YOUR decision to attempt to register the VANNAGRAM MARK with the United States Patent and Trademark Office.

**INTERROGATORY NO. 15:**

Describe in detail all COMMUNICATIONS between YOU and any PERSON CONCERNING the TRADEMARK rights of Opposer, including the date and place of the COMMUNICATION, the manner of the COMMUNICATION (*e.g.*, by telephone, letter, email, *etc.*), the substance of the COMMUNICATION, and every PERSON who participated in or otherwise has knowledge of the COMMUNICATION.

**INTERROGATORY NO. 16:**

IDENTIFY YOUR past, present, and anticipated business partners or investors RELATING TO each APPLICANT OFFERING.

**INTERROGATORY NO. 17:**

IDENTIFY all goods and/or services YOU have ever offered in the United States under a MARK that contains the term INSTA or GRAM, or a variation of INSTA or GRAM as part of a MARK, including the circumstances of such use, and the first and (if applicable) last dates of such use.

**INTERROGATORY NO. 18:**

IDENTIFY each PERSON that was or is responsible for the development, design, marketing, or distribution of each APPLICANT OFFERING.

**INTERROGATORY NO. 19:**

IDENTIFY each PERSON that was or is responsible for communicating with consumers regarding any APPLICANT OFFERING.

**INTERROGATORY NO. 20:**

Describe in detail any advertising YOU have done or plan to do that uses the VANNAGRAM MARK, including without limitation the nature of such advertising, the geographic scope of such advertising, the cost of such advertising, and the duration of such advertising.

**INTERROGATORY NO. 21:**

Describe any efforts YOU have made to enable the connectivity or integration between any APPLICANT OFFERING and any of Instagram's services, including the Instagram App or website, and IDENTIFY each app name that YOU used to request such connectivity or integration.

**INTERROGATORY NO. 22:**

IDENTIFY each Instagram username and/or developer/Application Program Interface account that YOU currently use or have previously used.

**INTERROGATORY NO. 23:**

IDENTIFY all websites on which YOU have used the VANNAGRAM MARK, and the dates of such use.

**INTERROGATORY NO. 24:**

Describe how YOU generate or plan to generate revenue from each APPLICANT OFFERING, including advertising revenue RELATING TO such goods and/or services.

**INTERROGATORY NO. 25:**

State the total revenues YOU have generated on a monthly basis from each APPLICANT OFFERING, including advertising revenue RELATING TO such goods and/or services.

**INTERROGATORY NO. 26:**

IDENTIFY any agreement, contract, and/or license YOU have entered into with any PERSON RELATING TO the VANNAGRAM MARK.

**INTERROGATORY NO. 27:**

IDENTIFY all MARKS that YOU have used in connection with any APPLICANT OFFERING.

**INTERROGATORY NO. 28:**

Describe every instance in which any PERSON (other than Instagram) has alleged that YOUR use of any MARK may induce the mistaken belief that YOU or any of YOUR goods and/or services were affiliated with or sponsored or approved by said PERSON. In describing every such instance, please include the PERSON, the date, the names of the people involved, and the context surrounding each instance.

**INTERROGATORY NO. 29:**

Describe every instance in which any of YOUR customers (actual or potential) inquired whether, or otherwise indicated the mistaken belief that, YOU or any of YOUR goods and/or services were affiliated with or sponsored or approved by any PERSON other than Instagram. In describing every such instance, please include the PERSON, the date, the names of the people involved, and the context surrounding each instance.

**INTERROGATORY NO. 30:**

IDENTIFY any relationship, business-related or otherwise, that YOU have or had with SHUTTERBUS.

///



**INTERROGATORY NO. 31:**

IDENTIFY any good or service in connection with which YOU have or had used the SHUTTERBUS LOGO.

Dated: March 18, 2019

Respectfully submitted,

By: /s/ Heming Xu  
Larry W. McFarland  
Kollin J. Zimmermann  
YeWon Min  
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[hxu@kilpatricktownsend.com](mailto:hxu@kilpatricktownsend.com)

*Counsel for Opposer Instagram, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 18, 2020, I served a copy of the document entitled  
**OPPOSER INSTAGRAM LLC'S FIRST SET OF INTERROGATORIES**  
on Applicant by depositing a true and correct copy of the document by email to Mr. Benton  
Williams II, counsel of record for Applicant Vannagram & Co. LLC, at  
[benton.williams@bentonwilliamspllc.com](mailto:benton.williams@bentonwilliamspllc.com).

*/s/ Julie Contreras* \_\_\_\_\_

Julie Contreras

# **EXHIBIT B**

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

INSTAGRAM, LLC,

Opposer,

vs.

VANNAGRAM & CO. LLC,

Applicant.

Opposition No. 91249394

**OPPOSER INSTAGRAM,  
LLC'S FIRST SET OF  
REQUESTS FOR ADMISSION**

Pursuant to Rule 36 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, 37 C.F.R. § 2.120, Opposer Instagram, LLC (“Opposer”) requests that Applicant Vannagram & Co. LLC (“Applicant”) admit or deny, separately and in writing under oath within thirty (30) days of service hereof, each of the matters set forth below (“Requests”) in accordance with the definitions and instructions set forth below.

**DEFINITIONS**

1. The terms “YOU,” “YOUR”, and “YOURS” mean Applicant, as well as any business entity owned or operated by Applicant that uses or will use the VANNAGRAM MARK, including any such business entity’s officers, directors, corporate parent, subsidiaries, and affiliates, as well as anyone acting on Applicant’s behalf, including without limitation, all present and former partners, employees, officers, directors, agents, representatives, attorneys, or consultants.

2. The term “VANNAGRAM APPLICATION” means the United States Application No. 88/163,595.

3. The term “VANNAGRAM MARK” means the alleged trademark that is the subject of United States Application No. 88/163,595.

4. The term “INSTAGRAM MARKS” means, collectively, any and all of Opposer’s trademarks that consist of or incorporate the term INSTAGRAM, including without limitation

the INSTAGRAM marks in U.S. Registration Nos. 4,146,057; 4,756,754; 4,795,634; 4,822,600; 4,827,509; 4,856,047; 4,863,594; 4,863,595; and 5,019,151.

5. The term “VANNAGRAM WEBSITE” means the website accessible at <http://www.vannagramatx.com/>.

6. The term “VANNAGRAM LOGO” means the logo displayed in, among other places, the VANNAGRAM WEBSITE, and which is depicted below:



7. The term “SHUTTERBUS” refers to any PERSON who owns or owned the following Instagram account <https://www.instagram.com/shutterbus/?hl=en>, including any such PERSON’s officers, directors, corporate parent, subsidiaries, and affiliates, as well as anyone acting on such PERSON’s behalf, including without limitation, all present and former partners, employees, officers, directors, agents, representatives, attorneys, or consultants.

8. The term “SHUTTERBUS LOGO” means the logo displayed in <https://www.instagram.com/shutterbus/?hl=en>, and which is depicted below:



9. The term “OPPOSITION” means Opposition No. 91249394, filed by Opposer on July 10, 2019.

10. The term “YOUR ANSWER” means the Answer YOU filed in this OPPOSITION on February 13, 2020.

11. The terms “TRADEMARK” and “MARK” mean federally registered and state registered trademarks, service marks, and trade names; unregistered trademarks, service marks, and trade names; and trademarks, service marks, and trade names at common law in any jurisdiction.

12. The terms “DOCUMENT” and “DOCUMENTS” are used in the broadest sense of Rule 34 of the Federal Rules of Civil Procedure, and encompasses all manner of recordation such as electronically stored information, hard copy, carbon copy, photocopy, microfilm, microfiche, and machine-readable code and includes without limitation, letters, copies of letters, emails, intra-corporate communications, minutes, bulletins, specifications, instructions, advertisements, literature, trademark registrations, work assignments, reports, memoranda, memoranda of conversations, notes, notebooks, drafts, data sheets, work sheets, contracts, memoranda of agreements, assignments, licenses, sublicenses, books of accounts, orders, invoices, statements, bills, vouchers, photographs, drawings, charts, catalogues, brochures, and other written materials of whatever kind known to YOU or in YOUR possession or control.

13. The term “COMMUNICATION” refers to every manner or means of disclosure, transfer or exchange of information, whether orally or by DOCUMENT, and whether face-to-face, by telephone, facsimile transmission, mail, personal delivery, electronic mail, computer transmission, or otherwise.

14. The terms “CONCERNING” and “RELATING TO” mean referring to, pertaining to, consisting of, commenting on, discussing, analyzing, considering, describing, indicating, evidencing, supporting, refuting, constituting, reflecting, regarding, memorializing, confirming, containing, embodying, or otherwise connected to.

15. The term “PERSON” refers to individuals, parties, associations, partnerships, firms, corporations, and other business organizations or entities, whether formal or informal.

16. The term “APPLICANT OFFERINGS” means all goods and/or services in connection with which YOU are using or intend to use the VANNAGRAM MARK, including but not limited to the goods and/or services listed in YOUR VANNAGRAM APPLICATION.

17. Wherever used herein, the words “and”, “and/or”, and “or” refer to both the conjunctive and disjunctive meanings. The word “any” shall mean “each and every” as well as “anyone”. The present tense includes the past and future tenses. The singular shall include the plural and the plural shall include the singular. Words in the masculine, feminine, or neuter form shall include each of the other genders.

### **INSTRUCTIONS**

1. Opposer requests that YOU admit or deny the truth of each statement or fact, application of law to fact, or opinions about either, as set forth in the Requests below.

2. To the extent that YOU do not respond with either an unqualified admission or an objection (the reasons for which must be stated), YOU shall specifically deny the matter and set forth in detail the reasons why YOU cannot truthfully admit the matter. Any such denial shall fairly meet the substance of the Request, and when good faith requires that YOU qualify an answer or deny only a part of the matter in which any admission is requested, YOU shall specify so much of it as is true and qualify or deny the remainder.

3. If, in responding to these Requests, YOU encounter any ambiguities when construing a Request, instruction, or definition, YOU shall set forth in YOUR response the matter deemed ambiguous and the construction used in responding.

4. YOU may not give lack of information or knowledge as the reason for failure to admit or deny unless YOU state that YOU have made reasonable inquiry and that the information known or readily obtainable by YOU is insufficient to enable YOU to admit or deny.

5. The fact that a Request covers a matter that YOU believe presents a genuine issue for trial may not, on that ground alone, provide the basis for an objection.

6. Any Request set forth below to which there has not been an adequate and timely response may be deemed admitted and, therefore, conclusively established for purposes of this OPPOSITION.

7. These Requests are continuing in nature and YOUR responses to them are to be promptly supplemented or amended if, after the time of YOUR initial responses, YOU learn that

any response is or has become in some material respect incomplete or incorrect, to the full extent provided for by Federal Rule of Civil Procedure 26(e).

### **REQUESTS FOR ADMISSION**

#### **REQUEST NO. 1:**

Admit that YOU did not use each and every one of the services identified in YOUR VANNAGRAM APPLICATION as of the “first use in commerce” date identified in YOUR VANNAGRAM APPLICATION.

#### **REQUEST NO. 2:**

Admit that YOU are not currently licensed by Opposer to use any of the INSTAGRAM MARKS in connection with any APPLICANT OFFERING.

#### **REQUEST NO. 3:**

Admit that YOU are not currently authorized by Opposer to use any of the INSTAGRAM MARKS in connection with any APPLICANT OFFERING.

#### **REQUEST NO. 4:**

Admit that YOU do not contest Opposer’s ownership of any of the INSTAGRAM MARKS.

#### **REQUEST NO. 5:**

Admit that YOU do not contest the validity of any of Opposer’s applications for the INSTAGRAM MARKS.

#### **REQUEST NO. 6:**

Admit that YOU do not contest the validity of any of Opposer’s registrations for the INSTAGRAM MARKS.

#### **REQUEST NO. 7:**

Admit that the INSTAGRAM MARKS are widely recognized by the general consuming public of the United States as a designation of source of Instagram’s goods or services.



**REQUEST NO. 8:**

Admit that at the time YOU filed YOUR VANNAGRAM APPLICATION, the INSTAGRAM MARKS were widely recognized by the general consuming public of the United States as a designation of source of Instagram's goods or services.

**REQUEST NO. 9:**

Admit that at the time YOU started using YOUR VANNAGRAM MARK in the United States, the INSTAGRAM MARKS were widely recognized by the general consuming public of the United States as a designation of source of Instagram's goods or services.

**REQUEST NO. 10:**

Admit that the INSTAGRAM MARKS are distinctive.

**REQUEST NO. 11:**

Admit that the INSTAGRAM MARKS were distinctive at the time YOU filed YOUR VANNAGRAM APPLICATION.

**REQUEST NO. 12:**

Admit that the INSTAGRAM MARKS were distinctive at the time YOU started using YOUR VANNAGRAM MARK in the United States.

**REQUEST NO. 13:**

Admit that the services listed in YOUR VANNAGRAM APPLICATION are similar to at least some of the services for which the INSTAGRAM MARKS are registered.

**REQUEST NO. 14:**

Admit that the services listed in YOUR VANNAGRAM APPLICATION are related to at least some of the services for which the INSTAGRAM MARKS are registered.

