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

Proceeding	91251448
Party	Defendant Sugar Lash Inc.
Correspondence Address	DAVID L OPPENHUIZEN OPPENHUIZEN LAW PLC MCKAY TOWER, STE 730 146 MONROE CENTER ST. NW GRAND RAPIDS, MI 49503 UNITED STATES docket@oppenhuizen.com, david@oppenhuizen.com 616-242-9550
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	David L. Oppenhuizen
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Signature	/David L. Oppenhuizen/
Date	06/26/2020
Attachments	MotionToCompelAndExhs_06262020.pdf(431686 bytes )

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

NOVALASH, INC.  Opposer,  vs.  SUGAR LASH INC.  Applicant.	Opposition No. 91251448 App. Ser. No. 87395581
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**APPLICANT'S MOTION TO COMPEL**

COMES NOW, Applicant and pursuant to TBMP §§ 523 and 411 and Rule 37 of the Federal Rules of Civil Procedure moves to compel Opposer to comply with its discovery obligations. In support of this Motion, Applicant states as follows:

1. Applicant served its First Interrogatories to Opposer on May 14, 2020. (Exh. A)
2. Applicant served its First Request for the Production of Documents and Things to Opposer on May 14, 2020. (Exh. B)
3. Opposer served its Objections and Responses to Respondent's First Set of Interrogatories on June 15, 2020. (Exh. C) The response to four of the seven interrogatories declined to state an answer, and alternatively stated that the answer to the interrogatory could be determined by examining the documents "to be produced in response to Applicant's Rule 34 requests for production."
4. Opposer served its Objections and Responses to Applicant's First Request for Production of Documents and Things on June 15, 2020. (Exh. D) Opposer's response to each of the 14 document requests stated that responsive documents would be produced.
5. However, not a single document was produced or made available on June 15, 2020

contemporaneously along with service of Opposer's responses to the discovery requests, nor have any documents been produced or made available since that time.

6. Rule 34(b)(2)(B) of the Federal Rules of Civil Procedure states that document "production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response." Opposer's discovery responses did not specify any time by which the documents would be produced.

7. To date, Opposer has still not produced any documents in response to Applicant's interrogatories or document requests.

8. On June 17, 2020, Applicant's counsel sent an email to Opposer's counsel requesting that Opposer's counsel identify a date when the documents would be made available. (Exh. E)

9. Opposer's counsel responded that same day via email, and indicated that he was "checking now" with the Opposer. Applicant's counsel has not received any response or update since that email. (Exh. E)

10. On June 24, 2020, Applicant's counsel sent an email to Opposer's counsel requesting an update on when the documents would be made available. Applicant's counsel further advised Opposer's counsel that he would be filing this Motion to Compel if documents were not produced by the end of that week – which is now over six weeks from the date of service of Applicant's discovery requests, and nearly two weeks from the deadline to respond to Applicant's discovery requests.

11. Opposer's counsel has not provided any justification or reasoning as to the delay.

12. Rather, Opposer's responses to the Applicant's interrogatories and document requests stated that responsive documents would be produced.

13. Opposer's counsel has not advised Applicant's counsel that he believes that no responsive and non-privileged documents exist.

14. Opposer's failure to produce even a single document, and the failure to even identify a date by which documents will be made available, makes it apparent that the Opposer's delay is not based upon any reasonable justification, but that it is rather an attempt to not participate in discovery.

15. This is propounded by the fact that numerous of Opposer's interrogatory responses were not responsive on their face, and many answers provided a blanket response that the answer could be determined by Applicant using the documents were going to be produced.

16. Accordingly, the Opposer is in possession of responsive documents, some of which include information sufficient to answer a number of the Applicant's interrogatories. The Opposer has not provided any justification for the delay in producing the documents, nor has it even identified a date by which the documents will be produced in the future.

17. The requested documents that have not been produced include, at a minimum:

- a. Documents containing information sufficient to determine the sales of CANDIED LASHES branded products in the U.S.A. on a yearly basis since 2007 (Exh. A, Interrog. No. 1);
- b. Documents containing information sufficient to identify each CANDIED LASHES branded product and service sold in the U.S.A. on a yearly basis since 2007 (Exh. A., Interrog. No. 2);
- c. Documents containing information sufficient to determine the amount of advertising expenditures for CANDIED LASHES branded products and services sold in the U.S.A. on a yearly basis since 2007 (Exh. A., Interrog. No.

- 4);
- d. Documents containing information sufficient to identify all instances of non-paid media coverage of CANDIED LASHES branded products or services (Exh. A., Interrog. No. 7);
  - e. Documents relating to Sugar Lash Inc. (Exh. B, Doc. Req. 1);
  - f. Documents relating to actual, potential, or alleged confusion between CANDIED LASHES and SUGARLASH (Exh. B, Doc. Req. 2);
  - g. Documents relating to actual, potential, or alleged confusion between CANDIED LASHES and any other mark (Exh. B, Doc. Req. 3);
  - h. Documents to substantiate the sales of any CANDIED LASHES branded products in the U.S.A. on a yearly basis since 2007, including invoices (Exh. B, Doc. Req. 4);
  - i. Any documents, including photographs, which depict each of NovaLash's CANDIED LASHES products sold since 2007 (Exh. B, Doc. Req. 5);
  - j. Any consumer surveys conducted for the purpose of determining alleged fame of CANDIED LASHES (Exh. B, Doc. Req. 6);
  - k. Any documents evidencing sales of CANDIED LASHES branded products or services, including sales reports (Exh. B, Doc. Req. 7);
  - l. Documents relating to the dollar share of the U.S. market for each CANDIED LASHES branded product or service (Exh. B, Doc. Req. 9);
  - m. Documents evidencing brand awareness of CANDIED LASHES by the consuming public (Exh. B, Doc. Req. 10);
  - n. Documents related to any licensed use of CANDIED LASHES by any party

- other than the Opposer (Exh. B, Doc. Req. 11);
- o. Documents related to any trademark searches for CANDIED LASHES (Exh. B, Doc. Req. 12);
  - p. Documents substantiating the Opposer's belief that CANDIED LASHES became a famous mark for purposes of a likelihood of confusion by 2012 (Exh. B, Doc. Req. 13).

