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

Proceeding	91250353
Party	Defendant Mark's Work Wearhouse Ltd.
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Attachments	REPLY IN SUPPORT OF MOTION TO COMPEL WORK WEAR- HOUSE.pdf(143388 bytes )

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

The Men's Wearhouse, Inc.

Opposer,

vs.

Mark's Work Wearhouse Ltd.

Applicant.

Opposition No.: 91250353  
Mark: WORK WEARHOUSE  
Serial No.: 88034113

**REPLY BRIEF OF APPLICANT MARK'S  
WORK WEARHOUSE LTD. ON ITS  
MOTION FOR AN ORDER TO COMPEL  
DISCOVERY**

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Mark's Work Wearhouse Ltd. ("Applicant") submits this reply brief on its motion to compel discovery in Opposition No. 91250353. The Men's Wearhouse, Inc. ("Opposer") has opposed the motion. As an initial matter, Opposer insinuates that its many delays in properly responding to Applicant's discovery requests are solely a result of the COVID-19 pandemic. However, Applicant served its initial discovery requests on Opposer in October 2019, well before the pandemic could have impacted Opposer and its affiliated companies. Additionally, Opposer opines that it produced numerous discovery documents on the same day that Applicant filed its Motion to Compel. However, Opposer failed to mention that it served these documents *after* the Motion to Compel was filed, indicating Opposer was sitting on over a thousand documents that it had promised to produce over a month prior to the filing of the Motion to Compel in an effort to further delay the proceedings.

Opposer's continued failure to complete its production of documents and properly respond to Applicant's initial discovery requests is unfairly inhibiting Applicant's ability to defend its case as Opposer incorrectly asserts its recent document productions and supplemental interrogatories have mooted the disputed issues. As discussed in detail in the Motion to Compel, Opposer previously indicated it expected to complete production, including the production of relevant emails, and provide updated responses to Applicant's Interrogatories by the end of July 2020. While Opposer has now produced some additional documents and some updated documents, production is not complete as Opposer has continued to almost exclusively provide publicly available information and documents that do not comprehensively address Applicant's Interrogatories or Requests for Production. Accordingly, Applicant maintains its respectful request that the Board order Opposer to provide proper responses to Applicant's initial discovery requests and produce the remainder of the documents and things in its possession, custody, or control that are responsive to the Discovery Requests. For example, as discussed in the Motion to Compel, which is incorporated by reference:

- Opposer still has not properly responded to Applicant's Interrogatories regarding Opposer's knowledge of third party rampant use, registration, and attempted registration of trademarks and other phrase(s) that include or consist of WEARHOUSE and challenges to the same. For example, Opposer's initial and supplementary responses to Interrogatories 12 and 13 are wholly insufficient to address these Interrogatories, and the documents submitted by Opposer in reference to these Interrogatories are almost entirely publicly available documents that do not constitute a comprehensive overview of Opposer's awareness of third party WEARHOUSE marks and its efforts to enforce its rights in its allegedly famous marks; and

- Opposer has not produced any emails that are responsive to the discovery requests. Opposer has not produced any emails that are responsive to the discovery requests, despite Applicant's multiple requests for this information, and Opposer's stance that these requests are overbroad appears to be a further attempt to delay the proceedings.

Finally, Opposer indicates that Applicant's document production is in some way incomplete, despite never previously addressing this concern with Applicant. The volume of documents produced by Applicant is not relevant to the pending motion and is not an issue that is currently before the Board at this point in time.

In view of the foregoing, Applicant respectfully requests the Motion to Compel be granted.

Respectfully submitted,

**BARNES & THORNBURG LLP**

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Date: October 9, 2020

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that a copy of this motion has been served on October 9, 2020 via email.

/s/ Kathleen S. Fennessy