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Filing date: **05/10/2021**

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

Proceeding	91256218
Party	Defendant Hub Pen Company, LLC
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Submission	Motion to Compel Discovery or Disclosure
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Signature	/s/ Peter M. de Jonge/
Date	05/10/2021
Attachments	HPG Motion to Compel.pdf(52780 bytes) Dec. of P. de Jonge and Exhibits A - H.pdf(5453414 bytes)

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Opposed Mark:
U.S. Trademark Application Serial No.: 88/736,338

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

Hirsch Gift, Inc.

Opposer,

v.

Hub Pen Company, LLC



Applicant.

**HUB PEN COMPANY, LLC'S
MOTION TO COMPEL
DISCOVERY**

Opposition No. 91256218

Applicant Hub Pen Company, LLC (“Hub Pen” or “Applicant”), pursuant to Fed. R. Civ. P. 37 and 37 CFR § 2.120(f), moves the Trademark Trial and Appeal Board (“TTAB” or “Board”) for an order compelling Opposer Hirsch Gift, Inc. (“Hirsch Gift” or “Opposer”) to (1) produce documents in response to or to fully respond to Applicant’s Request for Production numbers 1-7 and 10-13 and (2) fully answer Applicant’s Interrogatory numbers 1-3 and 5-6.

FACTS

Opposer is the owner of the registered mark  (“Opposer’s Mark”). On June 5, 2020, Opposer filed an opposition to Applicant’s  mark (“Applicant’s Mark”) after publication claiming that registration of Applicant’s Mark will likely cause confusion, to cause mistake, or to deceive the trade and public that Applicant’s goods have their origin with Opposer or that such goods are approved, endorsed, sponsored or associated in some other way with Opposer. Opposer also alleged that Applicant’s Mark would falsely suggest a connection between the Applicant and Opposer. *See* 1 TTABVue ¶¶ 8-9.

On September 14, 2020, Applicant served its first set of interrogatories and requests for production. Copies of the relevant excerpts of these interrogatories and requests for production are attached as Exhibits A-B. On October 15, 2020, Opposer served its objections and responses to Applicant’s discovery and a limited production of documents, namely documents that appear to be catalog advertisements using Opposer’s mark. Copies of the relevant excerpts of Opposer’s objections, responses, and document production are attached as Exhibits C-E.

Since receipt of Opposer’s responses and objections to Applicant’s discovery, Applicant has attempted over the span of several months to work with counsel for Opposer regarding its deficient discovery responses and document production. *See generally* Ex. F. Specifically, Applicant sent emails on October 29, 2020 and November 9, 2020 regarding Opposer’s deficient document production. *Id.* at *7-9. Applicant did not receive any responses from Opposer to these emails. Thus, on December 29, 2020, Applicant sent another email and letter explaining, in detail, Opposer’s discovery deficiencies. *Id.* at *7,

Ex. G. In response, Opposer's counsel stated he was "working with my client to supplement discovery" *Id.* at *6. On February 12, 2021, Applicant once again contacted Opposer regarding its deficient discovery responses and document production as Applicant had not received any supplemental responses or production. *Id.* at *5. On February 16, 2021, counsel for Opposer responded and promised to send supplemental discovery responses by the end of February. *Id.*

The Parties again discussed the issue via email in March, 2021. *Id.* at *3. In response, Opposer claims to have sent updated discovery responses and document production to counsel for Applicant at the end of February, 2021. *Id.* at *3. However, as explained to counsel for Opposer, Applicant never received the updated discovery responses or additional document production and Opposer failed to respond to Applicant's repeated requests to resend the responses and document production. *Id.* at *2. Applicant once again followed up with Opposer on May 7, 2021 and informed Opposer that it planned to file this motion to compel as it still had not received the supplemental discovery responses and document production. *Id.* at *1.