Applicant moves this Board for an Order compelling Opposer, within five (5) days from the date of this Order, to make the above-identified documents available to the Applicant. Applicant further moves this Board for any other relief it deems appropriate.

WHEREFORE, Applicant respectfully requests that the Trademark Trial and Appeal Board grant its Motion to Compel and grant all other appropriate relief.

Respectfully Submitted,

SUGAR LASH INC.

Dated: June 26, 2020

By: /David L. Oppenhuizen/  
David L. Oppenhuizen  
Oppenhuizen Law PLC  
146 Monroe Center St. NW  
McKay Tower, Ste. 730  
Grand Rapids, MI 49503  
Tel: (616) 242-9550  
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communicated with me.

7. On June 23, 2020, I emailed Opposer's counsel and again requested him to notify me when the documents would be made available. I further advised him that I would be filing a Motion to Compel the document production if the documents were not produced by the end of the week. I did not receive any response from Opposer's counsel.

8. Opposer has not yet produced or made available a single document, and Opposer's counsel never responded to me following his June 17<sup>th</sup> statement that he was "checking now."

9. Pursuant to 37 C.F.R. § 2.120(f) and TBMP § 523.02, I have made a good faith effort to resolve the issues presented by Opposer's failure to produce documents in response to the discovery requests served upon it.

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

Dated: June 26, 2020

By: /David L. Oppenhuizen/  
David L. Oppenhuizen



**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of Applicant's Motion to Compel has been served on Opposer's counsel by emailing said copy on June 26, 2020 to the following addresses:

tmhou@conleyrose.com  
mmoscicki@conleyrose.com  
twarden@conleyrose.com

/David L. Oppenhuizen/  
David L. Oppenhuizen  
Attorney for Applicant

# Exhibit A

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

NOVALASH, INC.  Opposer,  vs.  SUGAR LASH INC.  Applicant.	Opposition No. 91251448 App. Ser. No. 87395581
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**APPLICANT’S FIRST INTERROGATORIES TO OPPOSER**

Pursuant to Trademark Rule of Practice 2.120 (37 U.S.C. § 2.120), Trademark Trial and Appeal Board Manual of Procedure § 405, and Federal Rules of Civil Procedure 26 and 33, Applicant Sugar Lash Inc. (“Applicant”) requests that Opposer NovaLash, Inc. (“Opposer” or NovaLash) answer the following Interrogatories, under oath and in writing, within 30 days after date of service.

For the purpose of these Interrogatories, the following definitions and instructions apply:

**DEFINITIONS**

1. The term "NovaLash," “you,” and “your” refer to Opposer and includes any persons controlled by or acting on behalf of NovaLash, Inc., including but not limited to all officers, employees, agents, representatives, licensees, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers, but not to include NovaLash’s attorney(s).
  
2. The term "Sugar Lash Inc.” refers to the Applicant and includes any persons controlled by or acting on behalf of those entities, including but not limited to all officers, directors, owners, employees, agents, representatives, and attorneys, and any predecessors, subsidiaries, parent companies, affiliated companies, or joint venturers.

3. The term "CANDIED LASHES" means any word, name, symbol or device or other designation of origin incorporating the letter string "CANDIED LASHES" or its phonetic equivalent, in which you claim rights, including any trademark, service mark, or Internet domain name.

4. The term "CANDIED LASHES registration," unless otherwise qualified, means trademark registration number 3944538 for the mark "CANDIED LASHES" with a registration date of April 12, 2011.

5. The term "SUGARLASH" means any word, name, symbol or device or other designation of origin incorporating the letter string "SUGARLASH" or its phonetic equivalent, in which Sugar Lash Inc. claim rights, including any trademark, service mark, or Internet domain name.

6. The term "SUGARLASH application," unless otherwise qualified, means trademark application serial number 87395581 for the mark "SUGARLASH" with a filing date of April 2, 2017.

7. The term "person" means any natural person, group of natural persons, any business, legal or governmental entity, or association.

8. The term "document" as used herein is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34, any "writings and recordings" and "photographs" as defined by Federal Rule of Evidence 1001, and its interpretation by the courts, and includes, without limitation, all originals, drafts, and non-identical copies of any written, printed, typed, recorded, electronic, magnetic, optical, punched, copied, graphic or other tangible thing in, upon or from which information may be conveyed, embodied, translated, or stored (including, but not limited to, papers, records, books, correspondence, contracts, minutes of meetings, memoranda, notes on desk calendars and appointment books, intra-office

communications, canceled checks, invoices, telegrams, telexes, dictation or other audio tapes, video tapes, studies, electronic mail, information stored in computer readable form, on a compact disc, or any other type of data storage device or medium, computer printouts, microfilm, microfiche, laser disks, diaries, calendars, photographs, charts, viewgraphs, drawings, sketches and all other writings or drafts thereof), as well as all other tangible things subject to production under Federal Rule of Civil Procedure 34.

9. The term “describe” means to give the date and a full and complete narrative account of the information requested without omission of any information.