**REQUEST NO. 15:**

Admit that YOU were aware of Instagram prior to YOUR selection and adoption of the VANNAGRAM MARK.

**REQUEST NO. 16:**

Admit that YOU were aware of one or more of the INSTAGRAM MARKS prior to YOUR selection and adoption of the VANNAGRAM MARK.

**REQUEST NO. 17:**

Admit that YOU were aware of Instagram prior to the time YOU filed YOUR VANNAGRAM APPLICATION.

**REQUEST NO. 18:**

Admit that YOU were aware of one or more of the INSTAGRAM MARKS prior to the time YOU filed YOUR VANNAGRAM APPLICATION.

**REQUEST NO. 19:**

Admit that YOU did not conduct a trademark clearance search prior to filing YOUR VANNAGRAM APPLICATION.

**REQUEST NO. 20:**

Admit that YOU did not seek legal advice CONCERNING YOUR decision to select and adopt the VANNAGRAM MARK prior to filing YOUR VANNAGRAM APPLICATION.

**REQUEST NO. 21:**

Admit that Opposer did not consent to YOUR use of the VANNAGRAM MARK.

**REQUEST NO. 22:**

Admit that Opposer did not consent to YOUR filing of the VANNAGRAM APPLICATION.

**REQUEST NO. 23:**

Admit that YOUR use of the VANNAGRAM MARK is likely to call to mind Instagram for a significant portion of the United States consuming public.

**REQUEST NO. 24:**

Admit that YOUR use of the VANNAGRAM MARK is likely to call to mind Instagram for at least a portion of the United States consuming public.

**REQUEST NO. 25:**

Admit that YOU intended YOUR use of the VANNAGRAM MARK to call to mind Instagram for a significant portion of the United States consuming public.

**REQUEST NO. 26:**

Admit that YOU intended YOUR use of the VANNAGRAM MARK to call to mind Instagram for at least a portion of the United States consuming public.

**REQUEST NO. 27:**

Admit that YOUR selection of the VANNAGRAM MARK was based on Opposer's INSTAGRAM MARKS.

**REQUEST NO. 28:**

Admit that the component "AGRAM" as it appears in the VANNAGRAM MARK is a reference to Instagram.

**REQUEST NO. 29:**

Admit that the component "GRAM" as it appears in the VANNAGRAM MARK is a reference to Instagram.

**REQUEST NO. 30:**

Admit that at least one APPLICANT OFFERING was, during at least one point in time, intended to be used in connection with the Instagram application platform.

**REQUEST NO. 31:**

Admit that during at least one point in time, the target customers for at least one APPLICANT OFFERING include Instagram users.

**REQUEST NO. 32:**

Admit that during at least one point in time, at least one Instagram user was also an APPLICANT OFFERING customer.

**REQUEST NO. 33:**

Admit that YOU have during at least one point in time, used at least one Instagram good or service in connection with an APPLICANT OFFERING.

**REQUEST NO. 34:**

Admit that YOU use on a daily basis at least one Instagram good or service in connection with an APPLICANT OFFERING.

**REQUEST NO. 35:**

Admit that at least one APPLICANT OFFERING is marketed to Instagram users.

**REQUEST NO. 36:**

Admit that YOU adopted the VANNAGRAM MARK with the intention of capitalizing on the goodwill of the INSTAGRAM MARKS.

**REQUEST NO. 37:**

Admit that the VANNAGRAM MARK and the INSTAGRAM MARKS are similar in visual appearance.

**REQUEST NO. 38:**

Admit that the VANNAGRAM MARK and the INSTAGRAM MARKS are similar in sound.

**REQUEST NO. 39:**

Admit that the VANNAGRAM MARK and the INSTAGRAM MARKS are similar in connotation.

**REQUEST NO. 40:**

Admit that the VANNAGRAM MARK and the INSTAGRAM MARKS create a similar commercial impression.

**REQUEST NO. 41:**

Admit that consumers exercise a low degree of care when deciding whether to purchase any APPLICANT OFFERING.

**REQUEST NO. 42:**

Admit that YOU market or advertise at least one APPLICANT OFFERING in at least one channel that is the same as a channel in which an Instagram good or service is marketed or advertised.

**REQUEST NO. 43:**

Admit that YOU market or advertise at least one APPLICANT OFFERING in at least one channel that is similar to a channel in which an Instagram good or service is marketed or advertised.

**REQUEST NO. 44:**

Admit that YOU provide, sell, or distribute at least one APPLICANT OFFERING in at least one channel that is the same as a channel in which an Instagram good or service is provided, sold, or distributed.

**REQUEST NO. 45:**

Admit that YOU provide, sell, or distribute at least one APPLICANT OFFERING in at least one channel that is similar to a channel in which an Instagram good or service is provided, sold, or distributed.

**REQUEST NO. 46:**

Admit that YOUR use of the VANNAGRAM MARK is likely to cause consumer confusion regarding the source, sponsorship, approval, or affiliation between the VANNAGRAM MARK and the INSTAGRAM MARKS.

**REQUEST NO. 47:**

Admit that the VANNAGRAM MARK is deceptively similar to the INSTAGRAM MARKS so as to cause consumer confusion as to the origin of the goods and/or services offered under the VANNAGRAM MARK.

**REQUEST NO. 48:**

Admit that the VANNAGRAM MARK is deceptively similar to the INSTAGRAM MARKS so as to cause mistake as to the origin of the goods and/or services offered under the VANNAGRAM MARK.

**REQUEST NO. 49:**

Admit that the VANNAGRAM MARK is deceptively similar to the INSTAGRAM MARKS so as to deceive the public as to the origin of the goods and/or services offered under the VANNAGRAM MARK.

**REQUEST NO. 50:**

Admit that YOU are aware of at least one instance of consumer confusion regarding YOUR VANNAGRAM MARK and the INSTAGRAM MARKS.

**REQUEST NO. 51:**

Admit that YOU are aware of at least one instance of consumer confusion regarding the goods and/or services offered under the VANNAGRAM MARK and the INSTAGRAM MARKS.

**REQUEST NO. 52:**

Admit that YOUR registration of the VANNAGRAM MARK is likely to harm the goodwill of the INSTAGRAM MARKS.

**REQUEST NO. 53:**

Admit that YOUR registration of the VANNAGRAM MARK is likely to harm the reputation of the INSTAGRAM MARKS.

**REQUEST NO. 54:**

Admit that YOUR registration of the VANNAGRAM MARK is likely to impair the distinctiveness of the INSTAGRAM MARKS.

**REQUEST NO. 55:**

Admit that when designing the VANNAGRAM LOGO, YOU were aware of the SHUTTERBUS LOGO.

**REQUEST NO. 56:**

Admit that the design of the VANNAGRAM LOGO was influenced by the SHUTTERBUS LOGO.

**REQUEST NO. 57:**

Admit that when YOU designed the VANNAGRAM LOGO, YOU copied at least one element of the SHUTTERBUS LOGO.

Dated: March 18, 2020

Respectfully submitted,

By: /s/ Heming Xu

Larry W. McFarland  
Kollin J. Zimmermann  
Heming Xu  
YeWon Min  
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[ymin@kilpatricktownsend.com](mailto:ymin@kilpatricktownsend.com)  
*Counsel for Opposer Instagram, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 18, 2020, I served a copy of the document entitled  
**OPPOSER INSTAGRAM LLC'S FIRST SET OF REQUESTS FOR ADMISSION**  
on Applicant by depositing a true and correct copy of the document by email to Mr. Benton  
Williams II, at [benton.williams@bentonwilliamspllc.com](mailto:benton.williams@bentonwilliamspllc.com).

*/s/Julie Contreras* \_\_\_\_\_

Julie Contreras



# **EXHIBIT C**

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

INSTAGRAM, LLC,

Opposer,

vs.

VANNAGRAM & CO. LLC,

Applicant.

Opposition No. 91249394

**OPPOSER INSTAGRAM, LLC'S  
FIRST SET OF REQUESTS FOR  
PRODUCTION**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, 37 C.F.R. § 2.120, Opposer Instagram, LLC (“Opposer”) requests that Applicant Vannagram & Co. LLC (“Applicant”) respond to this First Set of Requests for Production of Documents and Things (“Requests”) and produce the following documents and things for discovery, inspection and copying at the office of Kilpatrick Townsend & Stockton LLP, 9720 Wilshire Boulevard, Penthouse Suite, Beverly Hills, California 90212, within thirty (30) days of the date of service hereof, in accordance with the definitions and instructions set forth below.

**DEFINITIONS**

1. The terms “YOU,” “YOUR”, and “YOURS” mean Applicant, as well as any business entity owned or operated by Applicant that uses or will use the VANNAGRAM MARK, including any such business entity’s officers, directors, corporate parent, subsidiaries, and affiliates, as well as anyone acting on Applicant’s behalf, including without limitation, all present and former partners, employees, officers, directors, agents, representatives, attorneys, or consultants.

2. The term “VANNAGRAM APPLICATION” means the United States Application No. 88/163,595.

3. The term “VANNAGRAM MARK” means the alleged trademark that is the subject of United States Application No. 88/163,595.

4. The term “INSTAGRAM MARKS” means, collectively, any and all of Opposer’s marks that consist of or incorporate the term INSTAGRAM, including without limitation the INSTAGRAM marks in U.S. Registration Nos. 4,146,057; 4,756,754; 4,795,634; 4,822,600; 4,827,509; 4,856,047; 4,863,594; 4,863,595; and 5,019,151.

5. The term “VANNAGRAM WEBSITE” means the website accessible at <http://www.vannagramatx.com/>.

6. The term “VANNAGRAM LOGO” means the logo displayed in, among other places, the VANNAGRAM WEBSITE, and which is depicted below:



7. The term “SHUTTERBUS” refers to any PERSON who owns or owned the following Instagram account <https://www.instagram.com/shutterbus/?hl=en>, including any such PERSON’s officers, directors, corporate parent, subsidiaries, and affiliates, as well as anyone acting on such PERSON’s behalf, including without limitation, all present and former partners, employees, officers, directors, agents, representatives, attorneys, or consultants.

8. The term “SHUTTERBUS LOGO” means the logo displayed in <https://www.instagram.com/shutterbus/?hl=en>, and which is depicted below:



9. The term “OPPOSITION” means Opposition No. 91249394, filed by Opposer on July 10, 2019.

10. The term “ANSWER” means the Answer YOU filed in this OPPOSITION on February 13, 2020.

11. The terms “TRADEMARK” and “MARK” mean federally registered and state registered trademarks, service marks and trade names; unregistered trademarks, service marks, and trade names; and trademarks, service marks and trade names at common law in any jurisdiction.

12. The terms “DOCUMENT” and “DOCUMENTS” are used in the broadest sense of Rule 34 of the Federal Rules of Civil Procedure, and encompasses all manner of recordation, such as electronically stored information, hard copy, carbon copy, photocopy, microfilm, microfiche, and machine-readable code and includes without limitation, letters, copies of letters, emails, intra-corporate communications, minutes, bulletins, specifications, instructions, advertisements, literature, trademark registrations, work assignments, reports, memoranda, memoranda of conversations, notes, notebooks, drafts, data sheets, work sheets, contracts, memoranda of agreements, assignments, licenses, sublicenses, books of accounts, orders, invoices, statements, bills, vouchers, photographs, drawings, charts, catalogues, brochures, COMMUNICATIONS, and other written materials of whatever kind known to YOU or in YOUR possession or control.

13. The term “COMMUNICATION” refers to every manner or means of disclosure, transfer or exchange of information, whether orally or by DOCUMENT, and whether face-to-face, by telephone, facsimile transmission, mail, personal delivery, electronic mail, computer transmission, or otherwise.

14. The terms “CONCERNING” and “RELATING TO” means referring to, pertaining to, consisting of, commenting on, discussing, analyzing, considering, describing, indicating, evidencing, supporting, refuting, constituting, reflecting, regarding, memorializing, confirming, containing, embodying, or otherwise connected to.

15. The term “APPLICANT OFFERINGS” means all goods and/or services in connection with which YOU are using or intend to use the VANNAGRAM MARK, including but not limited to the services listed in YOUR VANNAGRAM APPLICATION.

16. The term “PERSON” refers to individuals, parties, associations, partnerships, firms, corporations, and other business organizations or entities, whether formal or informal.

17. Wherever used herein, the words “and”, “and/or,” and “or” refer to both the conjunctive and disjunctive meanings. The word “any” shall mean “each and every” as well as “anyone”. The present tense includes the past and future tenses. The singular shall include the plural and the plural shall include the singular. Words in the masculine, feminine, or neuter form shall include each of the other genders.

### **INSTRUCTIONS**

1. These Requests seek responses that are accurate as of the date they are given and are continuing so that any additional information responsive to these Requests that YOU learn at any time shall timely be furnished to Opposer in supplemental responses.

2. In responding to these Requests, please furnish all DOCUMENTS, COMMUNICATIONS, and tangible things known or available to YOU, including those in the possession of YOUR attorneys or other PERSONS directly or indirectly employed or retained by YOU, including but not limited to YOUR agents, officers, employees, representatives, investigators, or anyone else acting or purporting to act on YOUR behalf or under YOUR control.