While Applicant is conscious of the difficulties in pursuing cases during this past year and throughout a difficult winter and was willing to work with Opposer regarding extensions to serve these updated discovery responses and additional document production, Applicant cannot continue to endlessly extend the discovery deadlines and wait for documents and responses that Opposer promised to serve *months* before. Accordingly, after a good faith effort to resolve this issues without the Board's help, Applicant was forced to file this motion to compel production of these documents and supplemental discovery responses.

The deficient discovery responses relate to the below topics:

- Opposer's basis for alleging there is a likelihood of confusion between Opposer's and Applicant's Marks;
- Similarity of Opposer's and Applicant's Marks;
- Channels of Trade;
- Sophistication of Purchasers;
- Strength of Opposer's Mark; and
- Potential Deponents from Opposer.

The deadline to serve expert disclosures in this matter is May 11, 2021 and discovery is scheduled to close on June 10, 2021. Applicant requests the Board's aid regarding production of these documents so that it may fully determine if it needs to serve any expert disclosures and conduct any depositions before the respective deadlines which Applicant understands will be reset pursuant to 37 CFR § 2.120(f).

ARGUMENT

As the basis of its Opposition, Opposer has claimed that registration of Applicant's mark will likely cause confusion in the marketplace as to source and is likely to suggest a false connection between Applicant and Opposer. Applicant may, therefore, request non-privileged discovery regarding these issues. *See Mack Trucks, Inc. v. Monroe Auto Equip. Co.*, 181 USPQ 286, 287 (TTAB 1974); Fed. R. Civ. P. 33(a)(2). Specifically, Applicant requested responses to the below interrogatories and production of the following categories of documents that are all related to Opposer's claim that there is a likelihood of confusion between Applicant's Mark and Opposer's Mark:

- ROG 1 – Conception and Development of Opposer's Mark – Opposer failed to adequately describe the conception and development of Opposer's Mark,

including, but not limited to, any alternative designs that were considered and why each portion of Opposer's Mark was chosen. Any such descriptions and development of Opposer's Mark are relevant to whether the marks are similar and, thus, whether a likelihood of confusion exists.

- ROG 2 – Investigations Regarding Likelihood of Confusion Between Applicant's Mark and Opposer's Mark – In response, Opposer claims that, upon discovery, Applicant's Mark was circulated internally to members of Opposer who believed there was a likelihood of confusion between the marks. However, Opposer failed to sufficiently answer this interrogatory, including, but not limited to, identifying those individuals involved in these discussions and providing a basis as to why those individuals believed there was a likelihood of confusion. Any such investigations and conclusions regarding the basis for Opposer's claim of likelihood of confusion are relevant as to whether the marks are similar and will also provide the identities of potential deponents.
- ROG 3 – Basis for Likelihood of Confusion Claim – In response, Opposer provides a broad legal conclusion without any reference to underlying facts supporting its claim of confusion. This response is insufficient and is relevant to understand Opposer's basis for filing its Opposition alleging there is a likelihood of confusion.
- ROG 5 – Communications to Third-Parties Regarding Likelihood of Confusion – In response, Opposer claims that there are no non-privilege communications related to this issue. However, Opposer fails to explain why these communications are privileged or to whom they were made such that Applicant may determine if it will contest Opposer's claim of privilege. Any such non-privileged communications

with third-parties are relevant to understand Opposer's allegation of likelihood of confusion. As such, Applicant must fully understand Opposer's privilege claim.

- ROG 6 – Investigations and Analysis of Applicant's Mark – In response, Opposer claims that it reviewed Applicant's Mark and "offerings" bearing Applicant's Mark and that a "cursory review" showed that all elements of likelihood of confusion were met. This response is not sufficient as it fails to identify who performed these analyses or provide any specifics related the review, including what portions of the mark or Applicant's products were analyzed. Such information is relevant to whether the marks are similar and, thus, if there is a likelihood of confusion between the marks.
- RFPs 1, 3, 5-7, 13 – Documents and Things Regarding Applicant; Analysis of Applicant's Mark or Products; Evaluations or Analysis Related to the Same; Plans, Suggestions, or Contemplated Actions Regarding the Same; Discussions Regarding the Same; Comparisons of Opposer's and Applicant's Products and Services – In response to all of these Requests, Opposer claims it does not have any responsive documents. However, Opposer's response to ROG 2 clearly shows that, at a minimum, Applicant's Mark was circulated to persons internally at Hirsch Gift. However, to date, no emails or other communications regarding Applicant's Mark have been produced. Such communications are clearly relevant to whether the marks-at-issue in this Opposition are similar.
- RFP 4 – Documents and Things Related to Communications with Third-Parties Regarding Applicant, Applicant's Mark, and Opposer's Mark – In response, Opposer states that it produced documents responsive to this Request. However, the only produced documents appear to be catalog advertisements for products