10. The term “identify,” when referring to:

- a. a natural person, means to give his or her full name, present or last address and telephone number, last known place of employment and job title;
- b. a public or private corporation, partnership, association, agency or other entity, means to give its present or last known address and telephone number, and state of incorporation, if applicable;
- c. a document, means to state its general character, title, date, addressee or recipient, author or signatory, present location, and who has possession, custody or control of the document, provided, however, that answers to interrogatories requesting identifications or descriptions of certain communications or documents may be satisfied by attaching a true and correct copy of any written documents, as described herein, containing the requested information;
- d. a product, means to provide a description of the item which is offered for sale, and the intended market for the product;
- e. a service, means to describe the service and the intended market for the service.

11. The term “communication” is defined as any transmission or exchange of information between two or more persons, orally or in writing, and includes, without limitation, any conversation or discussion, whether face-to-face or by means of telephone, letter, facsimile, electronic or other media.
12. The terms “relating to” and “related to” mean, without limitation, concerning, containing, evidencing, describing, constituting, referring to, explaining, discussing or reflecting.
13. The use of a present tense includes past tenses.
14. The conjunctive form “and” and the disjunctive form “or” shall be mutually interchangeable and shall not be construed to limit any Interrogatory.
15. The use of the singular form of any word also includes the plural and vice versa.
16. The terms “all,” “any,” and “each” shall be mutually interchangeable and shall not be construed to limit any Interrogatory.

### **INSTRUCTIONS**

1. In answering these Interrogatories, furnish all information, including information contained in or on any document that is known or available to you, including all information in the possession of your attorneys or other persons acting on your behalf or under your attorneys’ employment or direction.
2. If you cannot answer any interrogatory fully and completely after exercising due diligence to make inquiries and secure information necessary to do so, so state, and answer each such interrogatory to the full extent you deem possible; specify the portion of such interrogatory that you claim you are unable to answer fully and completely; state the facts on which you rely to support your contention that you are unable to answer such interrogatory fully and completely;

and state what knowledge, information and/or belief you have concerning the unanswered portion of each such interrogatory.

3. If there is any item of information that you refuse to disclose on grounds of privilege or work-product immunity, answer so much of the interrogatory as does not request information for which you claim privilege, state the nature of the privilege you claim, and provide sufficient details, including the nature of the information, its source, its subject matter, and the names of all persons to whom that information was disclosed, such as would enable the claim of privilege or immunity to be adjudicated.

4. If the response to any interrogatory consists, in whole or in part, of an objection relating to burdensomeness, then with respect to such response:

- a. Provide such information as can be ascertained without undue burden;
- b. State with particularity the basis for such objection including:
  - i. a description of the process or method required to obtain any fact responsive to the interrogatory; and
  - ii. the estimated cost and time required to obtain any fact responsive to the interrogatory.

5. These interrogatories are continuing and require further answer and supplementation, as provided by Federal Rule of Civil Procedure 26(e).

## **INTERROGATORIES**

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

Identify the amount of sales of CANDIED LASHES branded products and services sold in the United States of America for each year since 2007 on a year-by-year basis in which the amount

of sales is broken down to identify the amount of sales of each specific CANDIED LASHES product and specific CANDIED LASHES service on a year-by-year basis.

INTERROGATORY NO. 2.

Identify each CANDIED LASHES branded product and service sold in the United States of America for each year since 2007 on a year-by-year basis.

INTERROGATORY NO. 3.

Identify and describe any consumer surveys conducted for the purposes of determining any alleged fame of CANDIED LASHES.

INTERROGATORY NO. 4.

Identify the amount of advertising expenditures for CANDIED LASHES branded products and services sold in the United States of America for each year since 2007 on a year-by-year basis in which the advertising expenditures are broken down to identify the amount spent in advertising of each specific CANDIED LASHES product and specific CANDIED LASHES service on a year-by-year basis.

INTERROGATORY NO. 5.

Identify the market share of CANDIED LASHES branded products or services, broken down per product and per service.



INTERROGATORY NO. 6.

State whether you believe CANDIED LASHES is a famous mark, and if so, identify when you believe CANDIED LASHES became famous.

INTERROGATORY NO. 7.

Identify and describe all instances of non-paid media coverage of CANDIED LASHES branded products or services, including identifying the source and date of the media coverage.

Respectfully Submitted,

SUGAR LASH INC.

Dated: May 14, 2020

By: /David L. Oppenhuizen/  
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McKay Tower, Ste. 730  
Grand Rapids, MI 49503  
Tel: (616) 242-9550  
Email: david@oppenhuizen.com

**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of Applicant's First Interrogatories to Opposer have been served on Opposer's counsel by emailing said copy on May 14, 2020 to the following addresses:

tmhou@conleyrose.com  
mmoscicki@conleyrose.com  
twarden@conleyrose.com

/David L. Oppenhuizen/  
David L. Oppenhuizen  
Attorney for Applicant

# Exhibit B



## INSTRUCTIONS

1. Applicant requests that Opposer produce the responsive documents as they are kept in the usual course of business or organized and label them to correspond with the document requests to which they are responsive.
2. If there are no documents responsive to a particular document request, Applicant requests that Opposer set forth such information in writing.
3. These requests shall be deemed to call for all non-identical copies of documents. A document with handwritten notes, editing marks, etc. shall not be deemed identical to one without such modifications, additions, or deletions.
4. If production of any documents is withheld on the basis of a claim of privilege or otherwise, state:
  - a. the title or identity of the document and a brief description of its subject matter, including a summary of any business or other non-legal matter contained in or discussed in said document;
  - b. the general nature of such documents (for example, if it is a letter, chart, memorandum, etc.), its length, and description of any documents or things attached, appended to, or transmitted with said documents;
  - c. the identity of each person who prepared or participated in the preparation of the document;
  - d. the identity of the intended recipients and all persons to whom the contents of the documents were communicated by copy, distribution, verbally, or by summarizing said document;
  - e. the date of said document;

