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

Proceeding	91253132
Party	Plaintiff Ashley Kirkwood
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Date	04/16/2021
Attachments	2021-04-16 Opposers Motion to Reopen Discovery with exhibits.pdf(1030799 bytes)

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

ASHLEY KIRKWOOD,

Opposer,

v.

ROSEZENA J. PIERCE,

Applicant.

Opposition No. 91253132

Application Serial No. 88408976

Mark:

Trademark Tea

OPPOSER’S MOTION TO REOPEN DISCOVERY

Opposer Ashley Kirkwood (“Opposer” or “Kirkwood”), by and through counsel, hereby moves to reopen the discovery period for an additional 30 days so that the parties may complete unfinished discovery, including the deposition of Applicant Rosezena J. Pierce (“Applicant” or “Pierce”), pursuant to Fed. R. Civ. P. 16(b)(4) and Fed. R. Civ. P. 6(b)(1). *See also* TBMP § 509.01(b)(1).

PRELIMINARY STATEMENT

The parties have reached an impasse on discovery; Opposer has requested consent from Applicant multiple times to reopen the discovery period to complete the discovery process, and Applicant has withheld such consent. Applicant has failed to produce documents that are properly bates numbered or provide specific information in her responses about which documents corresponds with which discovery request. Applicant and Opposer also have not conducted the timely noticed deposition of Applicant as the parties did not agree on a mutually convenient date to conduct the deposition because both Applicant and Opposer appointed outside counsel during the discovery process.

BACKGROUND

Opposer served interrogatories and requests for production on Applicant on December 24, 2020. *See* Exhibits 1 and 2, attached. Opposer also served a notice of deposition of Applicant on December 24, 2020. *See* Exhibit 3, attached.

Applicant served responses to the first interrogatories and requests for production responses on January 25, 2021. The responses included a production of documents that were not numbered. Many responses to document requests consisted entirely of the word “Attached,” with no further context on which document corresponds to the sought request. *See* for example, Response to Request Nos. 5, 7, and 20. *See* Exhibit 5, attached. Applicant also responded to several interrogatories by simply referencing the production of documents. *See* for example, Response to Interrogatory Nos. 11, 14, 30, 31, 32. *See* Exhibit 4, attached.

Opposer appointed new counsel, the undersigned, on January 25, 2021. 18 TTABVUE. The Board recognized the notice of appearance on February 1, 2021. 19 TTABVUE.

Counsel for Opposer and Applicant Pierce held a call on February 2, 2021, to meet and confer regarding the pending discovery in the matter among other topics. The parties agreed to extend the close of discovery and subsequent Board deadlines by 30 days during the February 2, 2021 call. Specifically, Counsel for Opposer sent an email to Applicant Pierce following the call on February 2, 2021, noting that “the parties agreed to extend discovery, and subsequent Board deadlines, by 30 days. If you confirm, I will file the 30 day extension with the Board.” Applicant Pierce did not respond to this email with a confirmation or a denial of the representation of the discussion on the call.

Applicant appointed new counsel – attorneys Jonelle Lacy and Jasmine Landrich of R.J. Pierce Law Group, P.C. of which Applicant Rosezana J. Pierce is the founder and lead attorney -

on February 15, 2021. 21 TTABVUE. The Board has not issued any orders or communications following this appointment to recognize the appointed counsel or to discuss the docket schedule remaining in the proceeding.

Counsel for the parties met and conferred on March 11, 2021, regarding the discovery issues, including the close of discovery, the need to schedule the deposition, and the fact that Applicant's document production was not numbered. That same day, Counsel for Opposer followed up the phone call with a summary email to opposing counsel on March 11, 2021. In the email of March 11, 2021, Counsel for Opposer noted that "Opposer proposes that the parties consent to re-open discovery for 60 days and will await a response from you for a few days. Opposer proposes deposition of Ms. Pierce in early April. We discussed some of the parameters and are willing to continue that discussion if you would like. Please provide a few preferred dates."

By email on March 12, 2021, and again in a second email later on March 12, 2021, Counsel for Applicant did not consent to the request to reopen to the discovery period or to schedule the deposition, noting that "we have decided to decline the offer to re-open discovery. The Parties have had ample time to request and respond during the discovery period and during the most recent extension of that period. Regarding the Deposition Notice, the date has passed on said notice and was never rescheduled. Pursuant to TMBP 403.02, the deposition can no longer be held because discovery is closed." Counsel for Applicant neither addressed the prior discussion directly with Opposer regarding an extension of the discovery period of 30 days, nor noted the reason for Applicant's failure to respond to Counsel for Opposer's summary of the February phone call and extension confirmation request.

Counsel for Opposer has attached declaration regarding the foregoing events. Opposer

has not unnecessarily delayed in bringing this motion. Applicant will not be prejudiced by the granting of this Motion.

ARGUMENT

Pursuant to Fed. R. Civ. P. 6(b)(1)(B), the moving party must show excusable neglect in order to reopen an expired period for discovery. Here, Opposer has demonstrated that good cause and excusable neglect exist, namely completion of the proper production of documents by Applicant with bates numbers and the coordination of the deposition of Applicant. Counsel for Opposer sought consent on multiple occasions from Applicant's counsel and was denied. Furthermore, delays during the discovery period were in part due to the appointment of new counsel by Opposer on January 25, 2021, and then by Applicant on February 15, 2021. 18 TTABVUE and 21 TTABVUE.

Pursuant to Fed. R. Civ. P. 34 and TBMP Section 406.04(b), documents must be produced "as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request." Here, the documents produced by Applicant were not numbered, and the written responses to the document requests did not indicate which documents were responsive to which specific requests. *See* Exhibit 5, attached. Likewise, the documents produced by Applicant do not comply with the Federal Rules of Civil Procedure as Applicant has failed to indicate which documents respond to which requests.

Applicant has also chosen to respond to several interrogatories by noting that documents will be produced sufficient to form a response. As noted about, the documents produced by Applicant were not numbered. Pursuant to Fed. R. Civ. P. 33(d), a party relying on document production for an interrogatory response must answer by "specifying the records that must be reviewed, in sufficient detail to enable the interrogating party to locate and identify them as

readily as the responding party could.” TBMP§ 405.04(b). Here, Applicant has not specified at all which documents are responsive to which interrogatory requests, and Opposer has requested that Applicant re-produce her documents with bates numbers.

Opposer noticed a deposition of Applicant on December 24, 2021, proposing that it be conducted on January 26, 2021 (or as otherwise agreed to by the parties). *See* Exhibit 3, attached. On January 19, 2021, the parties filed a consented motion to extend discovery by 30 days. 16 TTABVUE. On January 25, 2021, Opposer appointed new counsel. 18 TTABVUE. In accordance with TBMP Section 404.01, which states that “the parties should attempt to schedule depositions by agreement rather than have the deposing party unilaterally set a deposition date,” Opposer sought a mutually agreeable date to conduct the deposition. Applicant and her counsel, however, rebuffed Opposer’s requests on multiple occasions. As a result, Opposer seeks the reopening of the discovery period in order to conduct the previously noticed deposition, which has not been delayed due to Opposer’s conduct. In fact, Applicant has sought to avoid the deposition even though there are no provisions in the rules permitting her to do so.

Excusable neglect is an “elastic” and “equitable” concept, which takes into “account all relevant circumstances,” including: (i) “the danger of prejudice to the [non-movant]”; (ii) “the length of the delay and its potential impact on judicial proceedings”; (iii) “the reason for the delay, including whether it was within the reasonable control of the movant”; and (iv) “whether the movant acted in good faith.” *Pioneer Inv. Servs. Co. v. Brunswick Assoc. Ltd. P’ship*, 507 U.S. 380, 395 (1993) (adopted by the *Board in Pumpkin Ltd. v. The Seeds Corp.*, 43 USPQ2d 1889, 1892–93 (TTAB 1997)). *See also Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1852 (TTAB 2000) (“Pursuant to Fed. R. Civ. P. 6(b)(2), the requisite showing for reopening an expired period is that of excusable neglect.”). Determining

whether a party has demonstrated excusable neglect is within the discretion of the Board and made upon balancing the foregoing factors. *Pumpkin Ltd. v. Seeds Corps.*, 43 USPQ2d 1582, 1588 (TTAB 1997). Here, Opposer has acted in good faith and there is no indication to the contrary. In addition, Opposer has not unnecessarily delayed the proceeding or in seeking a reopening of the discovery period; in fact, Opposer has repeatedly offered Applicant a chance to consent in a reasonable manner to the request. Opposer brings this motion approximately three weeks following a call between counsel for the parties to try to resolve the issue, such call being held approximately ten days after the close of discovery. Likewise, Opposer seeks only 30 days for the reopening of discovery so as not to delay the proceeding any longer than needed.

Here, Opposer did not “neglect” or fail to take discovery during the allotted discovery period. Rather, Opposer’s efforts to complete the discovery with proper responses and bates numbered documents from Applicant and to take the deposition of Applicant have been hindered by Applicant and her counsel.

The delay was caused by the lack of cooperation from Applicant, and by the circumstances of both parties appointing new counsel during discovery and the resulting need to adjust schedules, review case history, and coordinate discussion with one another. In sum, (1) the delay was not caused by any neglect or lack of responsiveness from Opposer; (2) Applicant indicated that she did not think a deposition was necessary and tried to avoid it; (3) Opposer noted multiple times that Applicant does not get to decide whether or not to be deposed; and (4) Opposer actively sought to schedule the deposition in calls with Applicant and her counsel on at least two occasions.

There is also little or no prejudice to Applicant in the relief sought, namely the reopening of discovery. Prejudice, for purposes of the *Pioneer* factors, means “prejudice to the

nonmovant's ability to litigate the case, e.g., where the movant's delay has resulted in a loss or unavailability of evidence or witnesses which otherwise would have been available to the nonmovant." TBMP § 509.01(b)(1). Re-opening discovery in this matter for 30 days would not prejudice Applicant's ability to litigate this proceeding. The sole effect that re-opening discovery would have on Applicant is that Applicant would have to produce the documents in accordance with the Federal Civil Rules of Procedure and appear for the deposition in accordance with the discovery rules of the Board. If Applicant sought to avoid delays, Applicant could have agreed to extension, or consented to the request to reopen discovery. Here, Applicant is the source of the delay. Applicant should not be permitted to avoid her deposition by merely refusing to agree to a date and running out the clock on the discovery period.

Opposer also notes that until Applicant appointed counsel on February 15, 2021, Opposer was challenged by the fact that Applicant – an individual – appeared to be acting with the assistance of counsel, namely lawyers who work at the same law firm managed by Applicant. For example, Applicant's consented motion to extend, 16 TTABVUE, was filed at a time when Applicant was not represented by counsel in this matter, yet the motion was not signed by Applicant and was signed by her later-appointed counsel. Similarly, prior filings in the proceeding were also not signed by Applicant at a time when she was not on record as being represented. *See* Applicant's Applicant Motion to Divide Application, 12 TTABUVE, and Applicant's Reply in Support of Motion to Divide Application, 14 TTABVUE. Opposer further notes that Applicant's Motion to Divide, which was denied, was filed during the discovery period, and yet when the Board denied Applicant's Motion, the Board did not extend the close of discovery. 15 TTABVUE.

As detailed herein, excusable neglect exists for the need to the reopen discovery,

particularly because much of the delay is due to matters outside of Opposer’s control, namely the lack of cooperation of Applicant, and the natural interruptions caused by each party appointing new counsel during the discovery period. Opposer, therefore, has brought this motion with good faith, following several attempts to seek consent or compromise with Applicant, and without delay.¹

CONCLUSION

Based on the foregoing, Opposer respectfully requests that the Board amend the scheduling and re-open discovery for 30 days pursuant to TBMP Section 509.01(b)(1), and Fed. R. Civ. P. 16(b)(4).

