Trademark Trial and Appeal Board Electronic Filing System. https://estta.uspto.gov

ESTTA Tracking number: **ESTTA1136324**

Filing date: **05/25/2021**

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

Proceeding	91252482
Party	Defendant SEH International, Ltd.
Correspondence Address	MATHEW E CORR BOYLE FREDRICKSON SC 840 NORTH PLANKINTON AVENUE MILWAUKEE, WI 53203 UNITED STATES Primary Email: jpf@boylefred.com Secondary Email(s): docketing@boylefred.com, mec@boylefred.com 414-225-9755
Submission	Defendant's Notice of Reliance
Filer's Name	John P. Fredrickson
Filer's email	jpf@boylefred.com
Signature	/John P. Fredrickson/
Date	05/25/2021
Attachments	NON-CONFIDENTIAL 3RD NOR_Redacted.pdf(776271 bytes)

UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

Giorgio Armani S.p.A.	)	Opposition No. 91252482
	)	
	)	Serial No. 88/289218
Opposer,	)	
	)	
v.	)	
SEH International, Ltd.	)	
	)	
Applicant.	)	

NON-CONFIDENTIAL APPLICANT'S THIRD NOTICE OF RELIANCE

Pursuant to Rule 2.122(e) of the Trademark Rules of Practice, 37 C.F.R. § 2.122(e), and TBMP § 704.10, Applicant, SEH International, Ltd., hereby makes of record and notifies Opposer of its reliance on the following discovery responses of Opposer:

1. A true and correct copy of Opposer's Response to Applicant's First Set of Interrogatories, which is attached hereto as Exhibit 16. Applicant submits these interrogatory responses to show the inability of Opposer to identify sales and advertising amounts that pertain to the AX mark separate from Opposer's A|X, and Armani exchange marks and the absence of any actual confusion, among other things, which are relevant to the issue of the fame, strength, or weakness of Opposer's asserted mark.

2. A true and correct copy of Opposer's Response to Applicant's First Set of Requests for Admissions served in this proceeding, which is attached hereto as Exhibit 17. Applicant submits these admissions to show how Opposer characterized the sound, appearance, meaning and connotation of Opposer's asserted mark in order to allowance of its registration, and is relevant to the issue of likely confusion.

May 25, 2021

/John P. Fredrickson/

John P. Fredrickson
Mathew E. Corr
Boyle Fredrickson, S.C.
840 N. Plankinton
Milwaukee, WI 53203
Attorneys for Applicant SEH International, Ltd

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing NON-CONFIDENTIAL APPLICANT'S THIRD NOTICE OF RELIANCE, including any exhibits, has been served via email on May 25, 2021 upon Counsel for Opposer, Giorgio Armani S.p.A.: as shown below:

Paolo A. Strino
Gibbons P.C.
One Pennsylvania Plaza
New York, NY 1004
PStrino@gibbonslaw.com ipdocket@gibbonslaw.com

The undersigned further certifies that this document and its exhibits are being transmitted electronically to the Commissioner for Trademarks on May 25, 2021, by filing the same electronically at http://estta.uspto.gov/filing-type.jsp

/John P. Fredrickson/
John P. Fredrickson

EXHIBIT 16

Giorgio Armani S.p.A. V. SEH International, Ltd.
Opposition No. 91252482

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

In re Serial No.: 88/289,218
Mark: AXIO and Design
Published in the Official Gazette on May 28, 2019

Giorgio Armani S.p.A.	:	
Opposer,	:	
v.	:	Opposition No. 91252482
SEH International, Ltd.	:	
Applicant.	:	

Honorable Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSER'S RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES

Pursuant to Fed. R. Civ. P. 36, 37 CFR § 2.120 *et. seq.*, and TBMP § 407 *et. seq.*, Opposer, by and through its undersigned counsel, responds to Applicant's First Set of Interrogatories.