- f. the document's present location and custodian for said document;
  - g. all other means of identifying said document with sufficient particularity to satisfy the requirements of identifying it for the Trademark Trial and Appeal Board;
  - h. the number of the specific Request said document is responsive to; and
  - i. the nature of the claimed applicable privilege (e.g., attorney-client, work product, etc.) or other basis for withholding said document.
5. If Opposer's response to any of the following requests is that the documents are not in Opposer's possession, custody, or control, Opposer will identify who has control of the document and/or the location of the document if the Opposer has knowledge with regard to said control and/or location.
6. If a request seeks a specific document or an itemized category that is not in the Opposer's possession, control, or custody, the Opposer shall provide any documents within the Opposer's possession, control, or custody that contain all or part of the information contained in the requested document or category.
7. In the event that any document or tangible thing to be produced herein has been destroyed, discarded, or is otherwise unavailable, the Opposer shall identify such document or thing, and in addition, shall specify: (a) the date of its destruction or commencement of its unavailability; (b) the reason for its destruction or unavailability; (c) the person authorizing its destruction or most knowledgeable with respect to its unavailability; and (d) the custodian of the document or thing immediately preceding its destruction or unavailability.

8. If document production in response to any of the following Requests should require additional documents in order to be made comprehensible or non-misleading, the Opposer shall include such additional documents as necessary.

9. The Opposer shall produce all documents in a form which renders the document susceptible to copying. The Opposer shall produce all documents according to the specific request to which the documents are responsive as they are kept in the usual course of business or organized and labeled to correspond to the following request.

10. If the Opposer is unable to comply fully with any request herein, the Opposer shall comply to the extent possible and provide an explanation as to why full compliance is not possible.

11. This request shall be deemed to be continuing. The Opposer's attention is directed to Rule 26(e)(1)(A) of the Federal Rules of Civil Procedure which provides as follows:

A party who has made a disclosure under Rule 26(a) — or who has responded to an interrogatory, request for production, or request for admission must supplement or correct its disclosure or response in a timely manner if the party learns that in some material respect the disclosure or response is incomplete or incorrect, and if the additional or corrective information has not otherwise been made known to the other parties during the discovery process or in writing.

### **DOCUMENTS AND THINGS TO BE PRODUCED**

1. All documents relating to Sugar Lash Inc.

2. All documents relating to any and all instances of actual, alleged, or potential confusion between CANDIED LASHES and SUGARLASH.

3. All documents relating to any and all instances of actual, alleged, or potential confusion between CANDIED LASHES and any other mark, including any mark owned by a third party to this Opposition No. 91251448.

4. All documents relating to and used to generate an Answer to Interrogatory No. 1 of the Applicant's First Interrogatories to Opposer, including but not limited to, invoices.
5. Documents, including photographs as defined by Federal Rule of Evidence 1001, which depict or display each of the CANDIED LASHES products or services sold by you since 2007.
6. Any consumer surveys conducted for the purposes of determining any alleged fame of CANDIED LASHES.
7. Any documents evidencing sales of CANDIED LASHES branded products or services, including sales reports.
8. All documents relating to and used to generate an Answer to Interrogatory No. 4 of the Applicant's First Interrogatories to Opposer.
9. All document relating to the market share held by each CANDIED LASHES branded product or service.
10. All documents evidencing brand awareness of CANDIED LASHES by the consuming public.
11. All documents relating to any licensed use of CANDIED LASHES by any person other than you.
12. All documents relating to any trademark searches for CANDIED LASHES.
13. All documents relating to and used to generate an Answer to Interrogatory No. 6 of the Applicant's First Interrogatories to Opposer.



14. All documents relating to non-paid media coverage of CANDIED LASHES branded products or services.

Respectfully Submitted,

SUGAR LASH INC.

Dated: May 14, 2020

By: /David L. Oppenhuizen/  
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Grand Rapids, MI 49503  
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**CERTIFICATE OF SERVICE**

I hereby certify that a true and accurate copy of Applicant's First Request for the Production of Documents and Things have been served on Opposer's counsel by emailing said copy on May 14, 2020 to the following addresses:

tmhou@conleyrose.com  
mmoscicki@conleyrose.com  
twarden@conleyrose.com

/David L. Oppenhuizen/  
David L. Oppenhuizen  
Attorney for Applicant

# Exhibit C

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

NOVALASH, INC.

Petitioner,

v.

SUGAR LASH INC.

Respondent.

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Opposition No. 91251448  
Mark: SUGARLASH  
Serial No. 87395581

**PETITIONER’S OBJECTIONS AND RESPONSES TO  
RESPONDENT’S FIRST SET OF INTERROGATORIES**

Pursuant to Fed. R. Civ. P. 26 and 33, and Trademark Rule of Practice 2.120, Petitioner NovaLash, Inc. (“NovaLash”) responds as follows to Respondent’s First Set of Interrogatories.

**PRELIMINARY STATEMENT**

The following responses are based upon the facts, documents, and information presently known and available to NovaLash. Discovery, investigation, research, and analysis are ongoing, and may disclose the existence of additional facts or documents, add meaning to known facts or documents, or lead to additions, variations, or changes to these responses.

Without obligating itself to do so, except to the extent required under the Federal Rules of Civil Procedure, NovaLash reserves the right to change or supplement these responses under Federal Rule of Civil Procedure 26(e) as additional facts or documents are discovered, revealed, recalled, or otherwise ascertained, and as further analysis, research, investigation, and discovery disclose additional facts, documents, interpretations, contentions, and/or legal theories which may apply. NovaLash specifically reserves the right to utilize any and all subsequently discovered

documents, information, or evidence at any later state of these proceedings.