bearing Opposer's Mark. Thus, it is unlikely that any of those advertisements are responsive to this Request. The requested documents are clearly relevant to whether the marks are similar. Therefore, Applicant seeks to confirm that such documents were searched for and produced to the extent they exist.

Applicant also requested production of multiple categories of documents related to the similarity of the channels of trade for products or services bearing Applicant's and Opposer's Marks, sophistication of customer purchasing the products or services, and documents related to the strength of Opposer's Mark. *See Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 10 USPQ2d 1671, 1675 (TTAB 1988); *Juice Generation, Inc. v. GS Enters. LLC*, 794 F.3d 1334, 1338-39 (Fed. Cir. 2015); *In re N.A.D., Inc.*, 754 F.2d 996, 999-1000 (Fed. Cir. 1985).

- RFP 2 – Documents and Things Regarding Opposer – In response, Opposer produced certain product catalogs that appear to be from 2007-2008 and 2020. However, it is entirely unclear if the product catalogs are complete or if advertisements were produced from each channel of trade. Such documents are clearly relevant to whether the Applicant's and Opposer's Marks are used in the same channels of trade and are advertised to the same types of customers, factors which are relevant to the likelihood of confusion analysis.
- RFP 12 – Documents and Things Related to Marketing, Advertising, and Promotion of Opposer's Products and Services – In response, Opposer directs Applicant to the product catalogs it produced from 2007-2008 and 2020. However, such examples are not sufficient to disclose the marketing, advertising, and promotion of Opposer's products and services in a channels to all classes of customers. All of this information is directly relevant to the strength of Opposer's mark, a

consideration in the likelihood of confusion analysis. In an effort to lessen the burden for Opposer, Applicant requests representative examples of marketing, advertisements, and promotion of Opposer's Products and Services for each channel of trade and method it uses.

- RFP 13 - Documents and Things Related to Comparisons of Opposer's Products and Services and Applicant's Products and Services - While this Request is also addressed in the section above, such comparisons of products and services offered using Applicant's and Opposer's Marks are also clearly relevant as to whether the goods are related, whether the goods are offered in the same channels of trade, and whether the goods are offered to the same types of customers, all considerations in a likelihood of confusion analysis.

Applicant also requested documents that will help Applicant choose who, if anyone, it will depose during the discovery period.

- RFPs 10-11 – Documents Sufficient to Identify Persons Responsible for Design, Development, Marketing, Research, and Sales Related to Opposer's Products and Services; Organizational and Corporate Structure Documents – In response to these Requests, Opposer directed Applicant to review its initial disclosures and alleged that it did not have any additional documents responsive to these Requests. However, in its Initial Disclosures, Opposer merely identified "Representatives of Opposer" and did not list any individuals, by name. *See* Ex. H at *1. Thus, without documents sufficient to identify potential deponents and custodians of information related to Opposer's use of its mark, Applicant is unable to determine who it may need to depose to fully understand the development and use of Opposer's Mark.

As detailed above, Opposer has either failed to produce relevant documents or provide substantive answers to these Requests and Interrogatories which relate directly to Opposer's claims in its Opposition. As such, the Board should compel Opposer to serve updated and responsive Interrogatory responses as well as produce all non-privileged documents responsive to these Requests.