Dated this 16th day of April, 2021.



Erik M. Pelton
Erik M. Pelton & Associates, PLLC
Attorney for Opposer

Attachments:

- Declaration of Erik Pelton in Support of Opposer’s Motion to Reopen Discovery
- Exhibit 1: Opposer’s First set of Interrogatories to Applicant
- Exhibit 2: Opposer’s First Request for Production of Documents and Things
- Exhibit 3: Opposer’s Notice of Rule 30(6)(6) Deposition of Applicant
- Exhibit 4: Applicant’s response to Opposer’s first interrogatories
- Exhibit 5: Applicant’s response to Opposer’s first requests for production

¹ If the Board does not find good cause for amending the scheduling order and re-opening discovery under FRCP 16(b)(4) or TBMP § 509.01(b)(1), then the Board could re-open discovery pursuant to its inherent authority under TBMP § 527.03, which provides:

Flowing from the Board's inherent authority to manage the cases on its docket is the inherent authority to enter sanctions against a party.” “The Board's exercise of this authority is clearly permitted in a variety of situations where the conduct in question does not fall within the reach of other sanctioning provisions of the rules.”

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of Opposer's Motion to Reopen Discovery has been served on the following by delivering said copy on April 16, 2021, via email, to counsel for Applicant at the following address:

Jonelle Lacy
RJ Pierce Law Group PC
Jonelle@rjpiercelaw.com; rosezena.j.pierce@gmail.com;
Jasmine@rjpiercelaw.com



By:
Erik M. Pelton, Esq.

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

ASHLEY KIRKWOOD,

Opposer,

v.

ROSEZENA J. PIERCE,

Applicant.

Opposition No. 91253132

Application Serial No. 88408976

Mark:

Trademark Tea

OPPOSER'S MOTION TO REOPEN DISCOVERY

Declaration of Erik Pelton in Support of Opposer's Motion to Reopen Discovery

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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**DECLARATION OF ERIK PELTON IN SUPPORT OF
OPPOSER’S MOTION TO REOPEN DISCOVERY**

I, Erik Pelton, declare as follows

I am an attorney at Erik M. Pelton & Associates, PLLC and am attorney of record for Opposer Ashley Kirkwood (“Opposer” or “Kirkwood”) in this proceeding. The facts set forth in this declaration are based on my personal knowledge, unless otherwise noted:

1. Opposer served its first set of interrogatories and requests for production on Applicant on December 24, 2020. True and correct copies of Opposer’s first set of interrogatories and requests for production are attached as Exhibits 1 and 2.
2. Opposer also served a notice of deposition of Applicant on December 24, 2020. A true and correct copy of this notice of deposition is attached as Exhibit 3.
3. Applicant served responses to the first set of interrogatories and requests for production Responses on January 25, 2021. True and correct copies of Applicant’s responses to the first interrogatories and requests for production are attached as Exhibit 4 and 5.
4. Applicant’s responses to the first set of interrogatories included production of documents that were not numbered. Many responses to document requests consisted entirely of

“Attached.” See for example, Response to Request Nos. 5, 7, and 20. A true and correct copy of Applicant’s responses to the first set of interrogatories are attached as Exhibit 4.

5. Applicant also responded to several interrogatories by references the production of documents. See for example, Response to Interrogatory Nos. 11, 14, 30, 31, 32. See Exhibit 4.

6. Opposer appointed new counsel, the undersigned and our firm of Erik M. Pelton & Associates, on January 25, 2021. *See* 18 TTABVUE.

7. The Board recognized the notice of appearance on February 1, 2021. *See* 19 TTABVUE.

8. Applicant Pierce and I held a telephone call on February 2, 2021 to meet and confer regarding the pending discovery in the matter among other topics. We agreed to extend the close of discovery and subsequent Board deadlines by 30 days.

9. I sent an email to Applicant Pierce following the call on February 2, 2021, noting that “the parties agreed to extend discovery, and subsequent Board deadlines, by 30 days. If you confirm, I will file the 30 day extension with the Board.”

10. Applicant Pierce never responded to my February 2, 2021, email with a confirmation or a denial of the representation of the discussion on the call and the extension agreement.

11. Applicant appointed new counsel – attorneys Jonelle Lacy and Jasmine Landrich of R.J. Pierce Law Group, P.C. on February 15, 2021. *See* 21 TTABVUE. Applicant Rosezana J. Pierce is the founder and lead attorney of R.J. Pierce Law Group, P.C. The Board has not issued any orders or communications following this appointment to recognize the appointed counsel nor to discuss the docket schedule remaining in the proceeding.

12. Counsel for both parties met and conferred via telephone on March 11, 2021,

regarding the discovery issues including the close of discovery, the need to schedule the deposition, and the fact that Applicant's document production was not numbered.

13. Counsel for Opposer followed up the phone call on the same day with a summary email to opposing counsel on March 11, 2021. In the email of March 11, 2021, I noted that "Opposer proposes that the parties consent to re-open discovery for 60 days and will await a response from you for a few days. Opposer proposes deposition of Ms. Pierce in early April. We discussed some of the parameters and are willing to continue that discussion if you would like. Please provide a few preferred dates."

14. By email on March 12, 2021, and again via a second email later on March 12, 2021, Applicant's counsel did not consent to the request to reopen to the discovery period or to schedule the deposition, noting that "we have decided to decline the offer to re-open discovery. The Parties have had ample time to request and respond during the discovery period and during the most recent extension of that period. Regarding the Deposition Notice, the date has passed on said notice and was never rescheduled. Pursuant to TMBP 403.02, the deposition can no longer be held because discovery is closed."

15. The March 12, 2021, emails from counsel for Applicant did not directly address the prior discussion with Applicant featuring an agreement to extend the discovery period by 30 days, nor Applicant's failure to respond to Counsel for Opposer's summary of the February phone call and extension confirmation request.

I declare under penalty of perjury of the laws of the United States that the foregoing is true and correct to the best of my knowledge under to 28 U.S.C. § 174

Dated this 16th day of April, 2021.



Erik M. Pelton
Erik M. Pelton & Associates, PLLC
Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that a true and accurate copy of Declaration of Erik Pelton in Support Opposer's Motion to Reopen Discovery has been served on the following by delivering said copy on April 16, 2021, via email, to counsel for Applicant at the following address:

Jonelle Lacy
RJ Pierce Law Group PC
Jonelle@rjpiercelaw.com; rosezena.j.pierce@gmail.com;
Jasmine@rjpiercelaw.com



By:
Erik M. Pelton, Esq.

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Mark:

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OPPOSER'S MOTION TO REOPEN DISCOVERY

Exhibit 1: Opposer's First set of Interrogatories to Applicant

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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ASHLEY KIRKWOOD,)	
)	
)	
Opposer,)	Opposition No. 91253132
)	
v.)	Serial No. 88408976
)	
ROSEZENA J. PIERCE,)	
)	
)	
Applicant.)	
)	

OPPOSER’S FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Opposer Ashley Kirkwood (“Opposer”) requests that Applicant Rosezena J. Pierce (“Applicant”) answer each of the following interrogatories separately and under oath. These Interrogatories are continuing in nature. Any information which is discovered after timely service of answers should be provided to Opposer through supplemental answers within a reasonable time after discovery thereof. Each of these Interrogatories is subject to the following instructions and definitions.

INSTRUCTIONS

1. In each instance where an Interrogatory is answered upon information and belief, Applicant must set forth the basis for such information and belief.
2. In each instance where Applicant denies knowledge or information sufficient to answer the Interrogatory, it is requested that Applicant set forth the name and address of each person, if any, known or believed to have such knowledge.

3. In each instance where the existence of a document is disclosed, Applicant is requested to attach a copy of such document to its answer. If the document is not in Applicant's custody, possession, or control, Applicant is requested to state the name and address of each person known or believed by Applicant to have such possession or control, and identify which documents are in such person's possession or control.

4. Manner of Identifying a Trademark or Service Mark. Whenever an Interrogatory inquires about a trademark, service mark, or trademark or service mark application or registration, please include:

- (i) Its country or state;
- (ii) The application or registration number, date of filing, and current status;
- (iii) Its date of first use in the country or state and a full description of the goods on which it was first used;
- (iv) The trademark owner and all prior owners or claimants; and
- (v) The class and description of the goods or services for which registered and the class and description of the goods or services in connection with which it is or was used.

5. Manner of Identifying Products or Services. Whenever an Interrogatory inquires about products or services, indicate:

- (i) The catalog, stock or like number;
- (ii) The name, type, and grade;
- (iii) Sizes or quantity customarily sold;
- (iv) Whether primarily intended for personal retail consumption, commercial retail consumption, or wholesale use;

(v) Any other designation customarily used by Applicant or by the trade to designate such product or service.

6. Objections. If Applicant objects to any Interrogatory, state the specific grounds for the objection and provide all information responsive to the Interrogatory which is outside the scope of the objection.

7. Claim of Privilege. If Applicant alleges privilege as the basis for withholding information or material responsive to an Interrogatory, specifically identify the privilege asserted, the basis therefore, identify all information or material for which Applicant alleges privilege, and identify whether any information has been withheld on the basis of such privilege.

DEFINITIONS

1. The term “Opposer” includes Ashley Kirkwood, her predecessors and successors in interest, and all of their parent, subsidiary and affiliated companies and officers, directors, employees, agents and representatives, both present and past.

2. The term “Applicant” includes Rosezena J. Pierce, her predecessors and successors in interest, and all of their parent, subsidiary and affiliated companies and officers, directors, employees, agents and representatives, both present and past.

3. As used herein, the term “person” includes any individual, corporation, company, division, partnership, agency or other organization or entity.

4. As used herein, the word “identify,” when used in reference to an oral statement, means that Applicant shall provide the following information: State the name of the speaker; the date of the statement; the place at which the statement was made; the person or persons to whom the statement was addressed, if practicable, or otherwise a general descriptions of the persons to whom the statement was addressed; the subject matter and substance of the statement; and if the

statement was memorialized in a writing or mechanical, electronic or other recording, state the date and present location of said writing or mechanical, electronic or other recording.

5. As used herein, the word “identify,” when used in connection with a document, means that Applicant shall provide the following information: the name of the author; the type of document or writing; the date; the addressee, if appropriate; the subject matter; and the present location or whereabouts of the written statement. In lieu of such identification, Applicant may attach a copy of the writing containing said written statement and refer thereto in your answer.

6. As used herein, the word “identify,” when used in connection with an individual, means that Applicant shall provide the following information: the name of the individual; his or her present business and personal addresses; present employer (if self-employed, so state); position or title held, if applicable; and if the Interrogatory applies to a previous period of time, give the above information as it existed at the time covered by the Interrogatory.

7. As used herein, the word “document” shall be deemed to mean and include any written, recorded or graphic matter, however reproduced, including, but not limited to, any statement contained in books, records, memoranda, agreements, communications (including intracompany communications), reports, correspondence, telegrams, summaries or records of telephone conversations, summaries or records of personal conversations or interviews and diaries, statistical statements, graphs, notebooks, charts, forecasts, projections, drawings, checks, invoices, bills of sale, minutes or records of meetings or conferences, reports and/or summaries or investigations, opinions of counsel, consultants, investigators or others, labels, packaging, brochures, pamphlets, advertisements, circulars, trade letters, press releases, original or preliminary notes, drafts of any document and marginal comments appearing on any document, notes, papers and any other writings, whether originals or copies, formal or informal, of any

nature, kind or description; and any other physical objects, including without limitation photographs and recordings, on or in which is recorded any information or in any other writing known to you or in your possession, custody or control.