The objections set forth below are intended to apply to all information provided pursuant to these requests. Furthermore, these responses do not in any way waive any objections by NovaLash, in this or in any subsequent proceeding, on any grounds, including objections as to the competency, relevancy, materiality, privilege, or admissibility of the responses, or the subject matter thereof.

NovaLash incorporates by reference each and every general objection set forth below into each specific response. The specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response shall not be interpreted as a waiver of any general objection to that response.

By responding to Respondent's Interrogatories, NovaLash does not waive any objection that may be applicable to: (a) the use, for any purpose, by Respondent, of any information or documents given in response to Respondent's Interrogatories; or (b) the admissibility, relevancy, or materiality of any of the information or documents to any issue in this case.

No incidental or implied admissions are intended by the responses herein. The fact that NovaLash has answered or objected to any Interrogatory should not be taken as an admission that Applicant accepts or admits the existence of any "fact" set forth or assumed by such request.

By stating that it will provide information in response to any particular Interrogatory, NovaLash makes no representation that any such information exists.

### **GENERAL OBJECTIONS**

1. NovaLash objects to these Interrogatories to the extent that they purport to impose burdens or duties that exceed the scope of reasonable and permissible discovery under the Federal Rules of Civil Procedure, the Trademark Rules of Practice, or any order in this Action.

2. NovaLash objects to these Interrogatories to the extent that they seek information or documents protected by the attorney-client privilege, work product doctrine, or any other applicable law, privilege, or protection. The production of any privileged information or document by NovaLash is unintentional, and NovaLash does not intend to waive any applicable objection or privilege as a result of such unintentional production. Except for items NovaLash may from time to time decide to include, NovaLash will not log protected items in connection with or in relation to the subject of this Cancellation dated subsequent to its commencement.

3. NovaLash objects to these Interrogatories to the extent that they seek information or documents beyond NovaLash's possession, custody, or control, or that calls for NovaLash to prepare documents or things that do not currently exist.

4. NovaLash objects to these Interrogatories which request "all" documents or information as overly broad and unnecessarily burdensome because the scope of request include any and all drafts, versions, revisions, and/or copies of the material requested—all of which may contain duplicative, redundant and irrelevant information.

### **RESPONSES TO INTERROGATORIES**

**INTERROGATORY NO. 1:** Identify the amount of sales of CANDIED LASHES branded products and services sold in the United States of America for

each year since 2007 on a year-by-year basis in which the amount of sales is broken down to identify the amount of sales of each specific CANDIED LASHES product and specific CANDIED LASHES service on a year-by-year basis.

RESPONSE NO. 1.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. Subject to and without waiving the foregoing general objections, NovaLash states as follows:

The answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing NovaLash's report of CANDIED LASHES sales, to be produced in response to Applicant's Rule 34 requests for production, whereby the burden of deriving or ascertaining the answer will be substantially the same for either party.

INTERROGATORY NO. 2: Identify each CANDIED LASHES branded product and service sold in the United States of America for each year since 2007 on a year-by-year basis.

RESPONSE NO. 2.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. Subject to and without waiving the foregoing general objections, NovaLash states as follows:

Pursuant to Fed. R. Civ. P. 33(d), the answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing NovaLash's report of CANDIED LASHES sales, to be produced in response to Applicant's Rule 34 requests for production, whereby the burden of deriving or ascertaining the answer will be substantially the same for either party.

INTERROGATORY NO. 3: Identify and describe any consumer surveys conducted for the purposes of determining any alleged fame of CANDIED LASHES.

RESPONSE NO. 3.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. Subject to and without waiving the foregoing general objections, NovaLash states as follows:

None.

INTERROGATORY NO. 4: Identify the amount of advertising expenditures for CANDIED LASHES branded products and services sold in the United States of America for each year since 2007 on a year-by-year basis in which the advertising expenditures are broken down to identify the amount spent in advertising of each specific CANDIED LASHES product and specific CANDIED LASHES service on a year-by-year basis.

RESPONSE NO. 4.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. NovaLash further specifically objects to the foregoing interrogatory, with respect to “each specific CANDIED LASHES product and specific CANDIED LASHES service” as seeking information that is not relevant to any party's claim or defense and is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery in resolving the issues. Subject to and without waiving the foregoing objections, NovaLash states as follows:

Pursuant to Fed. R. Civ. P. 33(d), the answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing NovaLash’s report of CANDIED LASHES advertising, to be produced in response to Applicant’s Rule 34 requests for production, whereby the burden of deriving or ascertaining the answer will be substantially the same for either party.

INTERROGATORY NO. 5: Identify the market share of CANDIED LASHES branded products or services, broken down per product and per service.

RESPONSE NO. 5.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. NovaLash further specifically objects to the foregoing interrogatory as vague and ambiguous with respect to the term “market share.” NovaLash assumes that this term means the dollar share of United States market for products. NovaLash further specifically objects to the foregoing interrogatory as seeking information that is not relevant to any party's claim or defense and is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties’



relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues. Subject to each of these objections, NovaLash states that it is not aware of such market share.

INTERROGATORY NO. 6: State whether you believe CANDIED LASHES is a famous mark, and if so, identify when you believe CANDIED LASHES became famous.

RESPONSE NO. 6.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. Subject to and without waiving the foregoing objections, NovaLash states as follows:

CANDIED LASHES acquired fame for the purpose of a likelihood of confusion in about 2012.

INTERROGATORY NO. 7: Identify and describe all instances of non-paid media coverage of CANDIED LASHES branded products or services, including identifying the source and date of the media coverage.

RESPONSE NO. 7.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. Subject to and without waiving the foregoing objections, NovaLash states as follows:

Pursuant to Fed. R. Civ. P. 33(d), the answer to this interrogatory may be determined by examining, auditing, compiling, abstracting, or summarizing NovaLash's copies of non-paid media coverage, to be produced in response to Applicant's Rule 34 requests for production, whereby the burden of deriving or ascertaining the answer will be substantially the same for either party.