PRELIMINARY STATEMENT

The responses set forth herein, subject to inadvertent or undiscovered error, are based on and are therefore necessarily limited by, the records and information still in existence, presently recollected and thus far discovered in the course of the preparation of these responses to discovery requests. Opposer has not completed its investigation of the facts relating to this case, has not fully completed its discovery in this case, and has not completed its preparation for trial of this case. All the responses made below are based on the information and documents that are presently available to and specifically known by Answering Opposer. It is anticipated that further discovery, independent investigation, legal research and analysis may supply additional facts and add meaning to known facts - as well as establish entirely new factual conclusions and legal contentions - which may lead to substantial additions to, changes in, and variations from the responses given below.

Accordingly, the following responses are given without prejudice to Answering Opposer's right to introduce evidence of any subsequently discovered or recalled fact or facts in relation to further discovery, research, or analysis. Answering Opposer reserves the right to amend or supplement any of the responses made below as additional facts are ascertained during the course of continuing discovery and investigation, analysis, legal research, and as contentions are made or otherwise. Furthermore, the fact that Answering Opposer has responded to any discovery request is not an admission that Answering Opposer accepts or admits the existence

[redacted]

of any other fact assumed by such request. Answering Opposer's substantive responses are provided subject to all the procedural objections and interpretations, as well as specific objections made below, and by providing responses, Opposer does not intend to waive any general or specific objections.

Based on the above statements and without limitation, Opposer's responses are hereby submitted without waiving or intending to waive in any matter, and to the contrary, preserving and intending to preserve: (a) all questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose, of the response or the subject matter thereof, in any subsequent proceeding, or the trial of, this or any other actions; (b) the right to object to the use of any of said responses or any portion thereof or the subject matter thereof, in any subsequent proceeding, or the trial of, this or any other action on any ground; (c) the right to object on any ground at any time to a demand for further responses to these or any other requests; and (d) the right at any time to revise, correct, substitute, supplement and/or clarify any of Opposer's responses subsequent to the date hereof.

This Preliminary Statement shall apply to each and every response given herein, and shall be incorporated by reference as though fully set forth in each of the responses appearing on the following pages.

GENERAL OBJECTIONS

1. [redacted]