8. Use of Conjunctive Terms. As used herein, “and” as well as “or” shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of an Interrogatory all responses which otherwise might be construed as outside its scope.

9. Use of Singular, Plural and Tense of Terms. As used herein, the singular shall include the plural and the present tense shall always include the past tense, and vice versa.

10. Opposer’s Mark. As used herein, the term “Opposer’s Mark” refers to the mark “GET THE TEA ON TRADEMARKS” referenced in Opposer’s Notice of Opposition, for which Opposer has filed application Serial Number 88582706.

11. Applicant’s Mark. As used herein, the term “Applicant’s Mark” refers to the mark “TRADEMARK TEA” referenced in Opposer’s Notice of Opposition. As used herein, the term “Applicant’s Mark” is not an admission or verification that Applicant has any type of ownership rights in, any right to use, or is entitled to any type of protection whatsoever for such mark.

12. Related Marks. As used herein, the term “Related Marks” refers to any trademarks or service marks used by Applicant incorporating the term “TEA.”

INTERROGATORIES

1. Identify the nature and scope of Applicant's business, its place or places of business, its form of business organization and its date of incorporation.
2. Identify any and all predecessors, or successors of Applicant, and all entities with any interest in Applicant's business involving Applicant's Mark and/or any Related Marks.
3. Identify all persons, including officers, directors and managerial employees of Applicant, that were involved in or have knowledge of the selection, design, and creation of Applicant's Mark and/or any Related Marks.
4. With respect to each such officer, director and managerial employee listed in response to Interrogatory Number 3, describe his or her responsibilities, duties and length of tenure, including the dates when each commenced his or her employment.
5. Identify and describe each product and/or service offered by Applicant in connection with Applicant's Mark and/or any Related Marks, including any products and/or services which are no longer offered by Applicant.
6. For each product or service identified in answer to Interrogatory Number 5, identify the earliest date when Applicant made such offer and the time period during which such offer continued.
7. For each product or service identified in answer to Interrogatory Number 5, identify the locality and state in which such product or service was distributed.
8. For each product or service identified in answer to Interrogatory Number 5, identify the customers to which the distribution of such product or service was targeted.
9. For each product or service identified in answer to Interrogatory Number 5, identify all documents showing or describing such product or service.

10. Identify the person or persons employed by Applicant who are or were primarily responsible for the selection of Applicant's Mark and/or any Related Marks.

11. Identify all advertisements and promotions showing Applicant's Mark and/or any Related Marks in connection with Applicant's goods and services, and indicate the date when each advertisement or promotion appeared, the medium or media in which the advertisement or promotion appeared, the geographic locations where such advertisement or promotion appeared, the person or persons who have been responsible for the advertisement or promotion, and the class of consumer or purchaser to whom each advertisement or promotion was directed.

12. With respect to each of the products and/or services identified in response to Interrogatory Number 5, identify the date of the first use of Applicant's Mark and/or any Related Marks in commerce in the United States.

13. With respect to each of the products and/or services identified in response to Interrogatory Number 5, describe with specificity examples of the first use of Applicant's Mark and/or any Related Marks in commerce in the United States.

14. With respect to each of the products and/or services identified in response to Interrogatory Number 5, describe all relevant facts and circumstances regarding the first use of Applicant's Mark and/or any Related Marks in commerce in the United States.

15. With respect to each of the products and/or services identified in response to Interrogatory Number 5, describe all relevant facts and circumstances regarding the channels of trade by which the products and/or services of the Applicant reach the ultimate end customer.

16. Describe in detail any trademark search conducted in connection with Applicant's Mark and/or any Related Marks, and identify all documents related to any such search.

17. Identify all documents in Applicant's possession which refer or relate to Applicant's use of Applicant's Mark and/or any Related Marks.
18. Describe any plans or steps to expand the number of products or services with which Applicant's Mark and/or any Related Marks is used, to alter the channels of trade mentioned in the answer to Interrogatory Number 14, or to sell such products and/or services to customers or client bases other than those mentioned in the answer to Interrogatory Number 6.
19. Identify the date on which Applicant was retained by Opposer for registration of Opposer's mark, "MOBILE GENERAL COUNSEL," Registration No. 5753691.
20. Describe with specificity the circumstances under which Applicant was retained by Opposer for registration of Opposer's mark, "MOBILE GENERAL COUNSEL," Registration No. 5753691, and the nature of the representation.
21. Identify the date on which Applicant first became aware of Opposer's Mark.
22. Describe with specificity the circumstances under which Applicant first became aware of Opposer's Mark.
23. Describe with specificity any knowledge Applicant at any point had of Opposer's use of Opposer's Mark.
24. Describe with specificity any knowledge Applicant at any point had of Opposer's business, products, and services.
25. Describe with specificity the circumstances by which the Applicant's Mark and/or any Related Marks was adopted by Applicant.
26. Identify all email subscriber lists associated with Opposer's business, products, and services which Applicant is or has previously been subscribed to.

27. Identify all business-related Facebook groups, LinkedIn groups, and other social media groups Applicant is a member of.

28. Identify all expert witnesses which Applicant has consulted with or retained with respect to any issues involved in this proceeding, and if such expert witnesses exist, identify all documents upon which the expert will base her expert opinion, and describe the subject matter concerning which he or she was consulted or retained.

29. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, First Affirmative Defense: "...the fact that Opposer's proposed mark is merely informational matter that fails to function as a mark to indicate source."

30. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, Second Affirmative Defense: "Opposer's proposed mark is a common phrase or message that would ordinarily be used in advertising or in the relevant industry, or that consumers are accustomed to seeing used in everyday speech by a variety of sources, such that Opposer's mark does not serve any source-indicating function in commerce."

31. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, Third Affirmative Defense: "Opposer's proposed mark is a widely used message that merely convey ordinary, familiar concepts or sentiments that are used by a variety of sources in the marketplace that is considered commonplace and will be understood as conveying the ordinary concept or sentiment normally associated with it, rather than serving any source indicating function in commerce."

32. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, Fourth Affirmative Defense: "...the opposition is barred by the doctrine of laches."

33. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, Fifth Affirmative Defense: "...the opposition is barred by the doctrine of estoppel."

34. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, Sixth Affirmative Defense: "...opposer has waived any right to pursue its opposition."

35. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, Seventh Affirmative Defense: "...the opposition is barred by the doctrine of acquiescence."

36. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, Eighth Affirmative Defense: "...the opposition is barred by the doctrine of unclean hands."

37. Identify any and all documents responsive to the preceding Interrogatories which have been lost or destroyed, the dates and the reasons for such loss or destruction, and the persons most knowledgeable about such loss or destruction.

38. For each of the preceding Interrogatories, identify all persons who were consulted or participated in the preparation of the answer to each Interrogatory; all persons who are presently knowledgeable as to any of the facts recited in the answer to each Interrogatory; whether or not such persons were consulted or participated in the preparation of the answer; and

all files and areas searched in attempting to locate any documents requested to be identified by each Interrogatory.

Dated this 24th day of December, 2020.

A handwritten signature in black ink, appearing to read "Ashley Kirkwood". The signature is fluid and cursive, with the first name "Ashley" being more prominent than the last name "Kirkwood".

Ashley Kirkwood
Mobile General Counsel PLLC
2903 Sunset Avenue
Flossmoor, IL 60422
TEL: (312) 880-8518
EMAIL: ashleyk@mobilegeneralcounsel.com

Opposer

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

ASHLEY KIRKWOOD,

Opposer,

v.

ROSEZENA J. PIERCE,

Applicant.

Opposition No. 91253132

Application Serial No. 88408976

Mark:

Trademark Tea

OPPOSER'S MOTION TO REOPEN DISCOVERY

Exhibit 2: Opposer's First Request for Production of Documents and Things

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

ASHLEY KIRKWOOD,)	
)	
)	
Opposer,)	Opposition No. 91253132
)	
v.)	Serial No. 88408976
)	
ROSEZENA J. PIERCE,)	
)	
)	
Applicant.)	
)	

OPPOSER’S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO APPLICANT

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and the Trademark Rules of Practice, Opposer Ashley Kirkwood (“Opposer”) hereby requests that Applicant Rosezena J. Pierce (“Applicant”) produce the following documents and things that are in Applicant’s possession, custody, or control. These documents and things are to be produced, or made available for copying and inspection, at Mobile General Counsel PLLC, 2903 Sunset Avenue, Flossmoor, Illinois 60422, within thirty (30) days of service hereof. Opposer hereby incorporates by reference as if fully stated herein the definitions from Opposer’s First Set of Interrogatories to Applicant.

INSTRUCTIONS

The following instructions apply to and are deemed incorporated into each question in this first request for production of documents and things:

1. Documents shall be produced as they are kept in the ordinary course of business or, in the alternative, organized and labeled so as to correspond to the document requests.

2. These requests are intended to cover all documents and things in Applicant's possession, custody or control. A document or thing is deemed to be in Applicant's possession, custody, or control if:

- a. it is in Applicant's physical control; or
- b. it is in the physical control of any other person or entity, and Applicant
 - i. owns the document or thing in whole or in part;
 - ii. has right by contract, statute, or otherwise to use, inspect, examine or copy that document or thing on any terms; or
 - iii. has, as a practical matter, been able to use, inspect, examine or copy that document or thing when it is sought to do so or could do so.

3. If any document requested was formerly in Applicant's possession, custody, or control and has since been lost or destroyed, Applicant shall submit, in lieu of each such document, a written statement that:

- a. identifies the document by providing the author(s), addressee(s), recipient(s), title, date, subject matter, and number of pages and identifies all persons who ever possessed copies; and
- b. states when and how the document was lost or destroyed and, if destroyed, identifies each person having knowledge concerning such destruction or loss, the person(s) requesting and performing such destruction, the reasons for such destruction, and each document evidencing the document's prior existence and/or facts concerning its destruction.

4. If any document or thing is withheld on grounds of privilege or work-product immunity, (i) identify the document or thing with sufficient particularity, including a description of the document's type (event, conversation, occurrence), subject matter, date, and participants, and (ii) state the legal and factual basis for the claim of privilege or work-product protection.

5. Insofar as any of these document production requests concern use of any mark or designation, such requests concern use in the United States of America and in commonwealths, territories, or other territory within the federal judicial system of the federal government of the United States of America, and not use in foreign nations.

6. Each request herein for any documents or things to be produced contemplates production of the documents or things in their entirety, without abbreviation, deletions, or redacted material and as they are kept in the ordinary course of business. File folders and notebooks with tabs or labels identifying documents must be produced in an intelligible format or with a description of the system from which the information was collected sufficient to permit rendering the materials readable, usable and subject to copying.

7. Pursuant to the Federal Rules of Civil Procedure Rule 26(e) and Rule 34, the parties have a duty to supplement regularly any prior response to the extent of documents, objects, or tangible things that subsequently come into their possession or control or become known to them.

8. The words "and" and "or" are construed both conjunctively and disjunctively, and each includes the other wherever such dual construction will serve to bring within the scope of this request any documents which would otherwise not be brought within its scope. All such terms, as well as other conjunctions and prepositions, are interpreted in the manner that provides the most complete answer and information.

9. “Each” means each and every.