3. To the extent that YOU withhold any DOCUMENT or COMMUNICATION in whole or in part because of a claim of privilege or immunity, please provide a privilege log setting forth the general nature of each DOCUMENT, COMMUNICATION, or portion thereof withheld, its subject matter, and any other information necessary to explain YOUR claim of privilege or immunity and to allow adjudication of the propriety of such claim. When a DOCUMENT has been redacted or altered in any fashion, YOU shall identify as to each DOCUMENT the reason for the redaction or alteration, the date of the redaction or alteration,

and the person performing the redaction or alteration. Any redaction must be clearly visible on the redacted DOCUMENT.

4. If YOU cannot respond to any Request in full, please respond to the fullest extent possible, explain why YOU cannot respond to the remainder, and describe the nature of the DOCUMENTS or COMMUNICATIONS or tangible things YOU cannot provide.

5. If YOU object to any portion of a Request, please respond to all portions of the Request to which YOU do not object.

6. Each DOCUMENT or tangible thing produced in response to these Requests shall be produced as it is kept in the usual course of business, including file folders, binders, notebooks, and other devices by which such papers or things may be organized or separated, or it shall be organized and labeled to correspond with the Requests to which it is responsive. All DOCUMENTS that are physically or electronically attached to each other shall be produced in that form and designated accordingly in an electronic production.

7. If there are no DOCUMENTS or tangible things responsive to any particular Request, YOU are requested to indicate the same in writing.

8. If any responsive DOCUMENT or tangible thing no longer exists, cannot be located, or is not in YOUR possession, custody, or control, YOU shall identify the DOCUMENT, describe its subject matter, describe its disposition, and identify all PERSONS with knowledge of the disposition.

9. Unless otherwise indicated in a particular Request, each Request is not limited in time or geographic location.

10. Electronically stored information such as Microsoft Excel files, data files, or other financial or accounting information shall be produced in native electronic format, with all metadata intact. All other DOCUMENTS shall be produced in: (1) native electronic format, with all metadata intact; (2) searchable PDF format; or (3) electronic TIFF images with associated OCR data or extracted text files; and, as may be appropriate, with load files in Relativity, Concordance, IPro, and Summation formats.

## **REQUESTS**

### **REQUEST FOR PRODUCTION NO. 1:**

All DOCUMENTS that support or were otherwise used, identified, relied upon, reviewed, or referenced in connection with YOUR responses to Instagram's First Set of Interrogatories.

### **REQUEST FOR PRODUCTION NO. 2:**

All DOCUMENTS that support or were otherwise used, identified, relied upon, reviewed, or referenced in connection with YOUR responses to Instagram's First Set of Requests for Admissions.

### **REQUEST FOR PRODUCTION NO. 3:**

All DOCUMENTS that support or were otherwise used, identified, relied upon, reviewed, or referenced in connection with any allegations made by YOU in YOUR ANSWER.

### **REQUEST FOR PRODUCTION NO. 4:**

For each service identified in YOUR VANNAGRAM APPLICATION, please produce DOCUMENTS sufficient to show YOUR first use in commerce of the VANNAGRAM MARK in connection with each particular service.

### **REQUEST FOR PRODUCTION NO. 5:**

All DOCUMENTS RELATING TO YOUR first awareness of any INSTAGRAM MARK.

### **REQUEST FOR PRODUCTION NO. 6:**

All DOCUMENTS RELATING TO every instance in which one of YOUR customers (actual or potential) inquired whether, or otherwise indicated the mistaken belief that, YOU or any of YOUR goods and/or services were affiliated with or sponsored or approved by Instagram.

### **REQUEST FOR PRODUCTION NO. 7:**

All DOCUMENTS describing, identifying, or RELATING TO YOUR target market for any APPLICANT OFFERING.

**REQUEST FOR PRODUCTION NO. 8:**

All DOCUMENTS RELATING TO YOUR understanding of the degree of care exercised by consumers when deciding whether to purchase any APPLICANT OFFERING.

**REQUEST FOR PRODUCTION NO. 9:**

All DOCUMENTS RELATING TO YOUR selection and adoption of the VANNAGRAM MARK, including COMMUNICATIONS RELATING TO the conception and selection process.

**REQUEST FOR PRODUCTION NO. 10:**

All DOCUMENTS RELATING TO YOUR design of the VANNAGRAM LOGO, including COMMUNICATIONS RELATING TO the design, conception, and selection process.

**REQUEST FOR PRODUCTION NO. 11:**

DOCUMENTS sufficient to show the channels in which YOU market or advertise, or intend to market or advertise, each APPLICANT OFFERING.

**REQUEST FOR PRODUCTION NO. 12:**

DOCUMENTS sufficient to show the channels in which YOU provide, sell, or distribute, or intend to provide, sell, or distribute, each APPLICANT OFFERING.

**REQUEST FOR PRODUCTION NO. 13:**

DOCUMENTS sufficient to show the price range in which YOU sell, or intend to sell, each APPLICANT OFFERING.

**REQUEST FOR PRODUCTION NO. 14:**

All DOCUMENTS RELATING TO any plans YOU have to expand YOUR goods and/or services offered in connection with the VANNAGRAM MARK.

**REQUEST FOR PRODUCTION NO. 15:**

All DOCUMENTS RELATING TO YOUR decision to attempt to register the VANNAGRAM MARK with the United States Patent and Trademark Office.



**REQUEST FOR PRODUCTION NO. 16:**

All DOCUMENTS RELATING TO the connectivity or integration between any APPLICANT OFFERING and any of Instagram’s services, including the Instagram app or website and Instagram’s Application Program Interface (“API”).

**REQUEST FOR PRODUCTION NO. 17:**

All DOCUMENTS RELATING TO every Instagram username, page, and/or developer/API account name that YOU currently use or have previously used.

**REQUEST FOR PRODUCTION NO. 18:**

All DOCUMENTS CONCERNING Instagram and/or any INSTAGRAM MARK.

**REQUEST FOR PRODUCTION NO. 19:**

All DOCUMENTS CONCERNING this above-captioned OPPOSITION proceeding.

**REQUEST FOR PRODUCTION NO. 20:**

All DOCUMENTS CONCERNING COMMUNICATIONS between YOU and Opposer, or any current or former employee or agent of Opposer, regarding the VANNAGRAM MARK.

**REQUEST FOR PRODUCTION NO. 21:**

All DOCUMENTS exchanged between YOU and any past, present, or anticipated business partners or investors RELATING TO any APPLICANT OFFERING.

**REQUEST FOR PRODUCTION NO. 22:**

DOCUMENTS sufficient to show all goods and/or services YOU have ever offered in the United States under a MARK that contains the term INSTA or GRAM, or a variation of INSTA or GRAM as part of a MARK.

**REQUEST FOR PRODUCTION NO. 23:**

DOCUMENTS sufficient to show the name, job title, and job description of every PERSON that was or is responsible for the development, design, marketing, and/or distribution of any APPLICANT OFFERING.

**REQUEST FOR PRODUCTION NO. 24:**

All DOCUMENTS CONCERNING any marketing or advertising YOU have done or

plan to do that uses the VANNAGRAM MARK, including without limitation DOCUMENTS showing the cost, scope, channels, and duration of such marketing or advertising, as well as any COMMUNICATIONS RELATING TO the development and design of such marketing or advertising.

**REQUEST FOR PRODUCTION NO. 25:**

DOCUMENTS sufficient to show all websites and webpages on which YOU have used or intend to use the VANNAGRAM MARK, including images and URL addresses of such websites and webpages.

**REQUEST FOR PRODUCTION NO. 26:**

All DOCUMENTS RELATING TO YOUR current and future business plans or strategies to generate revenue from any APPLICANT OFFERING.

**REQUEST FOR PRODUCTION NO. 27:**

DOCUMENTS sufficient to show the total revenues YOU have generated on a monthly basis from each APPLICANT OFFERING, including DOCUMENTS sufficient to show YOUR advertising revenue RELATING TO each APPLICANT OFFERING.

**REQUEST FOR PRODUCTION NO. 28:**

All DOCUMENTS CONCERNING any agreement, contract, or license YOU have entered into with any PERSON RELATING TO the VANNAGRAM MARK.

**REQUEST FOR PRODUCTION NO. 29:**

All DOCUMENTS CONCERNING any instances of actual confusion, mistake, deception, or association of any kind between YOU and Opposer or between any APPLICANT OFFERING and any of Opposer's goods or services.

**REQUEST FOR PRODUCTION NO. 30:**

All DOCUMENTS described, identified, referenced, or relied upon in YOUR Rule 26 initial disclosure statement.

**REQUEST FOR PRODUCTION NO. 31:**

DOCUMENTS sufficient to show YOUR DOCUMENT retention and destruction policy.

**REQUEST FOR PRODUCTION NO. 32:**

All DOCUMENTS CONCERNING any business plans, forecasts, or projections RELATING TO any APPLICANT OFFERING.

**REQUEST FOR PRODUCTION NO. 33:**

All DOCUMENTS CONCERNING any marketing research, surveys, or studies conducted by YOU or on YOUR behalf RELATING TO any APPLICANT OFFERING and the consumers or users of such good or service.

**REQUEST FOR PRODUCTION NO. 34:**

All DOCUMENTS identifying or describing YOUR current or potential competitors with respect to each APPLICANT OFFERING.

**REQUEST FOR PRODUCTION NO. 35:**

All DOCUMENTS CONCERNING any preparations to use the VANNAGRAM MARK in commerce, including any business plans, pitches, or proposals to potential business partners, investors, advertisers, or customers.

**REQUEST FOR PRODUCTION NO. 36:**

Please produce a representative example of every usage of the VANNAGRAM MARK in commerce, including usage on or in connection with any APPLICANT OFFERING, as well as usage in promotional and marketing materials.

**REQUEST FOR PRODUCTION NO. 37:**

All DOCUMENTS CONCERNING any alternate names and/or designs YOU considered for use in connection with any APPLICANT OFFERING.

**REQUEST FOR PRODUCTION NO. 38:**

DOCUMENTS sufficient to show the demographics of YOUR current and/or intended customers of each APPLICANT OFFERING.

**REQUEST FOR PRODUCTION NO. 39:**

All DOCUMENTS CONCERNING any customer feedback or complaints YOU have received about any APPLICANT OFFERING that RELATE TO Instagram.

**REQUEST FOR PRODUCTION NO. 40:**

All DOCUMENTS CONCERNING any efforts YOU made to search or clear MARKS containing INSTA or GRAM within the United States, including without limitation the VANNAGRAM MARK.

**REQUEST FOR PRODUCTION NO. 41:**

All DOCUMENTS RELATING TO YOUR selection, adoption, and/or design of any MARK (other than the VANNAGRAM MARK and VANNAGRAM LOGO) that YOU have used in connection with any APPLICANT OFFERING, including COMMUNICATIONS RELATING TO the design, conception, and selection process.

**REQUEST FOR PRODUCTION NO. 42:**

All DOCUMENTS CONCERNING any allegation from any PERSON (other than Instagram) that YOUR use of any MARK may induce the mistaken belief that YOU or any of YOUR goods and/or services were affiliated with or sponsored or approved by said PERSON.

**REQUEST FOR PRODUCTION NO. 43:**

All DOCUMENTS CONCERNING any instances of actual confusion, mistake, deception, or association of any kind between YOU and any PERSON (other than Instagram) or between any APPLICANT OFFERING and any PERSON'S (other than Instagram's) goods and/or services.

**REQUEST FOR PRODUCTION NO. 44:**

All DOCUMENTS RELATING TO SHUTTERBUS.

**REQUEST FOR PRODUCTION NO. 45:**

All DOCUMENTS RELATING TO the SHUTTERBUS LOGO.

**REQUEST FOR PRODUCTION NO. 46:**

All COMMUNICATIONS RELATING TO SHUTTERBUS.

**REQUEST FOR PRODUCTION NO. 47:**

All COMMUNICATIONS with SHUTTERBUS.

**REQUEST FOR PRODUCTION NO. 48:**

All COMMUNICATIONS RELATING TO the SHUTTERBUS LOGO.

**REQUEST FOR PRODUCTION NO. 49:**

All DOCUMENTS RELATING TO any connection YOU have or had with SHUTTERBUS.

**REQUEST FOR PRODUCTION NO. 50:**

All DOCUMENTS RELATING TO any connection YOU have or had with the SHUTTERBUS LOGO.

Dated: March 18, 2020

Respectfully submitted,

By: /s/ Heming Xu

Larry W. McFarland  
Kollin J. Zimmermann  
Heming Xu  
YeWon Min  
KILPATRICK TOWNSEND & STOCKTON LLP  
9720 Wilshire Boulevard, Penthouse Suite  
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Tel: (310) 248-3830  
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Emails: [lmcfarland@kilpatricktownsend.com](mailto:lmcfarland@kilpatricktownsend.com),  
[ymin@kilpatricktownsend.com](mailto:ymin@kilpatricktownsend.com)  
*Counsel for Opposer Instagram, LLC*

**CERTIFICATE OF SERVICE**

I hereby certify that on March 18, 2020, I served a copy of the document entitled  
**OPPOSER INSTAGRAM LLC'S FIRST SET OF REQUESTS FOR PRODUCTION**  
on Applicant by depositing a true and correct copy of the document by email to Mr. Benton  
Williams II, counsel of record for Applicant Vannagram & Co. LLC, at  
[benton.williams@bentonwilliamspllc.com](mailto:benton.williams@bentonwilliamspllc.com).