CONCLUSION

For the above reasons, Applicant requests the Board compel Opposer to: (1) produce documents in response to Request Nos. 1-7 and 10-13; and (2) fully answer Interrogatory Nos. 1-3 and 5-6.

DATED this 10th day of May, 2021.

THORPE NORTH & WESTERN, LLP

/s/ *Peter M. de Jonge*

Peter M. de Jonge

Attorney for Applicant, Hub Pen Company, LLC

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
HUB PEN COMPANY, LLC'S MOTION TO COMPEL DISCOVERY was
served upon the following party by the methods indicated below:

Zachary Hiller
Law Office of Zachary Hiller
1415 North Loop West Suite 1013
Houston, TX 77008
zack@zhillerlaw.com

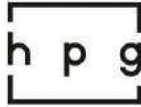
- | | |
|--|---------------------------------|
| <input checked="checked" type="checkbox"/> | Electronic Mail |
| <input type="checkbox"/> | United States Mail, First Class |
| <input type="checkbox"/> | Overnight Delivery |
| <input type="checkbox"/> | USPTO Filing |

DATED this 10th day of May, 2021.

/s/ Kaelynn Moultrie
Kaelynn Moultrie

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Opposed Mark:
U.S. Trademark Application Serial No.: 88/736,338

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

<p>Hirsch Gift, Inc.</p> <p>Opposer,</p> <p>v.</p> <p>Hub Pen Company, LLC</p> <p>Applicant.</p>	<p>PETER DE JONGE’S DECLARATION IN SUPPORT OF HUB PEN COMPANY, LLC’S MOTION TO COMPEL DISCOVERY</p> <p>Opposition No. 91256218</p>
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1. I am an attorney of record for Applicant Hub Pen Company, LLC (“Hub Pen” or “Applicant”).

2. Attached as Exhibit A is a true and correct copy of Applicant Hub Pen Company, LLC’s First Set of Interrogatories to Opposer served on September 14, 2020.

3. Attached as Exhibit B is a true and correct copy of Applicant Hub Pen Company, LLC’s First Set of Requests for Production to Opposer served on September 14, 2020.

4. Attached as Exhibit C is a true and correct copy of Opposer's Objections and Responses to Applicant's First Set of Interrogatories served on October 15, 2020.

5. Attached as Exhibit D is a true and correct copy of Opposer's Objections and Responses to Applicant's First Set of Requests for Production served on October 15, 2020.

6. Attached as Exhibit E is a true and correct copy of excerpts of Opposer's document production accompanying its Objections and Responses to Applicant's First Set of Requests for Production.

7. Attached as Exhibit F is a true and correct copy of an email stream between counsel for Applicant and counsel for Opposer dated September 14, 2020 through May 7, 2021.

8. Attached as Exhibit G is a true and correct copy of a letter dated December 29, 2020 from my colleague Joe Harmer to Zachary Hiller, counsel for Opposer.

9. Attached as Exhibit H is a true and correct copy of Opposer's *[sic]* Initial Disclosures served on September 14, 2020. The title of these disclosures appears to be incorrect (Applicant Hub Pen Company, LLC's Initial Disclosures). However, the disclosures were signed and served by counsel for Opposer.

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

Executed on May 10, 2021.



Peter M. de Jonge

Exhibit A

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Attorney for Hub Pen Company, LLC



Opposed Mark:
U.S. Trademark Application Serial No.: 88/736,338


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

<p>HIRSCH GIFT, INC Opposer,</p> <p>v.</p> <p>HUB PEN COMPANY, LLC Applicant.</p>	<p>APPLICANT HUB PEN COMPANY, LLC’S FIRST SET OF INTERROGATORIES TO OPPOSER</p> <p>Opposition No. 91256218</p>
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In accordance with Federal Rules of Civil Procedure 26 and 33 and TBMP 405, Applicant Hub Pen Company, LLC (“Hub Pen”) directs the following Interrogatories to Opposer Hirsch Gift, Inc (“Hirsch”) and requests that Hirsch respond in writing within thirty (30) days in accordance with its obligations under applicable rules.