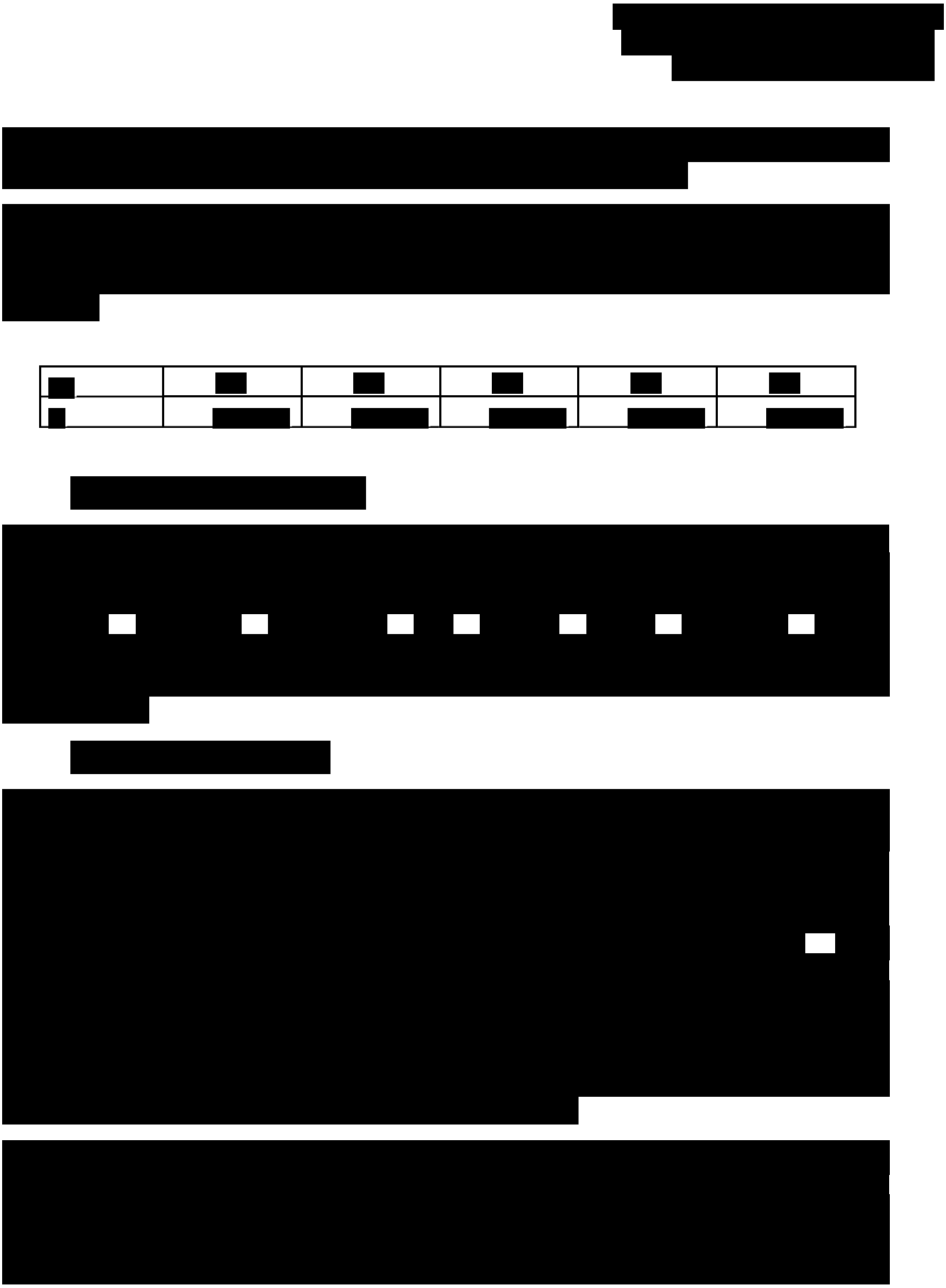
[redacted]

[redacted]

8. [redacted]

[redacted]

[redacted]



[redacted]

[redacted]

[redacted]

[redacted]

[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]
[redacted]	[redacted]	[redacted]	[redacted]	[redacted]	[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted]

[redacted].

By _____
(*As to Objections Only*)
Dated: September 9, 2020

Paolo A. Strino
Gibbons P.C.
One Pennsylvania Plaza
New York, NY 10004
(212) 613.2023
ipdocket@gibbonslaw.com
ATTORNEY FOR OPPOSER

VERIFICATION

I, ANTONIO CROCE (name), state that I am IP MANAGER (title/position) of Opposer, Giorgio Armani S.p.A., that I have read the foregoing responses to Applicant's First Set of Interrogatories, am familiar with their contents, and believe them to be true based on the documents, records and information available to Opposer.

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

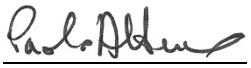
Signature: _____

Dated: SEPTEMBER 8, 2020

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing OPPOSER'S RESPONSE TO APPLICANT'S FIRST SET OF INTERROGATORIES, including any exhibits thereof, has been served on Applicant's attorney of record, by email on September 9, 2020, pursuant to TBMP 113.04, per below:

MATHEW E CORR
Boyle Fredrickson SC
840 North Plankinton Avenue
Milwaukee, Wi 53203
United States
jpf@boylefred.com,
docketing@boylefred.com,
mec@boylefred.com

By 

ATTORNEY FOR OPPOSER
Paolo A. Strino
Gibbons P.C.
One Pennsylvania Plaza
New York, NY 10004
(212) 613.2023
ipdocket@gibbonslaw.com

EXHIBIT 17

Giorgio Armani S.p.A. V. SEH International, Ltd.
Opposition No. 91252482

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

In re Serial No.: 88/289,218
Mark: AXIO and Design
Published in the Official Gazette on May 28, 2019

Giorgio Armani S.p.A.		
	Opposer,	
v.		Opposition No. 91252482
SEH International, Ltd.		
	Applicant.	