10. In order to bring within the scope of these document production requests any documents or things that might otherwise be considered outside their purview, any word written in the singular is construed as plural, and in the plural as singular; verb tenses are construed to include past, present, and future tenses.

REQUESTS FOR PRODUCTION

Please produce the following documents and things:

REQUEST NO. 1

All U.S. federal and state trademark and service mark applications filed by or on behalf of Applicant for Applicant’s Mark and/or any Related Marks.

REQUEST NO. 2

Representative samples of all documents and things showing, concerning, evidencing, relating or referring to Applicant’s selection, design and adoption of Applicant’s Mark including, without limitation, any documentation of meetings or discussions held concerning the selection, design and adoption of Applicant’s Mark, any documentation relating to the reasons for selecting Applicant’s Mark, and any documentation concerning the consideration and rejection of other marks.

REQUEST NO. 3

Representative samples of all documents and things showing, concerning, evidencing, relating or referring to Applicant’s search reports prepared during the selection, design and adoption of Applicant’s Mark.

REQUEST NO. 4

All documents and things showing, concerning, evidencing, relating or referring to third party uses of marks featuring the words “TRADEMARK” and “TEA.”

REQUEST NO. 5

Documents sufficient to show the time frame during which Applicant’s goods and/or services were distributed or offered in the United States.

REQUEST NO. 6

Documents sufficient to identify the names, titles and addresses of each and every person who participated in the Applicant’s selection, design and adoption of Applicant’s Mark including, specifically, the name(s) of the person and persons who first suggested that Applicant adopt and use Applicant’s Mark in connection with Applicant’s goods and/or services.

REQUEST NO. 7

Representative samples of all documents and things referring to or regarding Applicant’s advertising, marketing, and/or promotions for any goods and/or services sold under Applicant’s Mark, including, without limitation, advertisements, promotional materials, press releases, promotional emails and mail, online marketing, customer presentations, signs, posters, newspapers, media articles, catalogs, brochures, business cards, webpage screenshots, and any other publicly-distributed materials or items.

REQUEST NO. 8

Representative samples of all documents and things concerning press releases, articles from trade publications, news stories, and/or news clippings, regardless of medium, referencing and/or containing Applicant’s Mark.

REQUEST NO. 9

All documents and things concerning any assignment of Applicant's Mark.

REQUEST NO. 10

All documents and things concerning any license of Applicant's Mark.

REQUEST NO. 11

Representative samples of all documents and things showing, concerning, evidencing, relating or referring to Applicant's first use of Applicant's Mark on goods and/or services identified in Application Serial No. 88408976 for use in connection with Applicant's Mark in interstate commerce.

REQUEST NO. 12

Representative samples of all documents and things showing, concerning, evidencing, relating or referring to Applicant's first use of Applicant's Mark on any goods and/or services.

REQUEST NO. 13

Documents and things sufficient to show all the goods and/or services that have been offered, sold, advertised, and/or distributed under Applicant's Mark including specimens of such goods and/or services and literature describing the goods and/or services.

REQUEST NO. 14

Documents and things sufficient to identify the number of customers and/or clients that have used the goods and/or services connected with Applicant's Mark, as of December 24, 2020.

REQUEST NO. 15

Representative samples of all documents describing or constituting instances in which Applicant has used Applicant's Mark and/or any Related Marks.

REQUEST NO. 16

Representative samples of all documents constituting, referring, or relating to any third-party use of Applicant's Mark and/or any Related Marks in connection with Applicant's goods and/or services.

REQUEST NO. 17

Documents and things sufficient to identify the URL of any websites featuring goods and/or services in connection with Applicant's Mark, as of December 24, 2020.

REQUEST NO. 18

Documents and things sufficient to support Applicant's statement in Applicant's Answer to Notice of Opposition, First Affirmative Defense: "...the fact that Opposer's proposed mark is merely informational matter that fails to function as a mark to indicate source."

REQUEST NO. 19

Documents and things sufficient to support Applicant's statement in Applicant's Answer to Notice of Opposition, Second Affirmative Defense: "Opposer's proposed mark is a common phrase or message that would ordinarily be used in advertising or in the relevant industry, or that consumers are accustomed to seeing used in 4 everyday speech by a variety of sources, such that Opposer's mark does not serve any source-indicating function in commerce."

REQUEST NO. 20

Documents and things sufficient to support Applicant's statement in Applicant's Answer to Notice of Opposition, Third Affirmative Defense: "Opposer's proposed mark is a widely used message that merely convey ordinary, familiar concepts or sentiments that are used by a variety of sources in the marketplace that is considered commonplace and will be understood as

conveying the ordinary concept or sentiment normally associated with it, rather than serving any source indicating function in commerce.”

REQUEST NO. 21

Documents and things sufficient to support Applicant’s statement in Applicant’s Answer to Notice of Opposition, Fourth Affirmative Defense: “...the opposition is barred by the doctrine of laches.”

REQUEST NO. 22

Documents and things sufficient to support Applicant’s statement in Applicant’s Answer to Notice of Opposition, Fifth Affirmative Defense: “...the opposition is barred by the doctrine of estoppel.”

REQUEST NO. 23

Documents and things sufficient to support Applicant’s statement in Applicant’s Answer to Notice of Opposition, Sixth Affirmative Defense: “...opposer has waived any right to pursue its opposition.”

REQUEST NO. 24

Documents and things sufficient to support Applicant’s statement in Applicant’s Answer to Notice of Opposition, Seventh Affirmative Defense: “...the opposition is barred by the doctrine of acquiescence.”

REQUEST NO. 25

Documents and things sufficient to support Applicant’s statement in Applicant’s Answer to Notice of Opposition, Eighth Affirmative Defense: “...the opposition is barred by the doctrine of unclean hands.”

REQUEST NO. 26

All documents and things upon which any expert or consultant retained by Applicant or any person acting for or on behalf of Applicant relied upon to generate his or her opinions, statements, or other documents regarding any of the issues involved.

REQUEST NO. 27

All documents and things, other than those produced in response to any of the foregoing requests, identified or used by Applicant in its answers to Opposer's First Set of Interrogatories.

REQUEST NO. 28

All documents and things, other than those produced in response to any of the foregoing requests, upon which Applicant intends to rely in connection with this proceeding.

Dated this 24th day of December, 2020.



Ashley Kirkwood
Mobile General Counsel PLLC
2903 Sunset Avenue
Flossmoor, IL 60422
TEL: (312) 880-8518
EMAIL: ashleyk@mobilegeneralcounsel.com

Opposer

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

ASHLEY KIRKWOOD,

Opposer,

v.

ROSEZENA J. PIERCE,

Applicant.

Opposition No. 91253132

Application Serial No. 88408976

Mark:

Trademark Tea

OPPOSER'S MOTION TO REOPEN DISCOVERY

Exhibit 3: Opposer's Notice of Rule 30(6)(6) Deposition of Applicant

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

ASHLEY KIRKWOOD,)	
)	
)	
Opposer,)	Opposition No. 91253132
)	
v.)	Serial No. 88408976
)	
ROSEZENA J. PIERCE,)	
)	
)	
Applicant.)	
)	

NOTICE OF RULE 30(b)(6) DEPOSITION OF APPLICANT

Please take notice that Opposer Ashley Kirkwood (“Opposer”), pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure, Trademark Rule 2.120(b) and TBMP § 404, will take the depositions upon oral examination of Applicant Rosezena J. Pierce (“Applicant”) before a court reporter or a comparable service that is authorized to administer oaths by the laws of the United States or the State of Illinois pursuant to Fed. R. Civ. P. 28, at the date, time, and location listed below, and continuing until completed, at which time Applicant is invited to cross-examine.

Such depositions shall be taken for the purpose of discovery and for all purposes permitted by Federal Rules, statutes, and regulations, in the above-referenced proceeding and will continue from time to time until completed.

Date: January 26, 2021 (or as otherwise agreed to by the parties)

Time: 2:30 P.M. Central Standard Time (or as otherwise agreed to by the parties)

Method: By Phone or Video Call

Applicants will be prepared to continue the depositions on the subsequent business day if necessary as a result of the length of the depositions and/or the number of persons designated.

Applicant shall produce for inspection and/or copying by Opposer prior to the commencement of this deposition, all documents not yet produced that are responsive to Opposer's First Set of Requests for Production of Documents and Things to Applicant and any other outstanding discovery.

The topics to be discussed during the deposition shall come from the interrogatories and requests made in:

1. Opposer's First Set of Interrogatories to Applicant;
2. Opposer's First Set of Requests for Admission to Applicant; and
3. Opposer's First Set of Requests for Production of Documents and Things to Applicant.
4. Any subjects contained in the pleadings in this matter.

In the event that Opposer receives adequate responses to Opposer's First Set of Interrogatories to Applicant, Opposer's First Set of Requests for Admission to Applicant, and Opposer's First Set of Requests for Production of Documents and Things to Applicant, Opposer reserves the right to cancel the deposition.

Dated this 24th day of December, 2020.

A handwritten signature in black ink, appearing to read "Ashley Kirkwood". The signature is fluid and cursive, with a large initial "A" and "K".

Ashley Kirkwood
Mobile General Counsel PLLC
2903 Sunset Avenue
Flossmoor, IL 60422
TEL: (312) 880-8518
EMAIL: ashleyk@mobilegeneralcounsel.com

Opposer

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

ASHLEY KIRKWOOD,

Opposer,

v.

ROSEZENA J. PIERCE,

Applicant.

Opposition No. 91253132

Application Serial No. 88408976

Mark:

Trademark Tea

OPPOSER'S MOTION TO REOPEN DISCOVERY

Exhibit 4: Applicant's response to Opposer's first interrogatories

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

**In the matter of Application No. 88408976
For the mark: TRADEMARK TEA
Published in the Official Gazette on September 03, 2019**

ASHLEY KIRKWOOD	§	
OPPOSER,	§	
	§	OPPOSITION NO. 91253132
	§	
V.	§	
	§	
	§	
ROSEZENA J. PIERCE	§	
APPLICANT.	§	

**APPLICANT, ROSEZENA J. PIERCE'S FIRST RESPONSE TO
INTERROGATORIES REQUEST FROM OPPOSER, ASHLEY KIRKWOOD**

TO: Opposer, ASHLEY KIRKWOOD, 2903 Sunset Avenue, Flossmoor, IL 60422.

COMES NOW, Applicant, ROSEZENA J. PIERCE, to serve Opposer with her First Set of Response to Admissions Request From Opposer, Ashley Kirkwood.