DEFINITIONS

1. As used herein, “Hub Pen” means Hub Pen Company, LLC and any parent companies, subsidiaries, divisions, predecessors, successors, affiliates, and any past or present directors, officers, employees, agents, consultants, independent contractors, subcontractors, accountants, attorneys or other representatives acting or purporting to act for, on behalf of, or in the interests of Hub Pen Company, LLC.

2. As used herein, “Hub Pen Mark” means the HPG stylized mark: , which is the subject of Trademark/Service Mark Application No. 88/736,338.

3. As used herein, “Hub Pen Products and Services” means any good or service identified in the application for the Hub Pen Mark, and any other product or service offered by Hub Pen in association with the Hub Pen Mark.

4. As used herein, “Hirsch,” “you,” and “your” mean Hirsch Gift, Inc and any parent companies, subsidiaries, divisions, predecessors, successors, affiliates, and any past or present directors, officers, employees, agents, consultants, independent contractors, subcontractors, accountants, attorneys or other representatives acting or purporting to act for, on behalf of, or in the interests of Hirsch Gift, Inc.

5. As used herein, “Hirsch Mark” means the HG stylized mark: , which is the subject of Trademark/Service Mark Application No. 88/910,679.

6. As used herein, “Hirsch Products and Services” means any good or service identified in the application for the Hirsch Mark, and any other product or service offered by Hirsch in connection with the Hirsch Mark.

7. As used herein, “Proceeding” shall mean Opposition No. 91256218 before the United States Patent and Trademark Office Trademark Trial and Appeal Board.

8. As used herein, “and” and “or” shall, except where the context does not permit, be interpreted to mean “and/or.”

9. As used herein, “any,” “all,” and “each” mean “each and every,” so as to require the broadest meaning possible.

10. As used herein, “include” and “including” mean “without limitation,” so as to acquire the broadest meaning possible.

11. Any singular term shall be construed to include the plural, and vice versa, unless the context specifically indicates the contrary.

12. As used herein, “person” means any natural person or any business, legal, or governmental entity or association, and any act of a “person” shall include the acts of its directors, officers, owners, members, employees, agents, attorneys, and all other representatives acting on the person’s behalf.

13. As used herein, “communication” means any transmission of information by one or more persons and/or between two or more persons by any means.

14. As used herein, “document” has the full meaning ascribed by Federal Rule of Civil Procedure 34(a), including without limitation any tangible thing or object, written or graphic matter, electronically-stored information, any medium of any type or description upon which information is produced, reproduced, or stored, and any recording or writing, as these terms are defined in Rule 1001 of the Federal Rules of Evidence. “Document” shall further encompass all tangible things including prototypes, models, and physical specimens, all originals (or if originals are not available, identical copies thereof), all non-identical copies of a document, all drafts of a final document, and all other written, printed, or recorded matter of any kind. A draft or non-identical copy is a separate document within the meaning of this term. Translations of a document into another language or languages are also separate documents within the meaning of this term.

15. As used herein, “thing” means any physical object other than a document.

16. As used herein, “state” means to describe, in detail sufficient to communicate the information given, the facts known to you concerning the subject matter of the Interrogatory.

17. As used herein, the terms “identify” or “identification” as applied to an event means to provide a description of the event, the date of the event, the location of the event, and the participants in the event.

18. As used herein, the terms “identify” or “identification” as applied to factual or legal bases means to state in detail each and every fact, and each and every legal proposition or interpretation, upon which a belief or contention is based, and identify all documents, persons and events that support that belief or contention.

19. As used herein, “identify” or “identification” as applied to a product means to state the product name, product type, product number, model/revision number, and any other designation known to Hirsch.

20. As used herein, “identify” or “identification” as applied to a person means to state the person’s name, current or last known employer and title, and current or last known work or home addresses and telephone numbers.

21. As used herein, “identify” or “identification” as applied to an entity means to state its full name, present or last known address and place of incorporation or formation, and to identify each agent that acted for it with respect to the matters relating to the response.