Honorable Commissioner for Trademarks
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSER'S RESPONSE TO APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSIONS

Pursuant to Fed. R. Civ. P. 36, 37 CFR § 2.120 *et. seq.*, and TBMP 407 *et. seq.*, Opposer, by and through its undersigned counsel, responds to Applicant's First Set of Requests for Admissions.

PRELIMINARY STATEMENT

The responses set forth herein, subject to inadvertent or undiscovered error, are based on and are therefore necessarily limited by, the records and information still in existence, presently recollected and thus far discovered in the course of the preparation of these responses to discovery requests. Opposer has not completed its investigation of the facts relating to this case, has not fully completed its discovery in this case, and has not completed its preparation for trial of this case. All the responses made below are based on the information and documents that are presently available to and specifically known by Answering Opposer. It is anticipated that further discovery, independent investigation, legal research and analysis may supply additional facts and add meaning to known facts - as well as establish entirely new factual conclusions and legal contentions - which may lead to substantial additions to, changes in, and variations from the responses given below.

Accordingly, the following responses are given without prejudice to Answering Opposer's right to introduce evidence of any subsequently discovered or recalled fact or facts in relation to further discovery, research, or analysis. Answering Opposer reserves the right to amend or supplement any of the responses made below as additional facts are ascertained during the course of continuing discovery and investigation, analysis, legal research, and as contentions are made or otherwise. Furthermore, the fact that Answering Opposer has responded to any discovery request is not an admission that Answering Opposer accepts or admits the existence of any other fact assumed by such request. Answering Opposer's substantive

responses are provided subject to all the procedural objections and interpretations, as well as specific objections made below, and by providing responses, Opposer does not intend to waive any general or specific objections.

Based on the above statements and without limitation, Opposer's responses are hereby submitted without waiving or intending to waive in any matter, and to the contrary, preserving and intending to preserve: (a) all questions as to competency, relevancy, materiality, privilege and admissibility as evidence for any purpose, of the response or the subject matter thereof, in any subsequent proceeding, or the trial of, this or any other actions; (b) the right to object to the use of any of said responses or any portion thereof or the subject matter thereof, in any subsequent proceeding, or the trial of, this or any other action on any ground; (c) the right to object on any ground at any time to a demand for further responses to these or any other requests; and (d) the right at any time to revise, correct, substitute, supplement and/or clarify any of Opposer's responses subsequent to the date hereof.

This Preliminary Statement shall apply to each and every response given herein, and shall be incorporated by reference as though fully set forth in each of the responses appearing on the following pages.

GENERAL OBJECTIONS

1. Opposer makes the following general responses and objections ("General Objections") to each Definition and Request propounded in Applicant's First Set of Requests for Admissions to Opposer. These General Objections are hereby incorporated into each specific response. The assertion of the same, similar, or

additional objections or partial responses to individual Requests does not waive any of Opposer's General Objections.

2. Opposer objects to each Request and to Applicant's "Definitions" to the extent they are vague, ambiguous, overbroad, or unduly burdensome, or purport to impose on Opposer any duty or obligation that is inconsistent with or in excess of those obligations that are imposed by the Federal Rules of Civil Procedure, the Code of Federal Regulation, the Trademark Trial and Appeal Board Manual of Procedure, and/or, the Board's Scheduling Order dated November 22, 2019 (2 TTABVUE), and/or any other applicable rule.