Respectfully submitted,

/Rosezena J. Pierce/

Date: January 25, 2021

Rosezena J. Pierce Esq.
R.J. Pierce Law Group, P.C.
200 W. Madison, Suite 2100 - #330
Chicago, Illinois 60606
rosezena@rjpiercelaw.com
rosezena.j.pierce@gmail.com
COUNSEL FOR APPLICANT,
ROSEZENA J. PIERCE

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on each attorney of record or party in accordance with Rule 311.01(c) of the Trademark Trial and Appeal Board by delivery by telephonic document transfer, electronic mail or certified mail, return receipt requested, addressed as follows:

Erik M. Pelton
ERIK M. PELTON & ASSOCIATES, PLLC
111 Park Place, Suite 1A
Falls Church, VA 22046
703-525-8009 (phone)
uspto@tm4smallbiz.com (email)
COUNSEL FOR OPPOSER

Date: January 25, 2021

Rosezena J. Pierce Esq.
R.J. Pierce Law Group, P.C.
200 W. Madison, Suite 2100 - #330
Chicago, Illinois 60606
rosezena@rjpiercelaw.com
rosezena.j.pierce@gmail.com
COUNSEL FOR APPLICANT,
ROSEZENA J. PIERCE

DEFINITIONS

As used in these requests for production, the following definitions apply:

1. "Opposer" or "Applicant," as well as a party's full abbreviated name or a pronoun referring to a party, means the party, and where applicable, the party's agents, representatives, officers, directors, employees, partners, corporate agents, subsidiaries, affiliates or any other person acting in concert with the party or under the party's control, whether directly or indirectly, including any attorney.
2. "You" or "Your" ASHLEY KIRKWOOD, its successors, predecessors, divisions, subsidiaries, present and former officers, agents, employees and all other persons acting on behalf of ASHLEY KIRKWOOD, or its successors, predecessors, divisions, subsidiaries.
3. "Opposer" means ASHLEY KIRKWOOD.
4. "Applicant" mean ROSEZENA J. PIERCE.
5. "Material" means all documents, electronically stored information, or tangible things. The term is synonymous with and equal in scope to the term "documents," "electronically stored information," and "tangible things" in Federal Rule of Civil Procedure 34(a)(1). A draft or nonidentical copy of a document, electronically stored information, or a tangible thing is a separate item within the meaning of this term.
 - a. "Document" means all written, typed, or printed matter and all magnetic, electronic, or other records or documentation of any kind or description in your actual possession, custody, or control, including those in the possession, custody, or control of any and all present or former directors, officers, employees, consultants, accountants, attorneys, or other agents, whether or not prepared by you, that constitute or contain matters relevant to the subject matter of the action. "Document" includes, but is not limited to, the following: letters, reports, charts, diagrams, correspondence, telegrams, memoranda, notes, records, minutes, contracts, agreements, record or notations of telephone or personal conversations or conferences, interoffice communications, e-mail, microfilm, bulletins, circulars, pamphlets, photographs, faxes, invoices, tape recordings, computer printouts, drafts, resumes, logs, and worksheets.
 - b. "Electronic or magnetic data" means electronic information that is stored in a medium from which it can be retrieved and examined. The term refers to the original (or identical duplicate when the original is not available) and any other copies of the data that may have attached comments, notes, marks, or highlighting of any kind. Electronic or magnetic data includes, but is not limited to, the following: computer programs; operating systems; computer activity logs; programming notes or instructions; e-mail receipts, messages, or transmissions; output resulting from the use of any software program, including word-processing documents, spreadsheets, database files, charts, graphs, and outlines; metadata; PIF and PDF files; batch files; deleted files; temporary files; Internet- or web-browser-generated information stored in textual, graphical, or audio format, including history files, caches, and cookies; and any miscellaneous files or file fragments. Electronic or magnetic data includes any items stored on magnetic, optical, digital, or other electronic-storage

media, such as hard drives, floppy disks, CD-ROMs, DVDs, tapes, smart cards, integrated-circuit cards (e.g., SIM cards), removable media (e.g., Zip drives, Jaz cartridges), microfiche and punched cards. Electronic or magnetic data also includes the file, folder, tabs, containers, and labels attached to or associated with any physical storage device with each original or copy.

6. "Identify," with regard to a person, means to provide the following: (1) the person's full name; (2) any other names the person uses or has used in the past; (3) the person's residential address and telephone number; (4) the person's business address(es) and telephone number(s); (5) the person's employer and job title; (6) if the person is a former employee, the person's last job title while so employed, and the date of termination; and (7) if the person is not an employee of Applicant but has some other connection with Applicant, for example, agent, independent contractor, officer, director, or customer, the person's connection with Applicant.

7. "Identify" or "describe", when referring to a document, means you must state the following (1) the nature of the document; (2) the title or heading that appears on the document; (3) the date of the document and the date of each addendum, supplement, or other addition or change; (4) the identifies of the author, signer of the document, and person on whose behalf or at whose request or direction the document was prepared or delivered; and (5) the present location of the document and the name, address, position or title, and telephone number of the person or persons having custody of the document.

8. "Knowledge" means not only the personal and present knowledge of the person inquired of, but also the present knowledge of any officers, directors, agents, servants, employees, attorneys, and representatives of the person inquired of and information available to them.

9. "Mobile device" means any cellular telephone, satellite telephone, pager, personal digital assistant, handheld computer, electronic rolodex, walkie-talkie, or any combination of these devices.

10. "Possession, custody, or control" of an item means that the person either has physical possession of the item or has a right to possession equal or superior to that of the person who has physical possession of the item.

11. "Person" means any natural person, corporation, firm, association, partnership, joint venture, proprietorship, governmental body, or any other organization, business, or legal entity, and all predecessors or successors in interest.

12. "Relate to" means to name, refer to either directly or indirectly, comment on, analyze, review, report on, form the basis of, be considered in the preparation of, result from, or have any logical relation or relevance to the entity, person, document, event, or action pertaining to the subject matter on which inquiry is made.

13. "Statement" is a written statement signed or otherwise adopted or approved by the person making it or a stenographic, mechanical, electrical, or other type of recording, or any transcription thereof that is a substantially verbatim recital of a statement made by the person and contemporaneously recorded.

14. For any material that Applicant asserts are privileged, protected, or otherwise exempt from discovery, provide the following:

- a. The specific grounds for the claim of privilege, protection, or other exemption.
- b. The type of material being withheld, and, if the material is electronically stored information, the file format of the material.
- c. The subject matter of the material.
- d. The date of the material.
- e. The name, job title, and address of the author of the material.
- f. The name, job title, and address of each addressee of the material.
- g. The name, job title, and address of each person who received, was copied on, or otherwise saw all, part, or a summary of the material.
- h. The name, job title, and address of the custodian of the material and the material's current location.

SPECIFIC DEFINITIONS

- A. “Opposer” means ASHLEY KIRKWOOD.
- B. “Applicant” means ROSEZENA J. PIERCE.
- C. “Applicant’s Mark” means Applicant’s Trademark Tea mark, published September 03, 2019.
- D. “Opposer’s Mark” means “Get the Tea on Trademarks” mark filed August XX.
- E. “Opposer’s Services” means “Education services, namely, providing live and on-line classes in the field of trademarks, business law, small business law, trademark developments within the law and popular culture.”
- F. “Applicant’s Services” means “Television program syndication; Television show production; Workshops and seminars in the field of trademark developments within the law and popular culture; Education and entertainment services, namely, ongoing television public service announcements and ongoing television programs in the field of trademark developments within the law and popular culture; Educational services, namely, conducting seminars, webinars, and workshops in the field of trademark developments within the law and popular culture and distribution of course materials in connection therewith in printed or electronic format; Entertainment and educational services, namely, the presentation of seminars, workshops and panel discussions, and ongoing television and radio shows all in the field of trademark developments within the law and popular culture; Entertainment and educational services, namely, the presentation of seminars, lectures, workshops and panel discussions, and ongoing television and radio talk shows all in the field of public interest concerning trademark developments within the law and popular culture; Entertainment in the nature of television news shows; Entertainment in the nature of ongoing television programs in the field of trademark developments within the law and popular culture; Entertainment services in the nature of an ongoing reality based television program; Entertainment services, namely, televised appearances by a trademark lawyer, trademark owners, trademark clients, and celebrity guest; Entertainment services, namely, providing podcasts in the field of trademark developments within the law and popular culture; Entertainment services, namely, providing ongoing television programs in the field of trademark developments within the law and popular culture via a global computer network; Entertainment services, namely, providing video podcasts in the field of trademark developments within the law and popular culture; Entertainment, namely, television news shows; Entertainment, namely, production of television program; On-line journals, namely, blogs featuring trademark developments within the law and popular culture; On-line video journals, namely, vlogs featuring nondownloadable videos in the field of trademark developments within the law and popular culture; Production of radio or television programs; Providing television programs, not downloadable, via video-on-demand transmission services; Providing a website featuring blogs and non-downloadable publications in the nature of articles in the

field(s) of trademark developments within the law and popular culture; Providing entertainment services in the nature of ongoing Internet Protocol Television (IPTV) television programming segments in the field of trademark developments within the law and popular culture; Syndication of television programs featuring trademark developments within the law and popular culture.”

TIME PERIOD

The discovery requested is for the period beginning January 1, 2018 to the present, unless otherwise specifically stated in the request.

APPLICANT'S RESPONSE TO REQUESTS FOR INTERROGATORIES

1. Identify the nature and scope of Applicant's business, its place or places of business, its form of business organization and its date of incorporation.

RESPONSE: The nature and scope of Applicant's business is a virtual trademark law firm, professional corporation, incorporated in the state of Illinois September 2017.

2. Identify any and all predecessors, or successors of Applicant, and all entities with any interest in Applicant's business involving Applicant's Mark and/or any Related Marks.

RESPONSE: Applicant is the sole interest holder.

3. Identify all persons, including officers, directors and managerial employees of Applicant, that were involved in or have knowledge of the selection, design, and creation of Applicant's Mark and/or any Related Marks.

RESPONSE: Applicant is the sole creator of Applicant's Mark.

4. With respect to each such officer, director and managerial employee listed in response to Interrogatory Number 3, describe his or her responsibilities, duties and length of tenure, including the dates when each commenced his or her employment.

RESPONSE: Applicant is the sole Owner and CEO of her law firm.

5. Identify and describe each product and/or service offered by Applicant in connection with Applicant's Mark and/or any Related Marks, including any products and/or services which are no longer offered by Applicant.

RESPONSE: These are all the services that Applicant is currently using or intend to use in connection with the Applicant's Mark:

Television program syndication; Television show production; Workshops and seminars in the field of trademark developments within the law and popular culture; Education and entertainment services, namely, ongoing television public service announcements and ongoing television programs in the field of trademark developments within the law and popular culture; Educational services, namely, conducting seminars, webinars, and workshops in the field of trademark developments within the law and popular culture and distribution of course materials in connection therewith in printed or electronic format; Entertainment and educational services, namely, the presentation of seminars, workshops and panel discussions, and ongoing television and radio shows all in the field of trademark developments within the law and popular culture; Entertainment and educational services, namely, the presentation of seminars, lectures, workshops and panel discussions, and ongoing television and radio talk shows all in the field of public interest concerning trademark developments within the law and popular culture; Entertainment in the nature of television news shows; Entertainment in the nature of ongoing television programs in the field of trademark developments within the law and popular culture; Entertainment services in the nature of an ongoing reality based television program; Entertainment services, namely, televised appearances by a trademark lawyer, trademark owners, trademark clients, and celebrity guest; Entertainment services, namely, providing podcasts in the field of trademark developments within the law and popular culture; Entertainment services, namely, providing ongoing television programs in the field of trademark developments within the law and popular culture via a global computer network; Entertainment services, namely, providing video podcasts in the field of trademark developments within the law and popular culture; Entertainment, namely, television news shows; Entertainment, namely,

production of television program; On-line journals, namely, blogs featuring trademark developments within the law and popular culture; On-line video journals, namely, vlogs featuring nondownloadable videos in the field of trademark developments within the law and popular culture; Production of radio or television programs; Providing television programs, not downloadable, via video-on-demand transmission services; Providing a website featuring blogs and non-downloadable publications in the nature of articles in the field(s) of trademark developments within the law and popular culture; Providing entertainment services in the nature of ongoing Internet Protocol Television (IPTV) television programming segments in the field of trademark developments within the law and popular culture; Syndication of television programs featuring trademark developments within the law and popular culture

6. For each product or service identified in answer to Interrogatory Number 5, identify the earliest date when Applicant made such offer and the time period during which such offer continued.