*/s/ Julie Contreras* \_\_\_\_\_

Julie Contreras

# **EXHIBIT D**

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

In re U.S. Trademark Application Serial No. 88/163,595  
Published on March 12, 2019 in the *Official Gazette*  
For: VANNAGRAM

INSTAGRAM, LLC,

*Opposer,*

v.

VANNAGRAM & CO., LLC.,

*Applicant.*

Opposition No. 91249394

**APPLICANT VANNAGRAM & CO., LLC'S ANSWERS AND OBJECTIONS TO  
OPPOSER'S FIRST SET OF INTERROGATORIES**

To: Opposer Instagram, LLC, Kollin J. Zimmermann, Larry W. McFarland, Kilpatrick Townsend & Stockton LLP, 9720 Wilshire Boulevard, Beverly Hills, CA 90212.

Pursuant to FED. R. CIV. P. 33(b), Applicant Vannagram & Co., LLC serves these answers and objections to Opposer Instagram, LLC's first set of interrogatories.

Dated: April 27, 2020

Respectfully Submitted,

By: /s/ Benton Williams II

BENTON WILLIAMS II

Texas Bar No. 24070854

100 Crescent Court, Suite 700

Dallas, Texas 75201

Direct: (214) 785-6205

Benton.Williams@bentonwilliamspllc.com

*Attorney for Applicant Vannagram & Co., LLC*



CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that a true and correct copy of the foregoing was served on all counsel of record on this the 27th day of April 2020.

/s/ Benton Williams II  
BENTON WILLIAMS II

APPLICANT VANNAGRAM & CO., LLC'S ANSWERS AND OBJECTIONS TO  
OPPOSER'S FIRST SET OF INTERROGATORIES

ASSERTION AND PRESERVATION OF PRIVILEGED COMMUNICATIONS AND ITEMS

In answering the interrogatories below, Applicant expressly preserves and does not waive any privilege including, without limitation, those privileges protected by FED. R. EVID. 501 and FED. R. EVID. 502. Applicant provides the answers below without disclosing privileged material or communications.

STATEMENT OF DEFINITIONS USED IN APPLICANT'S RESPONSES BELOW

Applicant is not familiar with the ambiguous definition "Instagram Marks" as provided No. 4 of Opposer's definitions contained in Opposer's interrogatories. Specifically, Applicant is unaware and unfamiliar with the ambiguous and unclear portion of the definition related to unidentified state or federal registrations of Opposer. Applicant, in responding to Opposer's discovery requests, will use the following definition for "Instagram Marks:" the Instagram marks identified in Opposer's Notice of Opposition and the registrations identified by U.S. Registration Numbers enumerated in Definition No. 4 of Opposer's requests, which are defined as the marks in U.S. Registration Nos. 4,146,057; 4,756,754; 4,795,634; 4,822,600; 4,827,509; 4,856,047; 4,863,594; 4,863,595; and 5,019,151.

Applicant is not familiar with the ambiguous definition "Trademark" and "Mark" as provided No. 11 of Opposer's definitions contained in Opposer's interrogatories. Specifically Applicant is unaware and unfamiliar with the ambiguous and unclear portion of the definition related to "unregistered trademarks, service marks, and trade names; as well as trademarks, service marks, and trade names at common law in any jurisdiction" as well as "state registered trademarks, service marks, and trade names." Applicant, in responding to Opposer's discovery requests, will use the following definition for "Trademark" and "Mark:" the service mark that is the subject of Applicant's current application, identified as 88/163,595 and the Instagram marks in U.S. Registration Nos. 4,146,057; 4,756,754; 4,795,634; 4,822,600; 4,827,509; 4,856,047; 4,863,594; 4,863,595; and 5,019,151.

INTERROGATORY NO. 1: Identify each person that furnished information for any of your responses to these interrogatories, designating the number of the interrogatories for which each person furnished information.

ANSWER: Thomas Benton Williams II, Esq., Benton Williams PLLC, 100 Crescent Court, Suite 700, Dallas, Texas 75201, Tel. (214) 785-6205, Facsimile: (214) 785-6485, BW@bentonwilliamspllc.com.

INTERROGATORY NO. 2: For each service identified in your Vannagram application, state the date you first used the Vannagram mark in Commerce in connection with each particular service.

ANSWER: Digital imaging services; Photographic computer imaging; Photography; Photography services; Portrait photography; Portrait photography services; Rental of portable photography and/or videography booths for taking of pictures and videos; Wedding photography services; August 24, 2015.

INTERROGATORY NO. 3: For each service identified in your Vannagram application, state the number of the document you produced evidencing such use as of the date stated by you and your response to Interrogatory No. 2 above.

ANSWER: Will supplement.

INTERROGATORY NO. 4: State the date on which you first became aware of any Instagram mark.

ANSWER: Applicant was not aware of any registered trademark of Opposer that Opposer alleges prohibits Applicant's use of its mark before Applicant filed its Application for registration on October 22, 2018. Applicant was not aware of Opposer's allegations until January 2019 when it received a letter from Opposer.

INTERROGATORY NO. 5: Describe every instance in which any of your customers (actual or potential) inquired whether, or otherwise indicated the mistaken belief that, you or any of your goods or services were affiliated with or sponsored or approved by Instagram. In describing every such instance, please include the date, the names of the people involved, and the context surrounding each instance.

ANSWER: None.

INTERROGATORY NO. 6: Describe your target market for each applicant offering, including age range, gender distribution, geographic location, and any other demographics used by you to identify your target market.

ANSWER: Will supplement.

INTERROGATORY NO. 7: Describe how you selected and adopted the Vannagram mark. Please include the date range in which the selection process occurred, identify the persons involved, any other marks that were considered, and any other contact surrounding the conception and selection process.

ANSWER: Will supplement.

INTERROGATORY NO. 8: Describe how and why you selected the design of the Vannagram logo. Please include the date range in which it was designed, identify the persons involved, any other designs that were considered, and any other context surrounding the design, conception, and selection process.

ANSWER: Will supplement.

INTERROGATORY NO. 9: State the channels in which you market or advertise, or intend to market or advertise, each applicant offering.

ANSWER: Applicant is unable to answer this interrogatory, because of the undefined and ambiguous term “channels.” However, Applicant markets and advertises through printed publications and materials, online content, and printed marketing material; social media platforms, including Twitter, Pinterest, Facebook, Instagram, and others.

INTERROGATORY NO. 10: State the channels in which you sell or distribute or intend to sell or distribute each applicant offering.

ANSWER: Applicant is unable to answer this interrogatory, because of the undefined and ambiguous term “channels.” Applicant is a mobile photography booth that provides on-site photography equipment.

INTERROGATORY NO. 11: State the price range in which you sell, or intend to sell, each applicant offering.

ANSWER: Will supplement.

INTERROGATORY NO. 12: Describe the degree of care exercised by consumers when deciding whether to purchase each applicant offering.

ANSWER: The degree of care exercised by consumers when deciding whether to purchase each applicant offering is high; Applicant’s customers are sophisticated consumers.

INTERROGATORY NO. 13: Describe all plans you have to expand your goods and or services offered in connection with the Vannagram mark.

ANSWER: Applicant objects to the interrogatory above on the grounds that it is not relevant to the claims and defenses asserted in this matter.

INTERROGATORY NO. 14: Identify each person who had any involvement in your decision to attempt to register the Vannagram Mark with the United States Patent and Trademark office.

ANSWER: Applicant asserts the attorney-client privilege regarding information requested by the above interrogatory. Applicant withholds information covered by the attorney-client privilege.

**INTERROGATORY NO. 15:** Describe in detail all communications between you and any person concerning the trademark rights of opposer, including the date and place of the communication, the manner of the communication comma the substance of the communication, and every person who participated in or otherwise has knowledge of the communication.

**ANSWER:** Applicant asserts the attorney-client privilege regarding information requested by the above interrogatory. Applicant withholds information covered by the attorney-client privilege, the spousal immunity privilege, and communications protected under FED. R. EVID. 408.

**INTERROGATORY NO. 16:** Identify your past, present, and anticipated business partners or investors relating to each applicant offering.

**ANSWER:** Applicant objects to the interrogatory above on the grounds that it is not relevant to the claims and defenses asserted in this matter.

**INTERROGATORY NO. 17:** Identify all goods and or services you have ever offered in the United States under a mark that contains the term INSTA or GRAM, or a variation of INSTA or GRAM as part of a MARK, including the circumstances of such use, and the first and (if applicable) last dates of such use.

**ANSWER:** Digital imaging services; Photographic computer imaging; Photography; Photography services; Portrait photography; Portrait photography services; Rental of portable photography and/or videography booths for taking of pictures and videos; Wedding photography services; August 24, 2015.

**INTERROGATORY NO. 18:** IDENTIFY each PERSON that was or is responsible for the development, design, marketing, or distribution of each APPLICANT OFFERING.

**ANSWER:** Applicant asserts the attorney-client privilege regarding information requested by the above interrogatory. Applicant withholds information covered by the attorney-client privilege, the spousal immunity privilege, and communications protected under FED. R. EVID. 408.

**INTERROGATORY NO. 19:** IDENTIFY each PERSON that was or is responsible for communicating with consumers regarding any APPLICANT OFFERING.

**ANSWER:** Instagram's shareholders and officers. See URL located here: <http://www.vannagramatx.com/contact-us>.

INTERROGATORY NO. 20: Describe in detail any advertising YOU have done or plan to do that uses the VANNAGRAM MARK, including without limitation the nature of such advertising, the geographic scope of such advertising, the cost of such advertising, and the duration of such advertising.

ANSWER: Applicant markets and advertises through printed publications and materials, online content, and printed marketing material; social media platforms, including Twitter, Pinterest, Facebook, Instagram, and others.

INTERROGATORY NO. 21: Describe any efforts YOU have made to enable the connectivity or integration between any APPLICANT OFFERING and any of Instagram's services, including the Instagram App or website, and IDENTIFY each app name that YOU used to request such connectivity or integration.

ANSWER: Applicant has not sought to develop an integrated platform to bridge the use of its services with the Instagram app. Applicant maintains profiles on social media platforms, including, without limitation, Twitter, Pinterest, Facebook, Instagram, and others. Applicant uses these platforms along with other print and non-print media to communicate, connect, and advertise its services to others.

INTERROGATORY NO. 22: IDENTIFY each Instagram username and/or developer/Application Program Interface account that YOU currently use or have previously used.

ANSWER: @VANNAGRAMATX

INTERROGATORY NO. 23: IDENTIFY all websites on which YOU have used the VANNAGRAM MARK, and the dates of such use.

ANSWER: See web domain located at the following link: <http://www.vannagramatx.com/>

INTERROGATORY NO. 24: Describe how YOU generate or plan to generate revenue from each APPLICANT OFFERING, including advertising revenue RELATING TO such goods and/or services.

ANSWER: Applicant objects to the interrogatory above on the grounds that it is not relevant to the claims and defenses asserted in this matter.

INTERROGATORY NO. 25: State the total revenues YOU have generated on a monthly basis from each APPLICANT OFFERING, including advertising revenue RELATING TO such goods and/or services.

ANSWER: Applicant objects to the interrogatory above on the grounds that it is not relevant to the claims and defenses asserted in this matter.

INTERROGATORY NO. 26: IDENTIFY any agreement, contract, and/or license YOU have entered into with any PERSON RELATING TO the VANNAGRAM MARK.

ANSWER: Will supplement.

INTERROGATORY NO. 27: IDENTIFY all MARKS that YOU have used in connection with any APPLICANT OFFERING.

ANSWER: Applicant objects to the interrogatory above on the grounds that it is not relevant to the claims and defenses asserted in this matter.

INTERROGATORY NO. 28: Describe every instance in which any PERSON (other than Instagram) has alleged that YOUR use of any MARK may induce the mistaken belief that YOU or any of YOUR goods and/or services were affiliated with or sponsored or approved by said PERSON. In describing every such instance, please include the PERSON, the date, the names of the people involved, and the context surrounding each instance.

ANSWER: None.

INTERROGATORY NO. 29: Describe every instance in which any of YOUR customers (actual or potential) inquired whether, or otherwise indicated the mistaken belief that, YOU or any of YOUR goods and/or services were affiliated with or sponsored or approved by any PERSON other than Instagram. In describing every such instance, please include the PERSON, the date, the names of the people involved, and the context surrounding each instance.

ANSWER: None.

INTERROGATORY NO. 30: IDENTIFY any relationship, business-related or otherwise, that YOU have or had with SHUTTERBUS.

ANSWER: None.

INTERROGATORY NO. 31: IDENTIFY any good or service in connection with which YOU have or had used the SHUTTERBUS LOGO.