Dated: June 15, 2020.

By: /Thomas L. Warden/  
Thomas L. Warden  
twarden@conleyrose.com  
Conley Rose, P.C.  
P.O. Box 3267  
Houston, TX 77352-3267  
(713) 238-8000  
(713) 238-8008 (facsimile)

*Counsel for Petitioner*

**CERTIFICATE OF SERVICE UNDER TBMP 113**

I HEREBY CERTIFY that a true and correct copy of this document, Petitioner's Objections and Responses to Respondent's First Set of Interrogatories, in Opposition No. 91251448 was sent by electronic mail to the following:

David L. Oppenhuizen  
Oppenhuizen Law PLLC  
McKay Tower, Ste 730 1460 Monroe Center St. NW  
Grand Rapids, MI 49503  
[david@oppenhuizen.com](mailto:david@oppenhuizen.com)  
[docket@oppenhuizen.com](mailto:docket@oppenhuizen.com)

*Attorney for Respondent*

On the 15th day of June, 2020.

/Thomas L. Warden/  
Thomas L. Warden

# Exhibit D

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

NOVALASH, INC.

Opposer,

v.

SUGAR LASH INC.

Applicant.

§  
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§

Opposition No. 91251448  
Mark: SUGARLASH  
Serial No. 87395581

**OPPOSER’S OBJECTIONS AND RESPONSES TO APPLICANT’S FIRST REQUEST  
FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Fed. R. Civ. P. 26 and 34, and Trademark Rule of Practice 2.120, Opposer NovaLash, Inc. (“NovaLash”) responds as follows to Applicant’s First Set of Requests for Production of Documents and Things.

**PRELIMINARY STATEMENT**

The following responses are based upon the facts, documents, and information presently known and available to NovaLash. Discovery, investigation, research, and analysis are ongoing, and may disclose the existence of additional facts or documents, add meaning to known facts or documents, or lead to additions, variations, or changes to these responses.

Without obligating itself to do so, except to the extent required under the Federal Rules of Civil Procedure, NovaLash reserves the right to change or supplement these responses under Federal Rule of Civil Procedure 26(e) as additional facts or documents are discovered, revealed, recalled, or otherwise ascertained, and as further analysis, research, investigation, and discovery disclose additional facts, documents, interpretations, contentions, and/or legal theories which may

apply. NovaLash specifically reserves the right to utilize any and all subsequently discovered documents, information, or evidence at any later state of these proceedings.

The objections set forth below are intended to apply to all information provided pursuant to these requests. Furthermore, these responses do not in any way waive any objections by NovaLash, in this or in any subsequent proceeding, on any grounds, including objections as to the competency, relevancy, materiality, privilege, or admissibility of the responses, or the subject matter thereof.

NovaLash incorporates by reference each and every general objection set forth below into each specific response. The specific response may repeat a general objection for emphasis or some other reason. The failure to include any general objection in any specific response shall not be interpreted as a waiver of any general objection to that response.

By responding to Applicant's requests, NovaLash does not waive any objection that may be applicable to: (a) the use, for any purpose, by Applicant, of any information or documents given in response to Applicant's requests; or (b) the admissibility, relevancy, or materiality of any of the information or documents to any issue in this case.

No incidental or implied admissions are intended by the responses herein. The fact that NovaLash has objected to or produced documents responsive to any request should not be taken as an admission that Applicant accepts or admits the existence of any "fact" set forth or assumed by such request.

By stating that it will provide information in response to any particular request, NovaLash makes no representation that any such information exists.

## **GENERAL OBJECTIONS**

1. NovaLash objects to these Requests to the extent that they purport to impose burdens or duties that exceed the scope of reasonable and permissible discovery under the Federal Rules of Civil Procedure, the Trademark Rules of Practice, or any order in this Action.

2. NovaLash objects to these Requests to the extent that they seek information or documents protected by the attorney-client privilege, work product doctrine, or any other applicable law, privilege, or protection. The production of any privileged information or document by NovaLash is unintentional, and NovaLash does not intend to waive any applicable objection or privilege as a result of such unintentional production. Except for items NovaLash may from time to time decide to include, NovaLash will not log protected items in connection with or in relation to the subject of this Cancellation dated subsequent to its commencement.

3. NovaLash objects to these Requests to the extent that they seek information or documents beyond NovaLash's possession, custody, or control, or that calls for NovaLash to prepare documents or things that do not currently exist.

4. NovaLash objects to those Requests which request "all" documents as overly broad and unnecessarily burdensome because the scope of request include any and all drafts, versions, revisions, and/or copies of the material requested—all of which may contain duplicative, redundant and irrelevant information. Moreover, "all documents relating to" any issues in this proceeding encompasses all attorney-client communications and attorney work product, such documents therefore privileged and immune from Applicant's discovery.

## **RESPONSES TO REQUESTS FOR PRODUCTION**

REQUEST NO. 1: All documents relating to Sugar Lash Inc.

RESPONSE TO REQUEST NO. 1.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. Subject to and without waiving the foregoing general objections, NovaLash states that it will produce any relevant, non-privileged, non-objectionable documents responsive to this Request identified through a reasonably diligent search of the materials within its possession, custody and control.

REQUEST NO. 2: All documents relating to any and all instances of actual, alleged or potential confusion between CANDIED LASHES and SUGARLASH.

RESPONSE TO REQUEST NO. 2.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. Subject to and without waiving the foregoing general objections, NovaLash states that it will produce any relevant, non-privileged, non-objectionable documents responsive to this Request identified through a reasonably diligent search of the materials within its possession, custody and control.