3. Opposer objects to Applicant's definition of Opposer's Mark to mean "the designation AX that is the subject of Opposer's U.S. Trademark Registration No. 4239644, i) without words "Armani Exchange," ii) without a vertical or diagonal line separating A and X, and iii) without a space between the A and X". Applicant's definition is objectionable because it is vague, ambiguous, overly broad and unduly burdensome, especially inasmuch as it purports to instruct Opposer to admit that the addition of certain non-literal elements including but not limited to vertical or diagonal lines (such as for example "|") would defeat, alter, narrow or exceeds the protection provided by its standard characters trademark registration for the mark AX, which instead may be expressed in all of its various stylized configurations while retaining the statutory protection afforded under Registration No. 4239644. Further, Applicant's definition of Opposer's Mark is vague, ambiguous, overly broad and unduly burdensome inasmuch as it purports to instruct Opposer to admit that the

extent of the trademark rights that are the basis of Opposer's claim in this action are limited to those stemming from Registration No. 4239644, without regard to prior and additional rights acquired under common law. Thus, in answering these requests, Opposer will interpret the expression Opposer's Mark to encompass any variant of its mark AX, in any and all forms and formats, used alone or in combination with any other word(s), design(s) or symbol(s). To the extent that any of Applicant's requests can be answered with exclusive reference to the letters "AX" in the mark, Opposer's will state so as appropriate.

4. Opposer objects to the definition of the terms "refer or relate to" as vague and ambiguous and overly broad and unduly burdensome.

5. Opposer objects to each Request to the extent it purports to seek an admission regarding "all," "any," "each," or other similarly expansive or all-inclusive terms.

6. Opposer objects to each Request to the extent that it seeks information that is protected from disclosure by the attorney-client privilege, the attorney work product doctrine, or any other applicable privilege, doctrine, or discovery immunity.

7. Opposer objects to each Request to the extent it seeks confidential, proprietary, or trade secret information of third parties.

8. Opposer objects to each Request to the extent it seeks information that is not relevant to the parties' claims or defenses.

9. Opposer objects to each Request to the extent it is not limited in time and seeks information for periods of time that are not relevant to any claim or defense.

10. Opposer objects to each Request to the extent it seeks information that is not known or readily obtainable by Opposer.

11. Opposer objects to each Request to the extent that it is compound and/or consists of subparts constituting more than one Request.

12. Opposer objects to each Request to the extent that it seeks expert testimony or a legal conclusion.

SPECIFIC OBJECTIONS AND RESPONSES

Subject to the foregoing General Objections and the specific objections made below, Opposer objects and responds as follows:

REQUEST NO. 1

Opposer's Mark is the abbreviation for Armani Exchange.

OPPOSER'S ANSWER TO REQUEST 1

Opposer incorporates its Preliminary Statement and General Objections in their entirety as if more fully set forth herein, and more specifically refers to the objection against Applicant's definition of Opposer's Mark.

Opposer admits that the expression AX initially came as an acronym for ARMANI EXCHANGE. Opposer however expressly denies any inference that the expression AX as used and registered by Opposer is not and/or does not function as a trademark on its own.

REQUEST NO. 2

Opposer stated in a February 4, 2008 response to an office action issued in connection with its application to register Opposer's Mark (ser. no. 79/039,260), "Applicant's AX mark is for its famous abbreviation for ARMANI EXCHANGE."

OPPOSER'S ANSWER TO REQUEST 2

Opposer incorporates its Preliminary Statement and General Objections in their entirety as if more fully set forth herein, and more specifically refers to the objection against Applicant's definition of Opposer's Mark.

Opposer further objects to this request on the basis that the type of information referred therein would be in the public record with the U.S.P.T.O., thus it would be equally available to Opposer and Applicant.

For at least the foregoing reasons, Applicant's request requires no response and accordingly Opposer neither admits nor denies this request.

REQUEST NO. 3

Opposer's Mark is phonetically identical to Opposer's mark "A/X."

OPPOSER'S ANSWER TO REQUEST 3

Opposer incorporates its Preliminary Statement and General Objections in their entirety as if more fully set forth herein, and more specifically refers to the objection against Applicant's definition of Opposer's Mark.