ANSWER: None.

# **EXHIBIT E**



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

In re U.S. Trademark Application Serial No. 88/163,595  
Published on March 12, 2019 in the *Official Gazette*  
For: VANNAGRAM

INSTAGRAM, LLC,

*Opposer,*

v.

VANNAGRAM & CO., LLC.,

*Applicant.*

Opposition No. 91249394

**APPLICANT VANNAGRAM & CO., LLC'S RESPONSES AND OBJECTIONS TO  
OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS**

To: Opposer Instagram, LLC, Kollin J. Zimmermann, Larry W. McFarland, Kilpatrick  
Townsend & Stockton LLP, 9720 Wilshire Boulevard, Beverly Hills, CA 90212.

Pursuant to FED. R. CIV. P. 36(a)(3)-(4), Applicant Vannagram & Co., LLC serves these  
responses and objections to Opposer Instagram, LLC's first set of requests for admissions.

Dated: April 27, 2020

Respectfully Submitted,

By: /s/ Benton Williams II

BENTON WILLIAMS II

Texas Bar No. 24070854

100 Crescent Court, Suite 700

Dallas, Texas 75201

Direct: (214) 785-6205

Benton.Williams@bentonwilliamspllc.com

*Attorney for Applicant Vannagram & Co., LLC*

CERTIFICATE OF SERVICE

I, the undersigned attorney, hereby certify that a true and correct copy of the foregoing was served on all counsel of record on this the 27th day of April 2020.

/s/ Benton Williams II  
BENTON WILLIAMS II

APPLICANT VANNAGRAM & CO., LLC'S RESPONSES AND OBJECTIONS TO  
OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS

ASSERTION AND PRESERVATION OF PRIVILEGED COMMUNICATIONS AND ITEMS

In answering the requests for admissions below, Applicant expressly preserves and does not waive any privilege including, without limitation, those privileges protected by FED. R. EVID. 501 and FED. R. EVID. 502. Applicant provides the answers below without disclosing privileged material or communications.

STATEMENT OF DEFINITIONS USED IN APPLICANT'S RESPONSES BELOW

Applicant is not familiar with the ambiguous definition "Instagram Marks" as provided No. 4 of Opposer's definitions contained in Opposer's Requests for Admissions. Specifically, Applicant is unaware and unfamiliar with the ambiguous and unclear portion of the definition related to unidentified state or federal registrations of Opposer. Applicant, in responding to Opposer's discovery requests, will use the following definition for "Instagram Marks:" the Instagram marks identified in Opposer's Notice of Opposition and the registrations identified by U.S. Registration Numbers enumerated in Definition No. 4 of Opposer's requests, which are defined as the marks in U.S. Registration Nos. 4,146,057; 4,756,754; 4,795,634; 4,822,600; 4,827,509; 4,856,047; 4,863,594; 4,863,595; and 5,019,151.

Applicant is not familiar with the ambiguous definition "Trademark" and "Mark" as provided No. 11 of Opposer's definitions contained in Opposer's Requests for Admissions. Specifically Applicant is unaware and unfamiliar with the ambiguous and unclear portion of the definition related to "unregistered trademarks, service marks, and trade names; as well as trademarks, service marks, and trade names at common law in any jurisdiction" as well as "state registered trademarks, service marks, and trade names." Applicant, in responding to Opposer's discovery requests, will use the following definition for "Trademark" and "Mark:" the service mark that is the subject of Applicant's current application, identified as 88/163,595 and the Instagram marks in U.S. Registration Nos. 4,146,057; 4,756,754; 4,795,634; 4,822,600; 4,827,509; 4,856,047; 4,863,594; 4,863,595; and 5,019,151.

REQUEST FOR ADMISSION NO. 1: Admit that YOU did not use each and every one of the services identified in YOUR VANNAGRAM APPLICATION as of the "first use in commerce" date identified in YOUR VANNAGRAM APPLICATION.

RESPONSE: Deny.

REQUEST FOR ADMISSION NO. 2: Admit that YOU are not currently licensed by Opposer to use any of the INSTAGRAM MARKS in connection with any APPLICANT OFFERING.

RESPONSE: Deny.

**REQUEST FOR ADMISSION NO. 3:** Admit that YOU are not currently authorized by Opposer to use any of the INSTAGRAM MARKS in connection with any APPLICANT OFFERING.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 4:** Admit that YOU do not contest Opposer's ownership of any of the INSTAGRAM MARKS.

**RESPONSE:**

**REQUEST FOR ADMISSION NO. 5:** Admit that YOU do not contest the validity of any of Opposer's applications for the INSTAGRAM MARKS.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 6:** Admit that YOU do not contest the validity of any of Opposer's registrations for the INSTAGRAM MARKS.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 7:** Admit that the INSTAGRAM MARKS are widely recognized by the general consuming public of the United States as a designation of source of Instagram's goods or services.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 8:** Admit that at the time YOU filed YOUR VANNAGRAM APPLICATION, the INSTAGRAM MARKS were widely recognized by the general consuming public of the United States as a designation of source of Instagram's goods or services.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 9:** Admit that at the time YOU started using YOUR VANNAGRAM MARK in the United States, the INSTAGRAM MARKS were widely recognized by the general consuming public of the United States as a designation of source of Instagram's goods or services.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 10:** Admit that the INSTAGRAM MARKS are distinctive.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 11:** Admit that the INSTAGRAM MARKS were distinctive at the time YOU filed YOUR VANNAGRAM APPLICATION.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 12:** Admit that the INSTAGRAM MARKS were distinctive at the time YOU started using YOUR VANNAGRAM MARK in the United States.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 13:** Admit that the services listed in YOUR VANNAGRAM APPLICATION are similar to at least some of the services for which the INSTAGRAM MARKS are registered.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 14:** Admit that the services listed in YOUR VANNAGRAM APPLICATION are related to at least some of the services for which the INSTAGRAM MARKS are registered.

**RESPONSE:** Admit to the extent the Instagram Marks identify photography services, deny as to the remainder of the request.

**REQUEST FOR ADMISSION NO. 15:** Admit that YOU were aware of Instagram prior to YOUR selection and adoption of the VANNAGRAM MARK.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 16:** Admit that YOU were aware of one or more of the INSTAGRAM MARKS prior to YOUR selection and adoption of the VANNAGRAM MARK.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 17:** Admit that YOU were aware of Instagram prior to the time YOU filed YOUR VANNAGRAM APPLICATION.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 18:** Admit that YOU were aware of one or more of the INSTAGRAM MARKS prior to the time YOU filed YOUR VANNAGRAM APPLICATION.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 19:** Admit that YOU did not conduct a trademark clearance search prior to filing YOUR VANNAGRAM APPLICATION.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 20:** Admit that YOU did not seek legal advice CONCERNING YOUR decision to select and adopt the VANNAGRAM MARK prior to filing YOUR VANNAGRAM APPLICATION.

**RESPONSE:** Applicant asserts the privilege of attorney-client communications to the above request and asserts the request calls for privileged information.

**REQUEST FOR ADMISSION NO. 21:** Admit that Opposer did not consent to YOUR use of the VANNAGRAM MARK.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 22:** Admit that Opposer did not consent to YOUR filing of the VANNAGRAM APPLICATION.

**RESPONSE:** Admit to the extent Applicant did not expressly ask Opposer whether Opposer expressly consented to Applicant's application.

**REQUEST FOR ADMISSION NO. 23:** Admit that YOUR use of the VANNAGRAM MARK is likely to call to mind Instagram for a significant portion of the United States consuming public.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 24:** Admit that YOUR use of the VANNAGRAM MARK is likely to call to mind Instagram for at least a portion of the United States consuming public.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 25:** Admit that YOU intended YOUR use of the VANNAGRAM MARK to call to mind Instagram for a significant portion of the United States consuming public.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 26:** Admit that YOU intended YOUR use of the VANNAGRAM MARK to call to mind Instagram for at least a portion of the United States consuming public.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 27:** Admit that YOUR selection of the VANNAGRAM MARK was based on Opposer's INSTAGRAM MARKS.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 28:** Admit that the component "AGRAM" as it appears in the VANNAGRAM MARK is a reference to Instagram.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 29:** Admit that the component "GRAM" as it appears in the VANNAGRAM MARK is a reference to Instagram.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 30:** Admit that at least one APPLICANT OFFERING was, during at least one point in time, intended to be used in connection with the Instagram application platform.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 31:** Admit that during at least one point in time, the target customers for at least one APPLICANT OFFERING include Instagram users.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 32:** Admit that during at least one point in time, at least one Instagram user was also an APPLICANT OFFERING customer.

**RESPONSE:** Admit.

**REQUEST FOR ADMISSION NO. 33:** Admit that YOU have during at least one point in time, used at least one Instagram good or service in connection with an APPLICANT OFFERING.

**RESPONSE:** Admit to the extent Applicant has posted information about Applicant, including its name, products, and services, through the use of social media platforms and other methods of publication, including the Instagram social media platform. Deny as to the remainder of the request.

**REQUEST FOR ADMISSION NO. 34:** Admit that YOU use on a daily basis at least one Instagram good or service in connection with an APPLICANT OFFERING.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 35:** Admit that at least one APPLICANT OFFERING is marketed to Instagram users.

**RESPONSE:** Admit to the extent Applicant has posted information about Applicant, including its name, products, and services, through the use of social media platforms and other methods of publication, including the Instagram social media platform. Deny as to the remainder of the request.

**REQUEST FOR ADMISSION NO. 36:** Admit that YOU adopted the VANNAGRAM MARK with the intention of capitalizing on the goodwill of the INSTAGRAM MARKS.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 37:** Admit that the VANNAGRAM MARK and the INSTAGRAM MARKS are similar in visual appearance.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 38:** Admit that the VANNAGRAM MARK and the INSTAGRAM MARKS are similar in sound.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 39:** Admit that the VANNAGRAM MARK and the INSTAGRAM MARKS are similar in connotation.

**RESPONSE:** Deny.



**REQUEST FOR ADMISSION NO. 40:** Admit that the VANNAGRAM MARK and the INSTAGRAM MARKS create a similar commercial impression.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 41:** Admit that consumers exercise a low degree of care when deciding whether to purchase any APPLICANT OFFERING.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 42:** Admit that YOU market or advertise at least one APPLICANT OFFERING in at least one channel that is the same as a channel in which an Instagram good or service is marketed or advertised.

**RESPONSE:** Admit to the extent Applicant has posted information about Applicant, including its name, products, and services, through the use of social media platforms and other methods of publication, including the Instagram social media platform. Deny as to the remainder of the request.

**REQUEST FOR ADMISSION NO. 43:** Admit that YOU market or advertise at least one APPLICANT OFFERING in at least one channel that is similar to a channel in which an Instagram good or service is marketed or advertised.

**RESPONSE:** Admit to the extent Applicant has posted information about Applicant, including its name, products, and services, through the use of social media platforms and other methods of publication, including the Instagram social media platform. Deny as to the remainder of the request.

**REQUEST FOR ADMISSION NO. 44:** Admit that YOU provide, sell, or distribute at least one APPLICANT OFFERING in at least one channel that is the same as a channel in which an Instagram good or service is provided, sold, or distributed.

**RESPONSE:** Admit to the extent Applicant has posted information about Applicant, including its name, products, and services, through the use of social media platforms and other methods of publication, including the Instagram social media platform. Deny as to the remainder of the request.

**REQUEST FOR ADMISSION NO. 45:** Admit that YOU provide, sell, or distribute at least one APPLICANT OFFERING in at least one channel that is similar to a channel in which an Instagram good or service is provided, sold, or distributed.

**RESPONSE:** Admit to the extent Applicant has posted information about Applicant, including its name, products, and services, through the use of social media platforms and other methods of

publication, including the Instagram social media platform. Deny as to the remainder of the request.

**REQUEST FOR ADMISSION NO. 46:** Admit that YOUR use of the VANNAGRAM MARK is likely to cause consumer confusion regarding the source, sponsorship, approval, or affiliation between the VANNAGRAM MARK and the INSTAGRAM MARKS.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 47:** Admit that the VANNAGRAM MARK is deceptively similar to the INSTAGRAM MARKS so as to cause consumer confusion as to the origin of the goods and/or services offered under the VANNAGRAM MARK.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 48:** Admit that the VANNAGRAM MARK is deceptively similar to the INSTAGRAM MARKS so as to cause mistake as to the origin of the goods and/or services offered under the VANNAGRAM MARK.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 49:** Admit that the VANNAGRAM MARK is deceptively similar to the INSTAGRAM MARKS so as to deceive the public as to the origin of the goods and/or services offered under the VANNAGRAM MARK.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 50:** Admit that YOU are aware of at least one instance of consumer confusion regarding YOUR VANNAGRAM MARK and the INSTAGRAM MARKS.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 51:** Admit that YOU are aware of at least one instance of consumer confusion regarding the goods and/or services offered under the VANNAGRAM MARK and the INSTAGRAM MARKS.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 52:** Admit that YOUR registration of the VANNAGRAM MARK is likely to harm the goodwill of the INSTAGRAM MARKS.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 53:** Admit that YOUR registration of the VANNAGRAM MARK is likely to harm the reputation of the INSTAGRAM MARKS.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 54:** Admit that YOUR registration of the VANNAGRAM MARK is likely to impair the distinctiveness of the INSTAGRAM MARKS.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 55:** Admit that when designing the VANNAGRAM LOGO, YOU were aware of the SHUTTERBUS LOGO.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 56:** Admit that the design of the VANNAGRAM LOGO was influenced by the SHUTTERBUS LOGO.