RESPONSE: The earliest date Applicant made such offer for each services is at least as early as August 6, 2019 in connection with Television program syndication; Television show production; Workshops and seminars in the field of trademark developments within the law and popular culture; Education and entertainment services, namely, ongoing television public service announcements and ongoing television programs in the field of trademark developments within the law and popular culture; Educational services, namely, conducting seminars, webinars, and workshops in the field of trademark developments within the law and popular culture and distribution of course materials in connection therewith in printed or electronic format; Entertainment and educational services, namely, the presentation of seminars, workshops and panel discussions, and ongoing television and radio shows all in the field of trademark developments within the law and

popular culture; Entertainment and educational services, namely, the presentation of seminars, lectures, workshops and panel discussions, and ongoing television and radio talk shows all in the field of public interest concerning trademark developments within the law and popular culture; Entertainment in the nature of television news shows; Entertainment in the nature of ongoing television programs in the field of trademark developments within the law and popular culture; Entertainment services in the nature of an ongoing reality based television program; Entertainment services, namely, televised appearances by a trademark lawyer, trademark owners, trademark clients, and celebrity guest; Entertainment services, namely, providing podcasts in the field of trademark developments within the law and popular culture; Entertainment services, namely, providing ongoing television programs in the field of trademark developments within the law and popular culture via a global computer network; Entertainment services, namely, providing video podcasts in the field of trademark developments within the law and popular culture; Entertainment, namely, television news shows; Entertainment, namely, production of television program; On-line journals, namely, blogs featuring trademark developments within the law and popular culture; On-line video journals, namely, vlogs featuring nondownloadable videos in the field of trademark developments within the law and popular culture; Production of radio or television programs; Providing television programs, not downloadable, via video-on-demand transmission services; Providing a website featuring blogs and non-downloadable publications in the nature of articles in the field(s) of trademark developments within the law and popular culture; Providing entertainment services in the nature of ongoing Internet Protocol Television

(IPTV) television programming segments in the field of trademark developments within the law and popular culture; Syndication of television programs featuring trademark developments within the law and popular culture. Applicant notes that it intends to use the radio-related services in connection with Applicant's mark but has not yet done so.

7. For each product or service identified in answer to Interrogatory Number 5, identify the locality and state in which such product or service was distributed.

RESPONSE: The services are distributed over the world wide web via streaming platforms such as Youtube, Facebook, and Instagram.

8. For each product or service identified in answer to Interrogatory Number 5, identify the customers to which the distribution of such product or service was targeted.

RESPONSE: The distribution of services targets an audience of viewers who are entrepreneurs, brand owners, and individuals who want to learn the importance of trademark law and seek an experienced trademark attorney to secure registration.

9. For each product or service identified in answer to Interrogatory Number 5, identify all documents showing or describing such product or service.

RESPONSE: The documents showing and describing the products and services include advertisement, marketing, internal communication, and media production provided to Opposer pursuant to Opposer's Request for Production.

10. Identify the person or persons employed by Applicant who are or were primarily responsible for the selection of Applicant's Mark and/or any Related Marks.

RESPONSE: Applicant is the sole person who selected the Mark.

11. Identify all advertisements and promotions showing Applicant's Mark and/or any Related Marks in connection with Applicant's goods and services, and indicate the date when each advertisement or promotion appeared, the medium or media in which the advertisement or promotion appeared, the geographic locations where such advertisement or promotion appeared, the person or persons who have been responsible for the advertisement or promotion, and the class of consumer or purchaser to whom each advertisement or promotion was directed.

RESPONSE: All advertisement and promotion showing Applicant's mark in connection with Applicant's services have been produced pursuant to Opposer's Request for Production of Documents and Things, with corresponding dates; the advertisement and promotion appeared on the world wide web via streaming platforms such as Youtube, Facebook, and Instagram; and the class of consumer or purchaser to whom each advertisement or promotion is directed included all individuals with access to streaming platforms, who are entrepreneurs, brand owners, and individuals who want to learn the importance of trademark law and seek an experienced trademark attorney to secure registration.

12. With respect to each of the products and/or services identified in response to Interrogatory Number 5, identify the date of the first use of Applicant's Mark and/or any Related Marks in commerce in the United States.

RESPONSE: Applicant objects to this Interrogatory as duplicative.

13. With respect to each of the products and/or services identified in response to Interrogatory Number 5, describe with specificity examples of the first use of Applicant's Mark

and/or any Related Marks in commerce in the United States.

14. **RESPONSE: Advertisement and promotion that has appeared on the world wide web via streaming platforms such as Youtube, Facebook, and Instagram that has been produced by Applicant pursuant to Opposer's Request for Production.**

15. With respect to each of the products and/or services identified in response to Interrogatory Number 5, describe all relevant facts and circumstances regarding the first use of Applicant's Mark and/or any Related Marks in commerce in the United States.

RESPONSE: Applicant advertised her television show on social media platforms such as Youtube, Facebook, and Instagram on August 6, 2019.

16. With respect to each of the products and/or services identified in response to Interrogatory Number 5, describe all relevant facts and circumstances regarding the channels of trade by which the products and/or services of the Applicant reach the ultimate end customer.

RESPONSE: Applicant provides information regarding trademark law and current events concerning trademark matters. Applicant's Services do not include teaching individuals how to file their own trademark applications.

17. Describe in detail any trademark search conducted in connection with Applicant's Mark and/or any Related Marks, and identify all documents related to any such search.

RESPONSE: Objection – Confidential and Privilege Information

18. Identify all documents in Applicant's possession which refer or relate to Applicant's use of Applicant's Mark and/or any Related Marks.

RESPONSES: The documents showing and describing the products and services include advertisement, marketing, internal communication, and media production provided to Opposer pursuant to Opposer's Request for Production.

19. Describe any plans or steps to expand the number of products or services with which Applicant's Mark and/or any Related Marks is used, to alter the channels of trade mentioned in the answer to Interrogatory Number 14, or to sell such products and/or services to customers or client bases other than those mentioned in the answer to Interrogatory Number 6.

RESPONSE: Objection – Confidential and Privilege Information. Although Applicant can assure Opposer that she will never teach clients or potential clients how to file their own trademark applications under Applicant's Mark.

20. Identify the date on which Applicant was retained by Opposer for registration of Opposer's mark, "MOBILE GENERAL COUNSEL," Registration No. 5753691.

RESPONSE: Opposer retained Applicant for registration of Opposer's mark, "MOBILE GENERAL COUNSEL" on or around August 26, 2018.

21. Describe with specificity the circumstances under which Applicant was retained by Opposer for registration of Opposer's mark, "MOBILE GENERAL COUNSEL," Registration No. 5753691, and the nature of the representation.

RESPONSE: Applicant was retained by Opposer for registration of Opposer's mark, "MOBILE GENERAL COUNSEL," Registration No. 5753691, after Opposer disclosed to Applicant that Opposer had never practiced trademark law. Opposer sought out Applicant's trademark legal services.

22. Identify the date on which Applicant first became aware of Opposer's Mark.

Response: August 29, 2019

23. Describe with specificity the circumstances under which Applicant first became aware of Opposer's Mark.

Response: Applicant received a cease and desist letter dated August 29th, 2019 from Opposer's Attorney, Erik M Pelton.

24. Describe with specificity any knowledge Applicant at any point had of Opposer's use of Opposer's Mark.

RESPONSE: Applicant became aware of Opposer's Use of Opposer's Mark upon received the August 29, 2019 cease and desist letter.

25. Describe with specificity any knowledge Applicant at any point had of Opposer's business, products, and services.

RESPONSE: Applicant was aware that Opposer recently started a law firm as a solo practitioner and Opposer stated to Applicant that Opposer would be practicing employment law and small business risk management. Opposer expressed to Applicant that she had never practiced trademark law, needed Applicant to register Opposer's trademark, and Opposer would refer her clients to Applicant for trademark matters.

26. Describe with specificity the circumstances by which the Applicant's Mark and/or any Related Marks was adopted by Applicant.

REPOSENSE: Applicant is a well-known trademark attorney that reports trademark current events to the public as a means of conveying the importance of trademark registration. Trademark Tea was adopted in connection with the services listed in the identification of services as a means

to report current events in the field of trademark law and popular culture.

27. Identify all email subscriber lists associated with Opposer's business, products, and services which Applicant is or has previously been subscribed to.

RESPONSE: To the best of Applicant's knowledge, she is not and has not been involved in any email subscriber list associated with Opposer's business, products, or services.

28. Identify all business-related Facebook groups, LinkedIn groups, and other social media groups Applicant is a member of.

RESPONSE: Applicant specifically objects to this Interrogatory as: (i) seeking private and irrelevant information not reasonably calculated to lead to the discovery of admissible evidence; and (ii) unduly burdensome.

29. Identify all expert witnesses which Applicant has consulted with or retained with respect to any issues involved in this proceeding, and if such expert witnesses exist, identify all documents upon which the expert will base her expert opinion, and describe the subject matter concerning which he or she was consulted or retained.

RESPONSES: Applicant has not consulted with nor retained an expert witness.

30. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, First Affirmative Defense: "...the fact that Opposer's proposed mark is merely informational matter that fails to function as a mark to indicate source."

RESPONSE: Pursuant to Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§1051-1052, 1127, Opposer's mark is merely informational matter that fails to function as a trademark to indicate the source of applicant's goods or to identify and distinguish them from others. Applicant will produce evidence showing "get the tea on..." formative phrases used as merely informational matter to indicate the action of conveying information about a particular subject or thing.

31. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, Second Affirmative Defense: "Opposer's proposed

mark is a common phrase or message that would ordinarily be used in advertising or in the relevant industry, or that consumers are accustomed to seeing used in everyday speech by a variety of sources, such that Opposer's mark does not serve any source-indicating function in commerce."

RESPONSE: Pursuant to Trademark Act Sections 1, 2, and 45, 15 U.S.C. §§1051-1052, 1127, applied-for mark is a slogan that does not function as a trademark to indicate the source of applicant's goods and to identify and distinguish them from others. Applicant will produce evidence showing "get the tea on..." formative phrases showing that it does not function to distinguish source because it is a common phrase or message that would ordinarily be used in advertising, in the relevant industry, and consumers are accustomed to seeing the phrase in everyday speech by a variety of sources to indicate the action of conveying information about a subject or thing.

32. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, Third Affirmative Defense: "Opposer's proposed mark is a widely used message that merely convey ordinary, familiar concepts or sentiments that are used by a variety of sources in the marketplace that is considered commonplace and will be understood as conveying the ordinary concept or sentiment normally associated with it, rather than serving any source indicating function in commerce."

REPOSENSE: Applicant intends to produce evidence of third parties using the "get the tea on..." formative phrases showing that Opposer's phrase is widely used to express the action of conveying information about a particular subject or thing.

33. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, Fourth Affirmative Defense: "...the opposition is barred by the doctrine of laches."

RESPONSE: This Affirmative defense has been struck.

34. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, Fifth Affirmative Defense: "...the opposition is barred by the doctrine of estoppel."

RESPONSE: This Affirmative defense has been struck

35. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, Sixth Affirmative Defense: "...opposer has waived any right to pursue its opposition."

RESPONSE: This Affirmative defense has been struck

36. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, Seventh Affirmative Defense: "...the opposition is barred by the doctrine of acquiescence."

RESPONSE: This Affirmative defense has been struck.

37. Describe with specificity any support Applicant has for the statement in Applicant's Answer to Notice of Opposition, Eighth Affirmative Defense: "...the opposition is barred by the doctrine of unclean hands."

RESPONSE: This Affirmative defense has been struck.