22. As used herein, “identify” or “identification” as applied to an oral communication or statement means to state the date, place, each person making or listening to the oral communication or statement, all other persons present at the time, a

summary of the substance, and the identities of each document referring or relating to, in whole or in part, such oral communication or statement.

23. As used herein, “identify” or “identification” as applied to a document means to state the document’s production numbers, the type or nature of the document (e.g., letter, memorandum, chart, report, etc.), the date of its preparation, the identity of the person(s) who prepared the document, the identity of the person(s) who signed the document, the sender, the recipient(s) and addressee(s), a description of the subject matter and content, the name and address of any person having possession, custody, or control of the same or a true copy thereof, and all other means of identifying the document with sufficient particularity so as to satisfy the requirements for inclusion in an interrogatory or demand for its production pursuant to Federal Rule of Civil Procedure 34.

24. As used herein, “relating to” any given subject matter means concerning, describing, discussing, regarding, reflecting, mentioning, pertaining to, showing, depicting, bearing upon, embodying, supporting, refuting, evidencing, comprising, constituting, or referring in any way to that subject matter.

INSTRUCTIONS

1. Each Interrogatory is continuing in nature, such that you are required to promptly supplement your answers in accordance with your obligations under the Federal Rules of Civil Procedure should you obtain additional information responsive to these Interrogatories at a later date.

2. Each Interrogatory must be answered fully and in writing in accordance with Federal Rule of Civil Procedure 33. If a full response cannot be provided for any

Interrogatory, after conducting a reasonable investigation, state that such is the case and respond to the fullest extent possible, stating what responsive information is available, what information cannot be provided, why the information is unavailable, and what efforts were made to obtain the unavailable information.

3. If information is unavailable because a document or thing has been lost, discarded, transferred to another person or entity, or destroyed, or is otherwise no longer in your possession, custody, or control, you are requested to:

- a) identify each unavailable document or thing by describing, as completely as possible, the content, nature, type, and substance of the document or thing;
- b) state the date of, manner of, reason(s) of, and person(s) responsible for authorizing, and performing the document or thing's destruction, loss, transfer, discarding, or other action by which the document or thing left your possession, custody, or control;
- c) state the last known locations of all originals and copies of the document or thing; and
- d) list all person(s) who prepared or received such documents or things.

4. To the extent that the option to produce business records under Federal Rule of Civil Procedure 33(d) is utilized, specify the particular documents (by production number) relating to the subject matter of the Interrogatory, and the author and date of preparation of each such document if such information is not apparent or is incorrectly or incompletely disclosed on the face of the document(s).

5. If, in answering these Interrogatories, you claim that any Interrogatory is ambiguous, identify the part of the Interrogatory that is ambiguous and your interpretation of that part in your response.

6. For any requested information that is withheld or not produced based on attorney-client privilege, pursuant to the attorney work-product doctrine, common interest privilege, joint defense privilege, or for any other reason, for each item of information withheld:

- a) state the reasons for and the facts supporting the withholding;
- b) identify the communications or documents withheld;
- c) state the general nature and a brief description of the subject matter of the communications or documents withheld; and
- d) identify the specific discovery request(s) to which each such withheld communication or document is responsive.

INTERROGATORIES NOS. 1-6

INTERROGATORY NO. 1

Describe in detail the facts relating to the conception and development of the Hirsch Mark, its first use anywhere, and its first use in commerce.

INTERROGATORY NO. 2

Describe all investigations made by or on behalf of Hirsch prior to the filing of the Proceeding regarding the likelihood of confusion between the Hub Pen Mark and any of the Hub Pen Products and Services and the Hirsch Mark.

INTERROGATORY NO. 3

Describe in detail the factual and legal basis for the claim that the Hub Pen Mark

and any Hub Pen Products and Services are likely to cause confusion with the Hirsch Mark.