**RESPONSE:** Deny.

**REQUEST FOR ADMISSION NO. 57:** Admit that when YOU designed the VANNAGRAM LOGO, YOU copied at least one element of the SHUTTERBUS LOGO.

**RESPONSE:** Deny.

# **EXHIBIT F**

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

In re U.S. Trademark Application Serial No. 88/163,595  
Published on March 12, 2019 in the *Official Gazette*  
For: VANNAGRAM

INSTAGRAM, LLC,

*Opposer,*

v.

VANNAGRAM & CO., LLC.,

*Applicant.*

Opposition No. 91249394

**APPLICANT VANNAGRAM & CO., LLC'S RESPONSES AND OBJECTIONS TO  
OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION**

To: Opposer Instagram, LLC, Kollin J. Zimmermann, Larry W. McFarland, Kilpatrick Townsend & Stockton LLP, 9720 Wilshire Boulevard, Beverly Hills, CA 90212.

Pursuant to FED. R. CIV. P. 36(a)(3)-(4), Applicant Vannagram & Co., LLC serves these responses and objections to Opposer Instagram, LLC's first set of requests for production.

Dated: April 27, 2020

Respectfully Submitted,

By: /s/ Benton Williams II

BENTON WILLIAMS II

Texas Bar No. 24070854

100 Crescent Court, Suite 700

Dallas, Texas 75201

Direct: (214) 785-6205

Benton.Williams@bentonwilliamspllc.com

*Attorney for Applicant Vannagram & Co., LLC*

**CERTIFICATE OF SERVICE**

I, the undersigned attorney, hereby certify that a true and correct copy of the foregoing was served on all counsel of record on this the 27th day of April 2020.

/s/ Benton Williams II  
BENTON WILLIAMS II

APPLICANT VANNAGRAM & CO., LLC'S RESPONSES AND OBJECTIONS TO  
OPPOSER'S FIRST SET OF REQUESTS FOR PRODUCTION

ASSERTION AND PRESERVATION OF PRIVILEGED COMMUNICATIONS AND ITEMS

In answering the requests for production below, Applicant expressly preserves and does not waive any privilege including, without limitation, those privileges protected by FED. R. EVID. 501 and FED. R. EVID. 502. Applicant provides the answers below without disclosing privileged material or communications.

STATEMENT OF DEFINITIONS USED IN APPLICANT'S RESPONSES BELOW

Applicant is not familiar with the ambiguous definition "Instagram Marks" as provided No. 4 of Opposer's definitions contained in Opposer's Requests for Production. Specifically, Applicant is unaware and unfamiliar with the ambiguous and unclear portion of the definition related to unidentified state or federal registrations of Opposer. Applicant, in responding to Opposer's discovery requests, will use the following definition for "Instagram Marks:" the Instagram marks identified in Opposer's Notice of Opposition and the registrations identified by U.S. Registration Numbers enumerated in Definition No. 4 of Opposer's requests, which are defined as the marks in U.S. Registration Nos. 4,146,057; 4,756,754; 4,795,634; 4,822,600; 4,827,509; 4,856,047; 4,863,594; 4,863,595; and 5,019,151.

Applicant is not familiar with the ambiguous definition "Trademark" and "Mark" as provided No. 11 of Opposer's definitions contained in Opposer's Requests for Production. Specifically Applicant is unaware and unfamiliar with the ambiguous and unclear portion of the definition related to "unregistered trademarks, service marks, and trade names; as well as trademarks, service marks, and trade names at common law in any jurisdiction" as well as "state registered trademarks, service marks, and trade names." Applicant, in responding to Opposer's discovery requests, will use the following definition for "Trademark" and "Mark:" the service mark that is the subject of Applicant's current application, identified as 88/163,595 and the Instagram marks in U.S. Registration Nos. 4,146,057; 4,756,754; 4,795,634; 4,822,600; 4,827,509; 4,856,047; 4,863,594; 4,863,595; and 5,019,151.

REQUEST FOR PRODUCTION NO. 1: All DOCUMENTS that support or were otherwise used, identified, relied upon, reviewed, or referenced in connection with YOUR responses to Instagram's First Set of Interrogatories.

RESPONSE: See documents produced and identified as VANNAGRAM 0001 through VANNAGRAM 00242.

REQUEST FOR PRODUCTION NO. 2: All DOCUMENTS that support or were otherwise used, identified, relied upon, reviewed, or referenced in connection with YOUR responses to Instagram's First Set of Requests for Admissions.

RESPONSE: See documents produced and identified as VANNAGRAM 0001 through VANNAGRAM 00242.

REQUEST FOR PRODUCTION NO. 3: All DOCUMENTS that support or were otherwise used, identified, relied upon, reviewed, or referenced in connection with any allegations made by YOU in YOUR ANSWER.

RESPONSE: See documents produced and identified as VANNAGRAM 0001 through VANNAGRAM 00242.

REQUEST FOR PRODUCTION NO. 4: For each service identified in YOUR VANNAGRAM APPLICATION, please produce DOCUMENTS sufficient to show YOUR first use in commerce of the VANNAGRAM MARK in connection with each particular service.

RESPONSE: See documents produced and identified as VANNAGRAM 0001 through VANNAGRAM 00242.

REQUEST FOR PRODUCTION NO. 5: All DOCUMENTS RELATING TO YOUR first awareness of any INSTAGRAM MARK.

RESPONSE: See pre-litigation demand letter served on Applicant by Opposer regarding the registration of Applicant's service mark.

REQUEST FOR PRODUCTION NO. 6: All DOCUMENTS RELATING TO every instance in which one of YOUR customers (actual or potential) inquired whether, or otherwise indicated the mistaken belief that, YOU or any of YOUR goods and/or services were affiliated with or sponsored or approved by Instagram.

RESPONSE: None.

REQUEST FOR PRODUCTION NO. 7: All DOCUMENTS describing, identifying, or RELATING TO YOUR target market for any APPLICANT OFFERING.

RESPONSE: Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).



**REQUEST FOR PRODUCTION NO. 8:** All DOCUMENTS RELATING TO YOUR understanding of the degree of care exercised by consumers when deciding whether to purchase any APPLICANT OFFERING.

**RESPONSE:** Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

**REQUEST FOR PRODUCTION NO. 9:** All DOCUMENTS RELATING TO YOUR selection and adoption of the VANNAGRAM MARK, including COMMUNICATIONS RELATING TO the conception and selection process.

**RESPONSE:** Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

Applicant objects to the above request on the grounds that it seeks to invade the attorney-client privilege. The documents sought by the above request are protected from disclosure by the attorney-client privilege and as attorney work product. In addition, the request above seeks documents prepared in anticipation of litigation. FED. R. EVID. 501 and 502.

Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

**REQUEST FOR PRODUCTION NO. 10:** All DOCUMENTS RELATING TO YOUR design of the VANNAGRAM LOGO, including COMMUNICATIONS RELATING TO the design, conception, and selection process.

**RESPONSE:** Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

Applicant objects to the above request on the grounds that it seeks to invade the attorney-client privilege. The documents sought by the above request are protected from disclosure by the attorney-client privilege and as attorney work product. In addition, the request above seeks documents prepared in anticipation of litigation. FED. R. EVID. 501 and 502.

Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 11: DOCUMENTS sufficient to show the channels in which YOU market or advertise, or intend to market or advertise, each APPLICANT OFFERING.

RESPONSE: Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

Applicant objects to the above request on the grounds that it seeks to invade the attorney-client privilege. The documents sought by the above request are protected from disclosure by the attorney-client privilege and as attorney work product. In addition, the request above seeks documents prepared in anticipation of litigation. FED. R. EVID. 501 and 502.

Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 12: DOCUMENTS sufficient to show the channels in which YOU provide, sell, or distribute, or intend to provide, sell, or distribute, each APPLICANT OFFERING.

RESPONSE: Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

Applicant objects to the above request on the grounds that it seeks to invade the attorney-client privilege. The documents sought by the above request are protected from disclosure by the attorney-client privilege and as attorney work product. In addition, the request above seeks documents prepared in anticipation of litigation. FED. R. EVID. 501 and 502.

Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the

discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

See documents produced and identified as VANNAGRAM 0001 through VANNAGRAM 000242.

**REQUEST FOR PRODUCTION NO. 13:** DOCUMENTS sufficient to show the price range in which YOU sell, or intend to sell, each APPLICANT OFFERING.

**RESPONSE:** Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

**REQUEST FOR PRODUCTION NO. 14:** All DOCUMENTS RELATING TO any plans YOU have to expand YOUR goods and/or services offered in connection with the VANNAGRAM MARK.

**RESPONSE:** Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

Applicant objects to the above request on the grounds that it seeks to invade the attorney-client privilege. The documents sought by the above request are protected from disclosure by the attorney-client privilege and as attorney work product. In addition, the request above seeks documents prepared in anticipation of litigation. FED. R. EVID. 501 and 502.

Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

**REQUEST FOR PRODUCTION NO. 15:** All DOCUMENTS RELATING TO YOUR decision to attempt to register the VANNAGRAM MARK with the United States Patent and Trademark Office.

**RESPONSE:** Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

Applicant objects to the above request on the grounds that it seeks to invade the attorney-client privilege. The documents sought by the above request are protected from disclosure by the attorney-client privilege and as attorney work product. In addition, the request above seeks documents prepared in anticipation of litigation. FED. R. EVID. 501 and 502.

Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

**REQUEST FOR PRODUCTION NO. 16:** All DOCUMENTS RELATING TO the connectivity or integration between any APPLICANT OFFERING and any of Instagram's services, including the Instagram app or website and Instagram's Application Program Interface ("API").

**RESPONSE:** Will supplement.

**REQUEST FOR PRODUCTION NO. 17:** All DOCUMENTS RELATING TO every Instagram username, page, and/or developer/API account name that YOU currently use or have previously used.

**RESPONSE:** Applicant objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1). Applicant objects to the request above on the grounds that the request is seeking information that is not proportional to the needs of the case and is beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

See documents identified as VANNAGRAM 00225 through VANNAGRAM 000242.

**REQUEST FOR PRODUCTION NO. 18:** All DOCUMENTS CONCERNING Instagram and/or any INSTAGRAM MARK.

**RESPONSE:** See documents produced and identified as VANNAGRAM 0001 through VANNAGRAM 000242.

**REQUEST FOR PRODUCTION NO. 19:** All DOCUMENTS CONCERNING this above-captioned OPPOSITION proceeding.

**RESPONSE:** See documents produced and identified as VANNAGRAM 0001 through VANNAGRAM 000242.

**REQUEST FOR PRODUCTION NO. 20:** All DOCUMENTS CONCERNING COMMUNICATIONS between YOU and Opposer, or any current or former employee or agent of Opposer, regarding the VANNAGRAM MARK.

**RESPONSE:** Applicant objects on the grounds that the documents requested are equally accessible by Opposer and are in its possession.

**REQUEST FOR PRODUCTION NO. 21:** All DOCUMENTS exchanged between YOU and any past, present, or anticipated business partners or investors RELATING TO any APPLICANT OFFERING.

**RESPONSE:** Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

**REQUEST FOR PRODUCTION NO. 22:** DOCUMENTS sufficient to show all goods and/or services YOU have ever offered in the United States under a MARK that contains the term INSTA or GRAM, or a variation of INSTA or GRAM as part of a MARK.

**RESPONSE:** See documents produced and identified as VANNAGRAM 0001 through VANNAGRAM 000242.

**REQUEST FOR PRODUCTION NO. 23:** DOCUMENTS sufficient to show the name, job title, and job description of every PERSON that was or is responsible for the development, design, marketing, and/or distribution of any APPLICANT OFFERING.

**RESPONSE:** Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

**REQUEST FOR PRODUCTION NO. 24:** All DOCUMENTS CONCERNING any marketing or advertising YOU have done or plan to do that uses the VANNAGRAM MARK, including without limitation DOCUMENTS showing the cost, scope, channels, and duration of such marketing or advertising, as well as any COMMUNICATIONS RELATING TO the development and design of such marketing or advertising.

**RESPONSE:** Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1). Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request

is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

*See* documents produced and identified as VANNAGRAM 0001 through VANNAGRAM 000242.

**REQUEST FOR PRODUCTION NO. 25:** DOCUMENTS sufficient to show all websites and webpages on which YOU have used or intend to use the VANNAGRAM MARK, including images and URL addresses of such websites and webpages.

**RESPONSE:** *See* documents produced and identified as VANNAGRAM 0001 through VANNAGRAM 000242. *See also* answers to interrogatories served April 27, 2020.

**REQUEST FOR PRODUCTION NO. 26:** All DOCUMENTS RELATING TO YOUR current and future business plans or strategies to generate revenue from any APPLICANT OFFERING.