38. Identify any and all documents responsive to the preceding Interrogatories which have been lost or destroyed, the dates and the reasons for such loss or destruction, and the persons most knowledgeable about such loss or destruction.

RESPONSE: Applicant is not aware of any such documents.

39. For each of the preceding Interrogatories, identify all persons who were consulted or participated in the preparation of the answer to each Interrogatory; all persons who are presently knowledgeable as to any of the facts recited in the answer to each Interrogatory; whether or not such persons were consulted or participated in the preparation of the answer; and all files and areas searched in attempting to locate any documents requested to be identified by each Interrogatory.

RESPONSES: Rosezena Pierce, Makeda Smith, Jonelle Lacey, Jasmine Jandrlich.

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

ASHLEY KIRKWOOD,

Opposer,

v.

ROSEZENA J. PIERCE,

Applicant.

Opposition No. 91253132

Application Serial No. 88408976

Mark:

Trademark Tea

OPPOSER'S MOTION TO REOPEN DISCOVERY

Exhibit 5: Applicant's response to Opposer's first requests for production

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

**In the matter of Application No. 88408976
For the mark: TRADEMARK TEA
Published in the Official Gazette on September 03, 2019**

ASHLEY KIRKWOOD	§	
OPPOSER,	§	
	§	OPPOSITION NO. 91253132
	§	
V.	§	
	§	
	§	
ROSEZENA J. PIERCE	§	
APPLICANT.	§	

**APPLICANT, ROSEZENA J. PIERCE'S RESPONSES TO REQUEST FOR
PRODUCTION FROM OPPOSER, ASHLEY KIRKWOOD**

TO: Opposer, ASHLEY KIRKWOOD, 2903 Sunset Avenue, Flossmoor, IL 60422.
COMES NOW, Applicant, ROSEZENA J. PIERCE, to serve Opposer with her Responses to
Request for Production from Opposer Ashley Kirkwood.

Respectfully submitted,

/Rosezena J. Pierce/

Date: January 25, 2020

Rosezena J. Pierce Esq.
R.J. Pierce Law Group, P.C.
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rosezena@rjpiercelaw.com
rosezena.j.pierce@gmail.com
COUNSEL FOR APPLICANT,
ROSEZENA J. PIERCE

CERTIFICATE OF SERVICE

I certify that a true and correct copy of the foregoing was served on each attorney of record or party in accordance with Rule 311.01(c) of the Trademark Trial and Appeal Board by delivery by telephonic document transfer, electronic mail or certified mail, return receipt requested, addressed as follows:

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COUNSEL FOR OPPOSER

Date: January 25, 2021

/Rosezena J. Pierce Esq./
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COUNSEL FOR APPLICANT,
ROSEZENA J. PIERCE

DEFINITIONS

As used in these requests for production, the following definitions apply:

1. "Opposer" or "Applicant," as well as a party's full abbreviated name or a pronoun referring to a party, means the party, and where applicable, the party's agents, representatives, officers, directors, employees, partners, corporate agents, subsidiaries, affiliates or any other person acting in concert with the party or under the party's control, whether directly or indirectly, including any attorney.
2. "You" or "Your" ASHLEY KIRKWOOD, its successors, predecessors, divisions, subsidiaries, present and former officers, agents, employees and all other persons acting on behalf of ASHLEY KIRKWOOD, or its successors, predecessors, divisions, subsidiaries.
3. "Opposer" means ASHLEY KIRKWOOD.
4. "Applicant" mean ROSEZENA J. PIERCE.
5. "Material" means all documents, electronically stored information, or tangible things. The term is synonymous with and equal in scope to the term "documents," "electronically stored information," and "tangible things" in Federal Rule of Civil Procedure 34(a)(1). A draft or nonidentical copy of a document, electronically stored information, or a tangible thing is a separate item within the meaning of this term.
 - a. "Document" means all written, typed, or printed matter and all magnetic, electronic, or other records or documentation of any kind or description in your actual possession, custody, or control, including those in the possession, custody, or control of any and all present or former directors, officers, employees, consultants, accountants, attorneys, or other agents, whether or not prepared by you, that constitute or contain matters relevant to the subject matter of the action. "Document" includes, but is not limited to, the following: letters, reports, charts, diagrams, correspondence, telegrams, memoranda, notes, records, minutes, contracts, agreements, record or notations of telephone or personal conversations or conferences, interoffice communications, e-mail, microfilm, bulletins, circulars, pamphlets, photographs, faxes, invoices, tape recordings, computer printouts, drafts, resumes, logs, and worksheets.
 - b. "Electronic or magnetic data" means electronic information that is stored in a medium from which it can be retrieved and examined. The term refers to the original (or identical duplicate when the original is not available) and any other copies of the data that may have attached comments, notes, marks, or highlighting of any kind. Electronic or magnetic data includes, but is not limited to, the following: computer programs; operating systems; computer activity logs; programming notes or instructions; e-mail receipts, messages, or transmissions; output resulting from the use of any software program, including word-processing documents, spreadsheets, database files, charts, graphs, and outlines; metadata; PIF and PDF files; batch files; deleted files; temporary files; Internet- or web-browser-generated information stored in textual, graphical, or audio format, including history files, caches, and cookies; and any miscellaneous files or file fragments. Electronic or magnetic data includes any items stored on magnetic, optical, digital, or other electronic-storage

media, such as hard drives, floppy disks, CD-ROMs, DVDs, tapes, smart cards, integrated-circuit cards (e.g., SIM cards), removable media (e.g., Zip drives, Jaz cartridges), microfiche and punched cards. Electronic or magnetic data also includes the file, folder, tabs, containers, and labels attached to or associated with any physical storage device with each original or copy.

6. "Identify," with regard to a person, means to provide the following: (1) the person's full name; (2) any other names the person uses or has used in the past; (3) the person's residential address and telephone number; (4) the person's business address(es) and telephone number(s); (5) the person's employer and job title; (6) if the person is a former employee, the person's last job title while so employed, and the date of termination; and (7) if the person is not an employee of Applicant but has some other connection with Applicant, for example, agent, independent contractor, officer, director, or customer, the person's connection with Applicant.

7. "Identify" or "describe", when referring to a document, means you must state the following (1) the nature of the document; (2) the title or heading that appears on the document; (3) the date of the document and the date of each addendum, supplement, or other addition or change; (4) the identifies of the author, signer of the document, and person on whose behalf or at whose request or direction the document was prepared or delivered; and (5) the present location of the document and the name, address, position or title, and telephone number of the person or persons having custody of the document.

8. "Knowledge" means not only the personal and present knowledge of the person inquired of, but also the present knowledge of any officers, directors, agents, servants, employees, attorneys, and representatives of the person inquired of and information available to them.

9. "Mobile device" means any cellular telephone, satellite telephone, pager, personal digital assistant, handheld computer, electronic rolodex, walkie-talkie, or any combination of these devices.

10. "Possession, custody, or control" of an item means that the person either has physical possession of the item or has a right to possession equal or superior to that of the person who has physical possession of the item.

11. "Person" means any natural person, corporation, firm, association, partnership, joint venture, proprietorship, governmental body, or any other organization, business, or legal entity, and all predecessors or successors in interest.

12. "Relate to" means to name, refer to either directly or indirectly, comment on, analyze, review, report on, form the basis of, be considered in the preparation of, result from, or have any logical relation or relevance to the entity, person, document, event, or action pertaining to the subject matter on which inquiry is made.

13. "Statement" is a written statement signed or otherwise adopted or approved by the person making it or a stenographic, mechanical, electrical, or other type of recording, or any transcription thereof that is a substantially verbatim recital of a statement made by the person and contemporaneously recorded.

14. For any material that Applicant asserts are privileged, protected, or otherwise exempt from discovery, provide the following:

- a. The specific grounds for the claim of privilege, protection, or other exemption.
- b. The type of material being withheld, and, if the material is electronically stored information, the file format of the material.
- c. The subject matter of the material.
- d. The date of the material.
- e. The name, job title, and address of the author of the material.
- f. The name, job title, and address of each addressee of the material.
- g. The name, job title, and address of each person who received, was copied on, or otherwise saw all, part, or a summary of the material.
- h. The name, job title, and address of the custodian of the material and the material's current location.

SPECIFIC DEFINITIONS

- A. “Opposer” means ASHLEY KIRKWOOD.
- B. “Applicant” means ROSEZENA J. PIERCE.
- C. “Applicant’s Mark” means Applicant’s Trademark Tea mark, published September 03, 2019.
- D. “Opposer’s Mark” means “Get the Tea on Trademarks”.
- E. “Opposer’s Services” means “Education services, namely, providing live and on-line classes in the field of trademarks, business law, small business law, trademark developments within the law and popular culture.”
- F. “Applicant’s Services” means “Television program syndication; Television show production; Workshops and seminars in the field of trademark developments within the law and popular culture; Education and entertainment services, namely, ongoing television public service announcements and ongoing television programs in the field of trademark developments within the law and popular culture; Educational services, namely, conducting seminars, webinars, and workshops in the field of trademark developments within the law and popular culture and distribution of course materials in connection therewith in printed or electronic format; Entertainment and educational services, namely, the presentation of seminars, workshops and panel discussions, and ongoing television and radio shows all in the field of trademark developments within the law and popular culture; Entertainment and educational services, namely, the presentation of seminars, lectures, workshops and panel discussions, and ongoing television and radio talk shows all in the field of public interest concerning trademark developments within the law and popular culture; Entertainment in the nature of television news shows; Entertainment in the nature of ongoing television programs in the field of trademark developments within the law and popular culture; Entertainment services in the nature of an ongoing reality based television program; Entertainment services, namely, televised appearances by a trademark lawyer, trademark owners, trademark clients, and celebrity guest; Entertainment services, namely, providing podcasts in the field of trademark developments within the law and popular culture; Entertainment services, namely, providing ongoing television programs in the field of trademark developments within the law and popular culture via a global computer network; Entertainment services, namely, providing video podcasts in the field of trademark developments within the law and popular culture; Entertainment, namely, television news shows; Entertainment, namely, production of television program; On-line journals, namely, blogs featuring trademark developments within the law and popular culture; On-line video journals, namely, vlogs featuring nondownloadable videos in the field of trademark developments within the law and popular culture; Production of radio or television programs; Providing television programs, not downloadable, via video-on-demand transmission services; Providing a website featuring blogs and non-downloadable publications in the nature of articles in the

field(s) of trademark developments within the law and popular culture; Providing entertainment services in the nature of ongoing Internet Protocol Television (IPTV) television programming segments in the field of trademark developments within the law and popular culture; Syndication of television programs featuring trademark developments within the law and popular culture.”

TIME PERIOD

The discovery requested is for the period beginning January 1, 2018 to the present, unless otherwise specifically stated in the request.

**RESPONSES TO REQUESTS
FOR PRODUCTION**

REQUEST NO. 1

All U.S. federal and state trademark and service mark applications filed by or on behalf of Applicant for Applicant's Mark and/or any Related Marks.

RESPONSE: Please see Attached in Folder Labeled Response to Request No. 1

REQUEST NO. 2

Representative samples of all documents and things showing, concerning, evidencing, relating or referring to Applicant's selection, design and adoption of Applicant's Mark including, without limitation, any documentation of meetings or discussions held concerning the selection, design and adoption of Applicant's Mark, any documentation relating to the reasons for selecting Applicant's Mark, and any documentation concerning the consideration and rejection of other marks.

RESPONSE: It was an idea of Applicant and she decided to protect Applicant's Mark before adoption of designs for Applicant's Mark.