REQUEST NO. 3: All documents relating to any and all instances of actual, alleged, or potential confusion between CANDIED LASHES and any other mark, including any mark owned by a third party to this Opposition No. 91251448.

RESPONSE TO REQUEST NO. 3.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. Subject to and without waiving the foregoing general objections, NovaLash states that it will produce any relevant, non-privileged, non-objectionable documents responsive to this Request identified through a reasonably diligent search of the materials within its possession, custody and control.

REQUEST NO. 4: All documents relating to and used to generate an Answer to Interrogatory No. 1 of the Applicant's First Interrogatories to Opposer, including but not limited to, invoices.

RESPONSE TO REQUEST NO. 4.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. NovaLash particularly objects to the foregoing request as seeking as seeking documents beyond any actual sales report (e.g., invoices) which are not relevant to any party's claim or defense and/or the production of which is not proportional to the needs of the case, considering the importance of the issues at stake in the

action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues. Subject to and without waiving the foregoing general objections, NovaLash states that it will produce any relevant, non-privileged, non-objectionable documents responsive to this Request identified through a reasonably diligent search of the materials within its possession, custody and control.

REQUEST NO. 5: Documents, including photographs as defined by Federal Rule of Evidence 1001, which depict or display each of the CANDIED LASHES products or services sold by you since 2007.

RESPONSE TO REQUEST NO. 5.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. Subject to and without waiving the foregoing general objections, NovaLash states that it will only produce documents in its possession, custody, or control which are "sufficient to depict" each of such products.

REQUEST NO. 6: Any consumer surveys conducted for the purposes of determining any alleged fame of CANDIED LASHES.

RESPONSE TO REQUEST NO. 6.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. Subject to and without waiving the foregoing general objections, NovaLash states that it will produce any relevant, non-privileged, non-objectionable documents responsive to this Request identified through a reasonably diligent search of the materials within its possession, custody and control.

REQUEST NO. 7: Any documents evidencing sales of CANDIED LASHES branded products or services, including sales reports.

RESPONSE TO REQUEST NO. 7.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. NovaLash incorporates the General Objections set forth above, as if fully set forth herein. NovaLash particularly objects to the foregoing request as seeking as seeking documents beyond any actual sales report (e.g., other evidence of sale) which are not relevant to any party's claim or defense and/or the production of



which is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues. Subject to and without waiving the foregoing general objections, NovaLash states that it will produce any relevant, non-privileged, non-objectionable documents responsive to this Request identified through a reasonably diligent search of the materials within its possession, custody and control.

REQUEST NO. 8: All documents relating to and used to generate an Answer to Interrogatory No. 4 of the Applicant's First Interrogatories to Opposer.

RESPONSE TO REQUEST NO. 8.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. NovaLash particularly objects to the foregoing request as seeking as seeking documents beyond any reports of advertising expenditures, which other documents are not relevant to any party's claim or defense and/or the production of which is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues. Subject to and without waiving the foregoing general objections, NovaLash states that it will produce any relevant, non-privileged, non-objectionable documents responsive to this Request identified through a reasonably diligent search of the materials within its possession, custody and control.

REQUEST NO. 9: All document relating to the market share held by each CANDIED LASHES branded product or service.

RESPONSE TO REQUEST NO. 9.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. NovaLash further specifically objects to the foregoing interrogatory as vague and ambiguous with respect to the term "market share." NovaLash assumes that this term means the dollar share of United States market for products. NovaLash further specifically objects to the foregoing interrogatory as seeking information

that is not relevant to any party's claim or defense and is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues. Subject to and without waiving the foregoing general objections, NovaLash states that it will produce any relevant, non-privileged, non-objectionable documents responsive to this Request identified through a reasonably diligent search of the materials within its possession, custody and control.

REQUEST NO. 10: All documents evidencing brand awareness of CANDIED LASHES by the consuming public.

RESPONSE TO REQUEST NO. 10.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. Subject to and without waiving the foregoing general objections, NovaLash states that it will produce any relevant, non-privileged, non-objectionable documents responsive to this Request identified through a reasonably diligent search of the materials within its possession, custody and control.

REQUEST NO. 11: All documents relating to any licensed use of CANDIED LASHES by any person other than you.

RESPONSE TO REQUEST NO. 11.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. Subject to and without waiving the foregoing general objections, NovaLash states that it will produce any relevant, non-privileged, non-objectionable documents responsive to this Request identified through a reasonably diligent search of the materials within its possession, custody and control.

REQUEST NO. 12: All documents relating to any trademark searches for CANDIED LASHES.

RESPONSE TO REQUEST NO. 12.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. NovaLash particularly objects to the foregoing request as seeking as seeking documents that are not relevant to any party's claim or defense and/or the production of which is not proportional to the needs of the case,

considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues. Subject to and without waiving the foregoing general objections, NovaLash states that it will produce any relevant, non-privileged representative examples of documents responsive to this Request identified through a reasonably diligent search of the materials within its possession, custody and control.

REQUEST NO. 13: All documents relating to and used to generate an Answer to Interrogatory No. 6 of the Applicant's First Interrogatories to Opposer.

RESPONSE TO REQUEST NO. 13.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. NovaLash particularly objects to the foregoing request because a requests for "[a]ll documents relating to" the fame of Applicant's mark seeks documents that are not relevant to any party's claim or defense and/or the production of which is not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues. Subject to and without waiving the foregoing general objections, NovaLash states that it will produce any relevant, non-privileged representative examples of documents responsive to this Request identified through a reasonably diligent search of the materials within its possession, custody and control.

REQUEST NO. 14: All documents relating to non-paid media coverage of CANDIED LASHES branded products or services.