Opposer more specifically objects that this request as vague, and overbroad and for these reasons it cannot be answered as such. For example and without limitation, Applicant has provided no definition of Opposer's mark "A/X" or of the meaning of "phonetically identical".

Upon information and belief, Opposer admits that the letters AX would be pronounced in the same manner whether as part of "AX" or "A/X". However, to the extent that Applicant's request seeks an admission that some consumers could not conceivably pronounce the word "AX" or A/X" in other ways, Opposer denies

Opposer reserves all rights to clarify, supplement or amend the content of this answer in the event that Applicant provides a well-defined request.

REQUEST NO. 4

Opposer's Mark has the same connotation to consumers as Opposer's mark "A/X."

OPPOSER'S ANSWER TO REQUEST 4

Opposer incorporates its Preliminary Statement and General Objections in their entirety as if more fully set forth herein, and more specifically refers to the objection against Applicant's definition of Opposer's Mark.

Opposer more specifically objects to this request as being vague, and overbroad, and for these reasons it cannot be answered. For example and without limitation, Applicant has provided no definition of Opposer's mark "A/X", or the word "connotation" in the context of these requests. Opposer also objects to this request on the basis that it seeks an admission of a legal conclusion as opposed to an admission of fact.

For at least the foregoing reasons, Applicant's request requires no response and accordingly Opposer neither admits nor denies this request.

Opposer however admits that the literal elements of "AX" and "A/X" (i.e. the letters "A" and "X") are identical.

Opposer reserves all rights to clarify, supplement or amend the content of this answer in the event that Applicant provides a well-defined request.

REQUEST NO. 5

Opposer's Mark has the connotation to consumers of "Armani Exchange."

OPPOSER'S ANSWER TO REQUEST 5

Opposer incorporates its Preliminary Statement and General Objections in their entirety as if more fully set forth herein, and more specifically refers to the objection against Applicant's definition of Opposer's Mark.

Opposer more specifically objects to this request as being vague, and overbroad, and for these reasons it cannot be answered. For example and without limitation, Applicant has provided no definition of the word "connotation" in the context of these requests. Opposer also objects to this request on the basis that it seeks an admission of a legal conclusion as opposed to an admission of fact.

For at least the foregoing reasons, Applicant's request requires no response and accordingly Opposer neither admits nor deny this request. Opposer however denies that AX and ARMANI EXCHANGE are the same mark, with all related inferences.

Opposer reserves all rights to clarify, supplement or amend the content of this answer in the event that Applicant provides a well-defined request.

REQUEST NO. 6

Opposer stated in an August 20, 2011, response to a notice of suspension issued in connection with its application to register Opposer's Mark (ser. no. 79/039,260), "The instant mark 'AX' is phonetically identical to applicant's registered mark 'A/X' and would have the same connotation to consumers, i.e., 'Armani Exchange'."

OPPOSER'S ANSWER TO REQUEST 6

Opposer incorporates its Preliminary Statement and General Objections in their entirety as if more fully set forth herein, and more specifically refers to the objection against Applicant's definition of Opposer's Mark.

Opposer further objects to this request on the basis that the type of information referred therein would be in the public record with the U.S.P.T.O., thus it would be equally available to Opposer and Applicant.

For at least the foregoing reasons, Applicant's request requires no response and accordingly Opposer neither admits nor denies this request.

REQUEST NO. 7

The phonetic pronunciation of Opposer's registered mark A/X is "ā eks".

OPPOSER'S ANSWER TO REQUEST 7

Opposer incorporates its Preliminary Statement and General Objections in their entirety as if more fully set forth herein, and more specifically refers to the objection against Applicant's definition of Opposer's Mark.

Opposer more specifically objects to this request as being vague, and overbroad, and for these reasons it cannot be answered. For example and without limitation, Applicant has provided no definition of Opposer's mark "A/X".