REQUEST NO. 3

Representative samples of all documents and things showing, concerning, evidencing, relating or referring to Applicant's search reports prepared during the selection, design and adoption of Applicant's Mark.

RESPONSE Applicant will object to this Request based on it being confidential and privileged information to Applicant. Applicant specifically objects to this Interrogatory as: (i) seeking private and irrelevant information not reasonably calculated to lead to the discovery of admissible evidence;

and (ii) designed to annoy and harass Applicant. Applicant objects that this Interrogatory is premature, due to the absence of an agreed upon protective order to govern the exchange of confidential information. Applicant is unable to substantively respond unless and until such protective order is in place. Applicant will provide supplementary responses following the execution of an agreed (or Board-ordered) protective order.

REQUEST NO. 4

All documents and things showing, concerning, evidencing, relating or referring to third party uses of marks featuring the words “TRADEMARK” and “TEA.”

RESPONSE: Applicant does not have access to any such documents.

REQUEST NO. 5

Documents sufficient to show the time frame during which Applicant’s goods and/or services were distributed or offered in the United States.

RESPONSE: Attached

REQUEST NO. 6

Documents sufficient to identify the names, titles and addresses of each and every person who participated in the Applicant’s selection, design and adoption of Applicant’s Mark including, specifically, the name(s) of the person and persons who first suggested that Applicant adopt and use Applicant’s Mark in connection with Applicant’s goods and/or services.

RESPONSE: Applicant was solely responsible for the adoption of Applicant’s Mark.

REQUEST NO. 7

Representative samples of all documents and things referring to or regarding Applicant’s advertising, marketing, and/or promotions for any goods and/or services sold under Applicant’s Mark, including, without limitation, advertisements, promotional materials, press releases, promotional emails and mail, online marketing, customer presentations, signs, posters, newspapers, media articles, catalogs, brochures, business cards, webpage screenshots, and any other publicly-distributed materials or items.

RESPONSE: Attached

REQUEST NO. 8

Representative samples of all documents and things concerning press releases, articles from trade publications, news stories, and/or news clippings, regardless of medium, referencing and/or containing Applicant's Mark.

RESPONSE: The Requested documents either don't exist or will be too burdensome for Applicant to acquire at this time, because Applicant has been featured in numerous publications and cannot recall which publication made reference to Applicant's Mark.

REQUEST NO. 9

All documents and things concerning any assignment of Applicant's Mark.

RESPONSE: The Requested documents don't exist.

REQUEST NO. 10

All documents and things concerning any license of Applicant's Mark.

RESPONSE: The Requested documents don't exist.

REQUEST NO. 11

Representative samples of all documents and things showing, concerning, evidencing, relating or referring to Applicant's first use of Applicant's Mark on goods and/or services identified in Application Serial No. 88408976 for use in connection with Applicant's Mark in interstate commerce.

RESPONSE: Attached

REQUEST NO. 12

Representative samples of all documents and things showing, concerning, evidencing, relating or referring to Applicant's first use of Applicant's Mark on any goods and/or

services.

RESPONSE: Attached

REQUEST NO. 13

Documents and things sufficient to show all the goods and/or services that have been offered, sold, advertised, and/or distributed under Applicant's Mark including specimens of such goods and/or services and literature describing the goods and/or services.

RESPONSE: Attached

REQUEST NO. 14

Documents and things sufficient to identify the number of customers and/or clients that have used the goods and/or services connected with Applicant's Mark, as of December 24, 2020.

RESPONSE: Due to the nature of the services offered under Applicant's Mark it is too burdensome to calculate the actual viewers that have used the goods and/or services connected with Applicant's Mark, as customers and clients consume the services by tuning into Applicant's streaming platforms, such as Instagram, which contains over 65,000 followers, Applicant's Email List, which has over 6500 followers, and Applicant's Youtube Channel that has many viewers, including 180 subscribers.

REQUEST NO. 15

Representative samples of all documents describing or constituting instances in which Applicant has used Applicant's Mark and/or any Related Marks.

RESPONSE: Attached

REQUEST NO. 16

Representative samples of all documents constituting, referring, or relating to any third-party use of Applicant's Mark and/or any Related Marks in connection with Applicant's goods and/or services.

RESPONSE: The Requested documents don't exist.

REQUEST NO. 17

Documents and things sufficient to identify the URL of any websites featuring goods and/or services in connection with Applicant's Mark, as of December 24, 2020.

RESPONSE: <https://www.facebook.com/rjpiercelaw/posts/introducing-trademark-tea-with-the-biz-lawyer-tv-show-we-have-been-hard-at-work-/614807658928032/>

<https://www.instagram.com/thebizlawyer/?hl=en>

[https://fi.pinterest.com/pin/334181234850483433/?amp_client_id=CLIENT_ID\(_\)&mweb_unauth_id=%7B%7Bdefault.session%7D%7D&_url=https%3A%2F%2Ffi.pinterest.com%2Famp%2Fpin%2F334181234850483433%2F&_expand=true](https://fi.pinterest.com/pin/334181234850483433/?amp_client_id=CLIENT_ID(_)&mweb_unauth_id=%7B%7Bdefault.session%7D%7D&_url=https%3A%2F%2Ffi.pinterest.com%2Famp%2Fpin%2F334181234850483433%2F&_expand=true)

<https://www.youtube.com/watch?v=JAUcc1v0UTs>

REQUEST NO. 18

Documents and things sufficient to support Applicant's statement in Applicant's Answer to Notice of Opposition, First Affirmative Defense: "...the fact that Opposer's proposed mark is merely informational matter that fails to function as a mark to indicate source."

RESPONSE: Trademark Act Sections 1, 2, 3, and 45, 15 U.S.C. §§1052(e), 1127*See In re Hulting*, 107 USPQ2d 1175, 1177-79 (TTAB 2013) (holding **NO MORE RINOS!**, a slogan meaning "No More Republicans In Name Only," not registrable for a variety of paper items, shirts, and novelty buttons because the mark would be perceived merely as a commonly used political message); *In re Eagle Crest, Inc.*, 96 USPQ2d 1227, 1229-31 (TTAB 2010) (holding **ONCE A MARINE, ALWAYS A MARINE** not registrable for clothing items because the mark would be perceived merely as an old and familiar military expression); TMEP §1202.04(b).

Terms and phrases that merely convey an informational message are not registrable. *See In re Eagle Crest, Inc.*, 96 USPQ2d at 1229. Determining whether a term or phrase functions as a trademark or service mark depends on how it would be perceived by the relevant public. *In re Eagle Crest, Inc.*, 96 USPQ2d at 1229; *In re Aerospace Optics, Inc.*, 78 USPQ2d 1861, 1862 (TTAB 2006); TMEP §1202.04. “The more commonly a [term or phrase] is used, the less likely that the public will use it to identify only one source and the less likely that it will be recognized by purchasers as a trademark [or service mark].” *In re Hulting*, 107 USPQ2d at 1177 (quoting *In re Eagle Crest, Inc.*, 96 USPQ2d at 1229); TMEP §1202.04(b).

REQUEST NO. 19

Documents and things sufficient to support Applicant’s statement in Applicant’s Answer to Notice of Opposition, Second Affirmative Defense: “Opposer’s proposed mark is a common phrase or message that would ordinarily be used in advertising or in the relevant industry, or that consumers are accustomed to seeing used in 4 everyday speech by a variety of sources, such that Opposer’s mark does not serve any source-indicating function in commerce.”

RESPONSE: Attached, as well as provided below.

<https://www.urbandictionary.com/define.php?term=The%20tea>

<https://www.merriam-webster.com/words-at-play/tea-slang-meaning-origin>

Good Day Sacramento: Get the Tea <https://www.youtube.com/watch?v=awmLp2wXXs>

Gary with DA Tea: <https://www.youtube.com/channel/UCG5Xubw2CqN->

4ZHkSlzBldg

Wats the tea wit empres B: <https://www.youtube.com/watch?v=RausFsNeCZg>

Ellen played her new favorite game, "Spill the Tea," :
<https://www.youtube.com/watch?v=avWLMvv7P4Q>

REQUEST NO. 20

Documents and things sufficient to support Applicant's statement in Applicant's Answer to Notice of Opposition, Third Affirmative Defense: "Opposer's proposed mark is a widely used message that merely convey ordinary, familiar concepts or sentiments that are used by a variety of sources in the marketplace that is considered commonplace and will be understood as conveying the ordinary concept or sentiment normally associated with it, rather than serving any source indicating function in commerce."

RESPONSE: Attached.

REQUEST NO. 21

Documents and things sufficient to support Applicant's statement in Applicant's Answer to Notice of Opposition, Fourth Affirmative Defense: "...the opposition is barred by the doctrine of laches."

RESPONSE: Pursuant to the Discovery call with Interlocutory Attorney, this Affirmative Defense has been previously stricken form the record.

REQUEST NO. 22

Documents and things sufficient to support Applicant's statement in Applicant's Answer to Notice of Opposition, Fifth Affirmative Defense: "...the opposition is barred by the

doctrine of estoppel.”

RESPONSE: Pursuant to the Discovery call with Interlocutory Attorney, this Affirmative Defense has been previously stricken form the record.

REQUEST NO. 23

Documents and things sufficient to support Applicant’s statement in Applicant’s Answer to Notice of Opposition, Sixth Affirmative Defense: “...opposer has waived any right to pursue its opposition.”

RESPONSE: Pursuant to the Discovery call with Interlocutory Attorney, this Affirmative Defense has been previously stricken form the record.

REQUEST NO. 24

Documents and things sufficient to support Applicant’s statement in Applicant’s Answer to Notice of Opposition, Seventh Affirmative Defense: “...the opposition is barred by the doctrine of acquiescence.”

RESPONSE: Pursuant to the Discovery call with Interlocutory Attorney, this Affirmative Defense has been previously stricken form the record.

REQUEST NO. 25

Documents and things sufficient to support Applicant’s statement in Applicant’s Answer to Notice of Opposition, Eighth Affirmative Defense: “...the opposition is barred by the doctrine of unclean hands.”

RESPONSE: Pursuant to the Discovery call with Interlocutory Attorney, this Affirmative Defense has been previously stricken form the record.

REQUEST NO. 26

All documents and things upon which any expert or consultant retained by Applicant

or any person acting for or on behalf of Applicant relied upon to generate his or her opinions, statements, or other documents regarding any of the issues involved.

RESPONSE: The Requested documents don't exist.

REQUEST NO. 27

All documents and things, other than those produced in response to any of the foregoing requests, identified or used by Applicant in its answers to Opposer's First Set of Interrogatories.

RESPONSE: The communication via Instagram direct messaging relating to Opposer seeking out Applicant's trademark services and explaining Opposer's plans for her law firm's practice areas, including future trademark applications disclosed to Applicant.

Opposer's Instagram page and website. Opposer's first filed Trademark application as the Attorney on Record.

<https://www.instagram.com/mobilegeneralcounsel/>

<https://www.mobilegeneralcounsel.com/>

Trademark application for Conscious Soul + Work filed August 12, 2019, Registration No. 6006962.

REQUEST NO. 28

All documents and things, other than those produced in response to any of the foregoing requests, upon which Applicant intends to rely in connection with this proceeding.

RESPONSE: Opposer's Instagram page and website. Opposer's first filed Opposer's First Trademark application filed as the Attorney on Record.

<https://www.instagram.com/mobilegeneralcounsel/>

<https://www.mobilegeneralcounsel.com/>

Trademark application for Conscious Soul + Work filed August 12, 2019,

Registration No. 6006962.