RESPONSE TO REQUEST NO. 14.

NovaLash incorporates the General Objections set forth above, as if fully set forth herein. Subject to and without waiving the foregoing general objections, NovaLash will produce any relevant, non-privileged examples of such media coverage identified through a reasonably diligent search of the materials within its possession, custody and control.

Dated: June 15, 2020.

By: /Thomas L. Warden/ \_\_\_\_\_

Thomas L. Warden  
twarden@conleyrose.com  
Conley Rose, P.C.  
P.O. Box 3267  
Houston, TX 77352-3267  
(713) 238-8000  
(713) 238-8008 (facsimile)

*Counsel for Applicant* \_\_\_\_\_

**CERTIFICATE OF SERVICE UNDER TBMP 113**

I HEREBY CERTIFY that a true and correct copy of this document, Opposer's Objections and Responses to Applicant's First Request For Production of Documents and Things, in Opposition No. 91251448 has been sent by was sent by electronic mail to the following:

David L. Oppenhuizen  
Oppenhuizen Law PLLC  
McKay Tower, Ste 730 1460 Monroe Center St. NW  
Grand Rapids, MI 49503  
[david@oppenhuizen.com](mailto:david@oppenhuizen.com)  
[docket@oppenhuizen.com](mailto:docket@oppenhuizen.com)

*Attorney for Applicant*

On the 15th day of June, 2020.

/Thomas L. Warden//

Thomas L. Warden

# Exhibit E

**From:** David Oppenhuizen  
**To:** [Thomas Warden](#)  
**Cc:** [Esther Williams](#); [Matthew Moscicki](#); [Melissa Kirchoff](#)  
**Bcc:** [Robbie Nissen](#)  
**Subject:** RE: Discovery Requests for Opposition No. 91251448 of SUGARLASH (2745-13900)  
**Date:** Tuesday, June 23, 2020 12:13:40 PM  
**Attachments:** [image001.png](#)  
[image015.png](#)

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Tom,

Please advise when you will be making the documents available. At this point you have not stated when the documents will be made available, and any further delay can hardly be considered reasonable. Please provide me an update on when the documents will be produced as soon as you are able.

In any event, if the documents are not produced by the end of the week then I will have no choice but to file a Motion to Compel, which will certainly be a bad look for your client before the TTAB.

Thank you,

Dave

**David L. Oppenhuizen**

Registered Patent Attorney



616-242-9550  
616-217-4135  
david@oppenhuizen.com  
www.oppenhuizen.com

146 Monroe Center NW  
McKay Tower, Suite 730  
Grand Rapids, MI 49503  
United States

---

**From:** Thomas Warden <twarden@conleyrose.com>  
**Sent:** Wednesday, June 17, 2020 5:25 PM  
**To:** David Oppenhuizen <david@oppenhuizen.com>  
**Cc:** Esther Williams <ewilliams@conleyrose.com>; Matthew Moscicki <mmoscicki@conleyrose.com>; Melissa Kirchoff <mkirchoff@conleyrose.com>  
**Subject:** RE: Discovery Requests for Opposition No. 91251448 of SUGARLASH (2745-13900)

Thanks, David. I am checking now.

---

**From:** David Oppenhuizen [<mailto:david@oppenhuizen.com>]

**Sent:** Wednesday, June 17, 2020 4:24 PM  
**To:** Thomas Warden  
**Cc:** Esther Williams; Matthew Moscicki; Melissa Kirchhoff  
**Subject:** RE: Discovery Requests for Opposition No. 91251448 of SUGARLASH (2745-13900)

Tom,

Thank you for those responses. I did not see a reasonable time identified in your document requests by which you will be producing the documents, as required by Fed. R. Civ. P. 34(b)(2)(B). Please advise when those documents will be made available so that we don't have to bother the TTAB with a Motion to Compel.

Thank you,

Dave

**David L. Oppenhuizen**

Registered Patent Attorney



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Grand Rapids, MI 49503  
United States

---

**From:** Thomas Warden <[twarden@conleyrose.com](mailto:twarden@conleyrose.com)>

**Sent:** Monday, June 15, 2020 11:18 PM

**To:** David Oppenhuizen <[david@oppenhuizen.com](mailto:david@oppenhuizen.com)>

**Cc:** Esther Williams <[ewilliams@conleyrose.com](mailto:ewilliams@conleyrose.com)>; Matthew Moscicki <[mmoscicki@conleyrose.com](mailto:mmoscicki@conleyrose.com)>; Melissa Kirchhoff <[mkirchhoff@conleyrose.com](mailto:mkirchhoff@conleyrose.com)>

**Subject:** RE: Discovery Requests for Opposition No. 91251448 of SUGARLASH (2745-13900)

David,

Attached are NovaLash's responses to Sugar Lash's discovery requests.

Thanks,

**Thomas L. Warden**  
**Principal | Conley Rose, P.C. | Intellectual Property Law**

---

575 N. Dairy Ashford Rd, Suite 1102 | Houston, TX 77079  
Direct: (713) 237-8331 | Main: (713) 238-8000





[twarden@conleyrose.com](mailto:twarden@conleyrose.com)

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---

**From:** David Oppenhuizen [<mailto:david@oppenhuizen.com>]  
**Sent:** Thursday, May 14, 2020 10:49 PM  
**To:** Thomas Warden  
**Cc:** Trademark Houston; Matthew Moscicki  
**Subject:** Discovery Requests for Opposition No. 91251448 of SUGARLASH

Tom,

Please find Sugar Lash Inc.'s first set of document requests, first set of interrogatories, and first set of requests for admissions.

Please confirm receipt of this message.

Thank you,

Dave

**David L. Oppenhuizen**

Registered Patent Attorney



 616-242-9550

616-217-4135

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