**RESPONSE:** Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. Fed. R. Evid. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. Fed. R. Civ. P. 26(b)(1).

Applicant objects to the above request on the grounds that it seeks to invade the attorney-client privilege. The documents sought by the above request are protected from disclosure by the attorney-client privilege and as attorney work product. In addition, the request above seeks documents prepared in anticipation of litigation. Fed. R. Evid. 501 and 502.

Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under Fed. R. Civ. P. 26(b)(1).

**REQUEST FOR PRODUCTION NO. 27:** DOCUMENTS sufficient to show the total revenues YOU have generated on a monthly basis from each APPLICANT OFFERING, including DOCUMENTS sufficient to show YOUR advertising revenue RELATING TO each APPLICANT OFFERING.

**RESPONSE:** Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. Fed. R. Evid. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. Fed. R. Civ. P. 26(b)(1).

Applicant objects to the above request on the grounds that it seeks to invade the attorney-client privilege. The documents sought by the above request are protected from disclosure by the attorney-client privilege and as attorney work product. In addition, the request above seeks documents prepared in anticipation of litigation. Fed. R. Evid. 501 and 502.

Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 28: All DOCUMENTS CONCERNING any agreement, contract, or license YOU have entered into with any PERSON RELATING TO the VANNAGRAM MARK.

RESPONSE: Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 29: All DOCUMENTS CONCERNING any instances of actual confusion, mistake, deception, or association of any kind between YOU and Opposer or between any APPLICANT OFFERING and any of Opposer's goods or services.

RESPONSE: None.

REQUEST FOR PRODUCTION NO. 30: All DOCUMENTS described, identified, referenced, or relied upon in YOUR Rule 26 initial disclosure statement.

RESPONSE: See documents produced and identified as VANNAGRAM 0001 through VANNAGRAM 000242.

REQUEST FOR PRODUCTION NO. 31: DOCUMENTS sufficient to show YOUR DOCUMENT retention and destruction policy.

RESPONSE: Applicant will supplement.

REQUEST FOR PRODUCTION NO. 32: All DOCUMENTS CONCERNING any business plans, forecasts, or projections RELATING TO any APPLICANT OFFERING.

RESPONSE: Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

Applicant objects to the above request on the grounds that it seeks to invade the attorney-client privilege. The documents sought by the above request are protected from disclosure by the attorney-client privilege and as attorney work product. In addition, the request above seeks documents prepared in anticipation of litigation. FED. R. EVID. 501 and 502.

Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 33: All DOCUMENTS CONCERNING any marketing research, surveys, or studies conducted by YOU or on YOUR behalf RELATING TO any APPLICANT OFFERING and the consumers or users of such good or service.

RESPONSE: Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. Fed. R. Evid. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. Fed. R. Civ. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 34: All DOCUMENTS identifying or describing YOUR current or potential competitors with respect to each APPLICANT OFFERING.

RESPONSE: Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

Applicant objects to the above request on the grounds that it seeks to invade the attorney-client privilege. The documents sought by the above request are protected from disclosure by the attorney-client privilege and as attorney work product. In addition, the request above seeks documents prepared in anticipation of litigation. FED. R. EVID. 501 and 502.

Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).



**REQUEST FOR PRODUCTION NO. 35:** All DOCUMENTS CONCERNING any preparations to use the VANNAGRAM MARK in commerce, including any business plans, pitches, or proposals to potential business partners, investors, advertisers, or customers.

**RESPONSE:** Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

Applicant objects to the above request on the grounds that it seeks to invade the attorney-client privilege. The documents sought by the above request are protected from disclosure by the attorney-client privilege and as attorney work product. In addition, the request above seeks documents prepared in anticipation of litigation. FED. R. EVID. 501 and 502.

Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

**REQUEST FOR PRODUCTION NO. 36:** Please produce a representative example of every usage of the VANNAGRAM MARK in commerce, including usage on or in connection with any APPLICANT OFFERING, as well as usage in promotional and marketing materials.

**RESPONSE:** Applicant objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

**REQUEST FOR PRODUCTION NO. 37:** All DOCUMENTS CONCERNING any alternate names and/or designs YOU considered for use in connection with any APPLICANT OFFERING.

**RESPONSE:** Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

**REQUEST FOR PRODUCTION NO. 38:** DOCUMENTS sufficient to show the demographics of YOUR current and/or intended customers of each APPLICANT OFFERING.

**RESPONSE:** Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not

proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 39: All DOCUMENTS CONCERNING any customer feedback or complaints YOU have received about any APPLICANT OFFERING that RELATE TO Instagram.

RESPONSE: None.

REQUEST FOR PRODUCTION NO. 40: All DOCUMENTS CONCERNING any efforts YOU made to search or clear MARKS containing INSTA or GRAM within the United States, including without limitation the VANNAGRAM MARK.

RESPONSE: Applicant will supplement with non-privileged responsive documents.

REQUEST FOR PRODUCTION NO. 41: All DOCUMENTS RELATING TO YOUR selection, adoption, and/or design of any MARK (other than the VANNAGRAM MARK and VANNAGRAM LOGO) that YOU have used in connection with any APPLICANT OFFERING, including COMMUNICATIONS RELATING TO the design, conception, and selection process.

RESPONSE: Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

Applicant objects to the above request on the grounds that it seeks to invade the attorney-client privilege. The documents sought by the above request are protected from disclosure by the attorney-client privilege and as attorney work product. In addition, the request above seeks documents prepared in anticipation of litigation. FED. R. EVID. 501 and 502.

Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 42: All DOCUMENTS CONCERNING any allegation from any PERSON (other than Instagram) that YOUR use of any MARK may induce the mistaken belief that YOU or any of YOUR goods and/or services were affiliated with or sponsored or approved by said PERSON.

RESPONSE: None.

REQUEST FOR PRODUCTION NO. 43: All DOCUMENTS CONCERNING any instances of actual confusion, mistake, deception, or association of any kind between YOU and any PERSON (other than Instagram) or between any APPLICANT OFFERING and any PERSON'S (other than Instagram's) goods and/or services.

RESPONSE: Applicant objects to the above request on the grounds that the request seeks the disclosure of trade secrets without an adequate protective order covering such documents. FED. R. EVID. 501 and 502. Applicant further objects on the grounds that the request is not proportional to the needs of the case and is not relevant to the claims and defenses asserted in this matter. FED. R. CIV. P. 26(b)(1).

Applicant objects to the above request on the grounds that it seeks to invade the attorney-client privilege. The documents sought by the above request are protected from disclosure by the attorney-client privilege and as attorney work product. In addition, the request above seeks documents prepared in anticipation of litigation. FED. R. EVID. 501 and 502.

Applicant objects to the request above on the grounds that the request is seeking information beyond the scope of the parties' claims or defenses. The request is unlikely to result in the discovery of items relevant to the claims and defenses asserted in this matter under FED. R. CIV. P. 26(b)(1).

REQUEST FOR PRODUCTION NO. 44: All DOCUMENTS RELATING TO SHUTTERBUS.

RESPONSE: None.

REQUEST FOR PRODUCTION NO. 45: All DOCUMENTS RELATING TO the SHUTTERBUS LOGO.

RESPONSE: None.

REQUEST FOR PRODUCTION NO. 46: All COMMUNICATIONS RELATING TO SHUTTERBUS.

RESPONSE: None.

REQUEST FOR PRODUCTION NO. 47: All COMMUNICATIONS with SHUTTERBUS.

RESPONSE: None.

REQUEST FOR PRODUCTION NO. 48: All COMMUNICATIONS RELATING TO the SHUTTERBUS LOGO.

RESPONSE: None.

REQUEST FOR PRODUCTION NO. 49: All DOCUMENTS RELATING TO any connection YOU have or had with SHUTTERBUS.

RESPONSE: None.

REQUEST FOR PRODUCTION NO. 50: All DOCUMENTS RELATING TO any connection YOU have or had with the SHUTTERBUS LOGO.

RESPONSE: None.

# **EXHIBIT G**

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

*In re* U.S. Trademark Application Serial No. 88/163,595  
Published on March 12, 2019 in the *Official Gazette*  
For: **VANNAGRAM**

INSTAGRAM, LLC,

*Opposer,*

v.

VANNAGRAM & CO., LLC.,

*Applicant.*

Opposition No. 91249394

**APPLICANT VANNAGRAM & CO., LLC'S AMENDED ANSWERS TO  
OPPOSER'S FIRST SET OF INTERROGATORIES**

To: Opposer Instagram, LLC, Kollin J. Zimmermann, Larry W. McFarland, Kilpatrick Townsend & Stockton LLP, 9720 Wilshire Boulevard, Beverly Hills, CA 90212.

Pursuant to FED. R. CIV. P. 33(b), Applicant Vannagram & Co., LLC serves these amended answers to Opposer Instagram, LLC's first set of interrogatories.

Dated: December 18, 2020

Respectfully Submitted,

By:           /s/ Benton Williams II            
BENTON WILLIAMS II  
Texas Bar No. 24070854

100 Crescent Court, Suite 700  
Dallas, Texas 75201  
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[BW@bentonwilliamspllc.com](mailto:BW@bentonwilliamspllc.com)

*Attorney for Applicant Vannagram & Co., LLC*

**APPLICANT VANNAGRAM & CO., LLC'S AMENDED ANSWERS TO  
OPPOSER'S FIRST SET OF INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify each person that furnished information for any of your responses to these interrogatories, designating the number of the interrogatories for which each person furnished information.

**ANSWER:**

**Thomas Benton Williams II, Esq., Nos. 1-27**

**Emily Forsythe, Nos. 1-27**

**Jared Shrode, Nos. 1-27**

**Interrogatory NO. 2:** For each service identified in your Vannagram application, state the date you first used the Vannagram mark in Commerce in connection with each particular service.

**ANSWER:**

**Digital imaging services: December 8, 2015 (VANNAGRAM 000768; VANNAGRAM 000770)**

**Photographic computer imaging: December 8, 2015 (VANNAGRAM 000768; VANNAGRAM 000770)**

**Photography: August 5, 2020 (VANNAGRAM 000755)**

**Photography services: August 5, 2020 (VANNAGRAM 000755; VANNAGRAM 000763; VANNAGRAM 000770)**

**Portrait photography: August 5, 2020 (VANNAGRAM 000755; VANNAGRAM 000763; VANNAGRAM 000770)**

**Portrait photography services: August 5, 2020 (VANNAGRAM 000755; VANNAGRAM 000763; VANNAGRAM 000770)**

**Rental of portable photography and/or videography booths for taking of pictures and videos: September 23, 2015 (VANNAGRAM 000763; VANNAGRAM 000766; VANNAGRAM 000767; VANNAGRAM 000768; VANNAGRAM 000769; VANNAGRAM 000770; VANNAGRAM 000770; VANNAGRAM 000774; VANNAGRAM 000775)**

**Wedding photography services: Prior to December 19, 2015 (VANNAGRAM 000772; VANNAGRAM 000773; VANNAGRAM 000792; VANNAGRAM 000793; VANNAGRAM 000794)**

**INTERROGATORY NO. 3:** For each service identified in your Vannagram application, state the number of the document you produced evidencing such use as of the date stated by you and your response to Interrogatory No. 2 above.

**ANSWER:**

**Digital imaging services: December 8, 2015 (VANNAGRAM 000768; VANNAGRAM 000770)**

**Photographic computer imaging: December 8, 2015 (VANNAGRAM 000768; VANNAGRAM 000770)**

**Photography: August 5, 2020 (VANNAGRAM 000755)**

**Photography services: August 5, 2020 (VANNAGRAM 000755; VANNAGRAM 000763; VANNAGRAM 000770)**

**Portrait photography: August 5, 2020 (VANNAGRAM 000755; VANNAGRAM 000763; VANNAGRAM 000770)**

**Portrait photography services: August 5, 2020 (VANNAGRAM 000755; VANNAGRAM 000763; VANNAGRAM 000770)**

**Rental of portable photography and/or videography booths for taking of pictures and videos: September 23, 2015 (VANNAGRAM 000763; VANNAGRAM 000766; VANNAGRAM 000767; VANNAGRAM 000768; VANNAGRAM 000769; VANNAGRAM 000770; VANNAGRAM 000770; VANNAGRAM 000774; VANNAGRAM 000775)**

**Wedding photography services: Prior to December 19, 2015 (VANNAGRAM 000772; VANNAGRAM 000773; VANNAGRAM 000792; VANNAGRAM 000793; VANNAGRAM 000794)**



**INTERROGATORY NO. 4:** State the date on which you first became aware of any Instagram mark.

**ANSWER:** Approximately on or about June 2, 2013.

**INTERROGATORY NO. 6:** Describe your target market for each applicant offering, including age range, gender distribution, geographic location, and any other demographics used by you to identify your target market.

**ANSWER:** Applicant's target market for each applicant offering identified in its application is largely one and the same. The target market for Applicant's services includes an age range between 18 years old and 49 years old. The gender distribution of Applicant's target market tends to remain equally distributed between male and female. The geographic location of Applicant's target market, generally, focuses on the southwestern United States with an emphasis on the state of Texas.