Subject to the foregoing objections, Opposer admits that the letters A and X in the word A/X would be pronounced as "ā eks". However, and in the interest of clarification, Opposer notes that it is conceivable that at least some consumers presented with the words AX and/or A/X would pronounce it as "ăks".

REQUEST NO. 8

The phonetic pronunciation of Opposer's Mark was "ā eks" on August 20, 2011.

OPPOSER'S ANSWER TO REQUEST 8

Opposer incorporates its Preliminary Statement and General Objections in their entirety as if more fully set forth herein, and more specifically refers to the objection against Applicant's definition of Opposer's Mark.

After making a reasonable inquiry, and on the basis of information known or readily obtainable, Opposer lacks information sufficient to admit or deny the phonetic pronunciation of the word AX on August 20, 2011.

With the above in mind, Opposer admits that the pronunciation of the word AX is "ā eks" and that it has not changed over time. In the interest of clarification, Opposer notes that it is conceivable that at least some consumers presented with the word AX and/or A/X would pronounce it as "ăks".

REQUEST NO. 9

The phonetic pronunciation of Opposer's Mark is "ā eks".

OPPOSER'S ANSWER TO REQUEST 9

Opposer incorporates its Preliminary Statement and General Objections in their entirety as if more fully set forth herein, and more specifically refers to the objection against Applicant's definition of Opposer's Mark.

Opposer admits that the pronunciation of the words AX is "ā eks". Further, it is conceivable that at least some consumers presented with the words AX and/or A/X would pronounce it as "ăks".

REQUEST NO. 10

In the August 20, 2011, response to a notice of suspension issued in connection with its application to register Opposer's mark (ser. no. 79/039,260), Opposer argued that Applicant's Mark was not likely to be confused with the marks "AX'S & design," "AX TELEVISION & design," and "BAT AX" in part because Opposer's Mark "is phonetically identical to applicant's registered mark 'A/X' and would have the same connotation to consumers, i.e., 'Armani Exchange'."

OPPOSER'S ANSWER TO REQUEST 10

Opposer incorporates its Preliminary Statement and General Objections in their entirety as if more fully set forth herein, and more specifically refers to the objection against Applicant's definition of Opposer's Mark.

Opposer further objects to this request on the basis that the type of information referred therein would be in the public record with the U.S.P.T.O., thus it would be equally available to Opposer and Applicant.

For at least the foregoing reasons, Applicant's request requires no response and accordingly Opposer neither admits nor denies this request.

Inasmuch as Applicant's request pieces together various parts of Opposer's alleged response to such notice of suspension in order to reach any self-serving legal conclusion, Opposer denies Applicant's legal conclusion.

REQUEST NO. 11

Opposer does not sell or offer to sell soccer uniforms to U.S. consumers.

OPPOSER'S ANSWER TO REQUEST 11

Opposer incorporates its Preliminary Statement and General Objections in their entirety as if more fully set forth herein

Opposer admits.

VERIFICATION

I, Antonio Cinà (name), state that I am IP Manager and Proxy Holder (title/position) of Opposer, Giorgio Armani S.p.A., that I have read the foregoing responses to Applicant's First Set of Request for Admission, am familiar with their contents, and believe them to be true based on the documents, records and information available to Opposer.

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

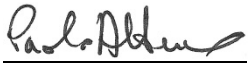
Signature: _____

Dated: July 21, 2020

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing OPPOSER'S RESPONSE TO APPLICANT'S FIRST SET OF REQUESTS FOR ADMISSIONS, including any exhibits thereof, has been served on Applicant's attorney of record, by email on July 21, 2020, pursuant to TBMP 113.04, per below:

MATHEW E CORR
Boyle Fredrickson SC
840 North Plankinton Avenue
Milwaukee, Wi 53203
United States
jpf@boylefred.com,
docketing@boylefred.com,
mec@boylefred.com

By 

ATTORNEY FOR OPPOSER