**INTERROGATORY NO. 7:** Describe how you selected and adopted the Vannagram mark. Please include the date range in which the selection process occurred, identify the persons involved, any other marks that were considered, and any other contact surrounding the conception and selection process.

**ANSWER:** Applicant's current principals are a married husband and wife with two small children. The names of Applicant's principals are Emily Forsythe and Jared Shrode. The following describes the selection process by which Applicant's principals created the Vannagram mark. Applicant is the owner of a photo booth that is a customized, unique, retrofitted Volkswagen Van. Inside of which are offered the suite of service offerings that forms the basis for Applicant's efforts to seek trademark registration. Among owners of vintage Volkswagen vans like the 1979 model Applicant owns, the community of owners identify their vehicle by giving it a unique name. The name of Applicant's Volkswagen van is "Anna the Vanna." See documents produced and identified as VANNAGRAM 000823 through VANNAGRAM 000828. The name of Applicant's Volkswagen Van is named in honor of its prior owner, whose name was "Anna." Applicant assigned this name to the Volkswagen Van to honor its prior owner. The latter part of the name "Vanna" is a derivative of the name "Anna" but also identifies the nature of the photo booth which is a van. This forms the basis of the name of the photo booth, which is "Anna the Vanna." Applicant adopted the name of its company, "Vannagram" partly in furtherance of the name of the Volkswagen van and partly to designate that the photo booth is used for photography services that customers publish on social media platforms and share with one another. The term gram is a suffix that refers to something drawn or written, like a telegram.

**INTERROGATORY NO. 8:** Describe how and why you selected the design of the Vannagram logo. Please include the date range in which it was designed, identify the persons involved, any other designs that were considered, and any other context surrounding the design, conception, and selection process.

**ANSWER:** The design of the logo must be circular, because it must attach to the front of, and replace, the circular logo of the Volkswagen Van inside of which is Applicant's photo booth. *See* document produced and identified as VANNAGRAM 000746; VANNAGRAM 000766; VANNAGRAM 000800; VANNAGRAM 000812; VANNAGRAM 000824; VANNAGRAM 000893. The dates for the process of designing the circular logo ranged from approximately October 15, 2015 through December 15, 2015. The design process carried out by Applicant's principals. Applicant's principals are a husband and wife, and are named Emily Forsythe and Jared Shrode.

**INTERROGATORY NO. 11:** State the price range in which you sell, or intend to sell, each applicant offering.

**ANSWER:** Applicant's price range for each applicant offering identified in its application is generally the same, but fluctuates depending upon the length of time a potential customer would like to rent the photo booth that Applicant provides. The shortest length of time for which a customer may rent the photo booth is approximately two hours. The price range for this amount of time begins at \$995.00. The longest length of time for which a customer may rent the photo booth is six hours, and the price increases from \$995.00 upward to reflect the proportionately higher number of hours the customer pays to rent the photo booth and use the suite of services that Applicant offers. Those services are each identified in response to Interrogatory Nos. 2 and 3, above.

**INTERROGATORY NO. 13:** Describe all plans you have to expand your goods and or services offered in connection with the Vannagram mark.

**ANSWER:** Due to the ongoing COVID-19 pandemic, the restrictions on public gatherings and travel with which the pandemic is associated, Applicant's plans to expand both the activity and supply of the services Applicant offers remain uncertain. If and when the COVID-19 pandemic recedes, Applicant anticipates returning to the ordinary level of activity it maintained previously. However, the plans identified in this answer remain subject to change as the safety and health conditions within Applicant's geographic area remain subject to constant and uncertain change.

**INTERROGATORY NO. 14:** Identify each person who had any involvement in your decision to attempt to register the Vannagram Mark with the United States Patent and Trademark office.

**ANSWER:**

**Thomas Benton Williams II, Esq.  
Michael S. Ybarra, Esq.  
Emily Forsythe  
Jared Shrode**

**INTERROGATORY NO. 15:** Describe in detail all communications between you and any person concerning the trademark rights of opposer, including the date and place of the communication, the manner of the communication, the substance of the communication, and every person who participated in or otherwise has knowledge of the communication.

**ANSWER:**

**Applicant has had conversations with its attorneys in this proceeding regarding the rights and remedies of both Applicant and Opposer, that range from 2018 through the present day. The conversations, while privileged, have proceeded over the telephone and in writing. Applicant's principals have communicated with one another regarding similar subject matter over a period of time that began in 2018 and continued through the present day. These communications consist largely of the exchange of positions taken in this proceeding by Opposer and Applicant. Those communications largely relate to the position that Applicant is a photography vendor that focuses on providing a photo booth in settings that largely are located at large, public gatherings such as music festivals, concerts, weddings, and other live events in the southwestern United States. The conversations also focus on the discussion of Applicant's position that its mark differs from Opposer's mark with regard to the products and services each party offers and provides, the differences of the appearance of the word marks themselves, and the fact that Applicant does not offer or maintain a social media platform nor does it seek to offer social media platforms to the public.**

**INTERROGATORY NO. 16:** Identify your past, present, and anticipated business partners or investors relating to each applicant offering.

**ANSWER:** Emily Forsythe and Jared Shrode are Applicant's sole past and present business partners and investors, and Applicant does not anticipate any change in this arrangement.

**INTERROGATORY NO. 18:** IDENTIFY each PERSON that was or is responsible for the development, design, marketing, or distribution of each APPLICANT OFFERING.

**ANSWER:** Emily Forsythe and Jared Shrode

**INTERROGATORY NO. 19:** IDENTIFY each PERSON that was or is responsible for communicating with consumers regarding any APPLICANT OFFERING.

**ANSWER:** Emily Forsythe and Jared Shrode

**INTERROGATORY NO. 20:** Describe in detail any advertising YOU have done or plan to do that uses the VANNAGRAM MARK, including without limitation the nature of such advertising, the geographic scope of such advertising, the cost of such advertising, and the duration of such advertising.

**ANSWER:** Applicant markets and advertises using social media and regional industry publications such as bridal publications, bridal expositions, and other regional based methods such as local newspapers within the Austin, Texas metropolitan area. Applicant generally markets and advertises within the Southwestern United States generally and inside the state of Texas specifically. Due to the ongoing COVID-19 pandemic, the frequency, geographic scope, costs, and nature of Applicant's advertising have largely diminished to inactive status given the restrictions on public gatherings, restrictions on travel, and the prohibition of attending live events, such as music festivals, concerts, and weddings.

**INTERROGATORY NO. 23:** IDENTIFY all websites on which YOU have used the VANNAGRAM MARK, and the dates of such use.

**ANSWER:** Twitter: January 3, 2020; January 9, 2020; February 13, 2020; February 20, 2020; March 25, 2020; April 22, 2020; May 6, 2020; June 2, 2020; June 21, 2020; November 3, 2020 For additional dates beginning on December 1, 2015 and continuing through 2019, *see* documents produced and identified as VANNAGRAM 000855 through VANNAGRAM 000892.

Facebook: Beginning on November 17, 2015 and continuing through to the present day. For the year 2020, the dates of posting material consist of January 3, 2020; January 9, 2020; February 13, 2020; February 20, 2020; March 25, 2020; April 22, 2020; May 6, 2020; June 2, 2020; June 21, 2020; and November 3, 2020.

Instagram: January 3, 2020; January 9, 2020; February 13, 2020; February 20, 2020; March 25, 2020; April 22, 2020; May 6, 2020; June 2, 2020; June 21, 2020; November 3, 2020. For additional dates beginning on August 5, 2015 and continuing through 2019, *see* documents produced and identified as VANNAGRAM 000755;

**VANNAGRAM 000762; VANNAGRAM 000767;and VANNAGRAM 000768 through VANNAGRAM 000809.**

**LinkedIn: Beginning on or about January 15, 2016 and continuing through the present day.**

**VannagramATX.com: Beginning on or about August 24, 2015 and continuing through the present day.**

**TheKnot.com: Beginning on or about January 15, 2016 and continuing through the present day.**

**Weddingwire.com: Beginning on or about April 23, 2016 and continuing through the present day.**

**Findglocal.com: Beginning on or about January 15, 2019 and continuing through the present day.**

**INTERROGATORY NO. 24: Describe how YOU generate or plan to generate revenue from each APPLICANT OFFERING, including advertising revenue RELATING TO such goods and/or services.**

**ANSWER: As discussed in Applicant's Answer to Interrogatory No. 11 above, Applicant's pricing depends significantly upon the length of time a customer pays to rent Applicant's photo booth. Applicant's photo booth, and the rental of the photo booth, carry a suite of service offerings. The suite of service offerings that are associated with the rental of Applicant's photo booth are those designated in Applicant's application for registration as well as Applicant's answers to Interrogatory Nos. 2 and 3 above. When a customer pays to rent the photo booth, the minimum length of time for which the customer may rent it is two (2) hours. The minimum price for this length of time is \$995.00. Applicant generates revenue by increasing the number of hours for which a customer rents the photo booth and the number of events for which a customer rents the photo booth. However, due to the ongoing COVID-19 pandemic and the attendant restrictions on travel, prohibitions of public gatherings and live events, such as weddings, concerts, and music festivals, Applicant's generation of revenue has been reduced drastically in the same manner that all other vendors that focus upon live, public gatherings have sustained drastic, if not total, elimination of their revenue streams and plans to increase it.**

**INTERROGATORY NO. 25:** State the total revenues YOU have generated on a monthly basis from each APPLICANT OFFERING, including advertising revenue RELATING TO such goods and/or services.

**ANSWER:** Approximately \$7,500 each month until March 15, 2020. Since that time, Applicant's monthly revenue, much like the domestic economy generally, has been reduced by the ongoing COVID-19 pandemic to approximately \$0.00 to \$1,000 per month, including advertising revenue.

**INTERROGATORY NO. 26:** IDENTIFY any agreement, contract, and/or license YOU have entered into with any PERSON RELATING TO the VANNAGRAM MARK.

**ANSWER:** None other than attorney agreements to register Applicant's mark with the United States Patent & Trademark Office and the agreement of Vanagram, LLC to discontinue its use of the Vanagram mark.

**INTERROGATORY NO. 27:** IDENTIFY all MARKS that YOU have used in connection with any APPLICANT OFFERING.

**ANSWER:** Vannagram & Co., LLC and Vannagram.

Dated: December 18, 2020

Respectfully Submitted,

By: /s/ Benton Williams II  
BENTON WILLIAMS II  
Texas Bar No. 24070854

100 Crescent Court, Suite 700  
Dallas, Texas 75201  
Direct: (214) 785-6205  
[BW@bentonwilliamspllc.com](mailto:BW@bentonwilliamspllc.com)

*Attorney for Applicant Vannagram & Co., LLC*

**CERTIFICATE OF SERVICE**

I, the undersigned attorney, hereby certify that a true and correct copy of the foregoing was served on all counsel of record on this the 18th day of December 2020.

/s/ Benton Williams II  
BENTON WILLIAMS II

**VERIFICATION**

I am the corporate representative of Vannagram & Co., LLC. I have read the foregoing interrogatories and answers. The information provided above is within my personal knowledge and is true and correct. I have read the foregoing interrogatories and the answers to those interrogatories, which are true according to the best of my knowledge, information, and belief. I declare under penalty of perjury that the foregoing is true and correct.

Dated: December \_\_\_\_, 2020

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Printed Name

# **EXHIBIT H**



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

*In re* U.S. Trademark Application Serial No. 88/163,595  
Published on March 12, 2019 in the *Official Gazette*  
For: **VANNAGRAM**

INSTAGRAM, LLC,

*Opposer,*

v.

VANNAGRAM & CO., LLC.,

*Applicant.*

Opposition No. 91249394

**APPLICANT VANNAGRAM & CO., LLC'S AMENDED RESPONSES TO  
OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS**

To: Opposer Instagram, LLC, Kollin J. Zimmermann, Larry W. McFarland, Kilpatrick  
Townsend & Stockton LLP, 9720 Wilshire Boulevard, Beverly Hills, CA 90212.

Pursuant to FED. R. CIV. P. 36(a)(3)-(4), Applicant Vannagram & Co., LLC serves these  
amended responses to Opposer Instagram, LLC's first set of requests for admissions.

Dated: December 18, 2020

Respectfully Submitted,

By: /s/ Benton Williams II  
BENTON WILLIAMS II  
Texas Bar No. 24070854

100 Crescent Court, Suite 700  
Dallas, Texas 75201  
Direct: (214) 785-6205  
[BW@bentonwilliamspllc.com](mailto:BW@bentonwilliamspllc.com)

*Attorney for Applicant Vannagram & Co., LLC*

**CERTIFICATE OF SERVICE**

I, the undersigned attorney, hereby certify that a true and correct copy of the foregoing was served on all counsel of record on this the 18th day of December 2020.

/s/ Benton Williams II  
BENTON WILLIAMS II

**APPLICANT VANNAGRAM & CO., LLC'S AMENDED RESPONSES  
TO OPPOSER'S FIRST SET OF REQUESTS FOR ADMISSIONS**

**REQUEST FOR ADMISSION NO. 22:** Admit that Opposer did not consent to YOUR filing of the VANNAGRAM APPLICATION.

**RESPONSE:** Deny.