INTERROGATORY NO. 4

Identify and describe every instance where Hirsch has contacted or communicated with any third party regarding the Hirsch Mark, including the circumstances surrounding the contact and specifically identifying any instances or communications in which Hirsch attempted to enforce the Hirsch Mark.

INTERROGATORY NO. 5

Identify and describe in detail every instance in which Hirsch has communicated with a third party regarding the alleged likelihood of confusion between Hub Pen and the Hirsch Mark.

INTERROGATORY NO. 6

Identify and describe in detail every investigation and/or analysis of the nature, characteristics, qualities, features or substance of any of the Hub Pen Products and Services alleged to cause a likelihood of confusion with the Hirsch Mark, undertaken by or on behalf of Hirsch.

DATED this 14th day of September, 2020.

Respectfully submitted,

THORPE NORTH & WESTERN, LLP



Peter M. de Jonge
*Attorney for Applicant,
Hub Pen Company, LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
APPLICANT HUB PEN COMPANY, LLC'S FIRST SET OF
INTERROGATORIES TO OPPOSER was served upon the following party by the
methods indicated below:

Zachary Hiller
Law Office of Zachary Hiller
1415 North Loop West Suite 1013
Houston, TX 77008
zack@zhillerlaw.com

<input checked="" type="checkbox"/>	Electronic Mail
<input type="checkbox"/>	United States Mail, First Class
<input type="checkbox"/>	Overnight Delivery
<input type="checkbox"/>	Fax Transmission
<input type="checkbox"/>	CM/ECF Notification

DATED this 14th day of September, 2020.

/s/ Joshua Gray
Josh Gray

Exhibit B

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Attorney for Hub Pen Company, LLC



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In accordance with Federal Rules of Civil Procedure 26 and 34 and TBMP 406, Applicant Hub Pen Company, LLC (“Hub Pen”) directs the following Requests for Production to Opposer Hirsch Gift, Inc (“Hirsch”) and requests that Hirsch respond in writing within thirty (30) days in accordance with its obligations under applicable rules.


DEFINITIONS

1. As used herein, “Hub Pen” means Hub Pen Company, LLC and any parent companies, subsidiaries, divisions, predecessors, successors, affiliates, and any past or present directors, officers, employees, agents, consultants, independent contractors, subcontractors, accountants, attorneys or other representatives acting or purporting to act for, on behalf of, or in the interests of Hub Pen Company, LLC.

2. As used herein, “Hub Pen Mark” means the HPG stylized mark: , which is the subject of Trademark/Service Mark Application No. 88/736,338.

3. As used herein, “Hub Pen Products and Services” means any good or service identified in the application for the Hub Pen Mark, and any other product or service offered by Hub Pen in association with the Hub Pen Mark.

4. As used herein, “Hirsch,” “you,” and “your” mean Hirsch Gift, Inc and any parent companies, subsidiaries, divisions, predecessors, successors, affiliates, and any past or present directors, officers, employees, agents, consultants, independent contractors, subcontractors, accountants, attorneys or other representatives acting or purporting to act for, on behalf of, or in the interests of Hirsch Gift, Inc.

5. As used herein, “Hirsch Mark” means the HG stylized mark: , which is the subject of Trademark/Service Mark Application No. 88/910,679.

6. As used herein, “Hirsch Products and Services” means any good or service identified in the application for the Hirsch Mark, and any other product or service offered by Hirsch in connection with the Hirsch Mark.

7. As used herein, “Proceeding” shall mean Opposition No. 91256218 before the United States Patent and Trademark Office Trademark Trial and Appeal Board.

8. As used herein, “and” and “or” shall, except where the context does not permit, be interpreted to mean “and/or.”

9. As used herein, “any,” “all,” and “each” mean “each and every,” so as to require the broadest meaning possible.

10. As used herein, “include” and “including” mean “without limitation,” so as to acquire the broadest meaning possible.

11. Any singular term shall be construed to include the plural, and vice versa, unless the context specifically indicates the contrary.

12. As used herein, “person” means any natural person or any business, legal, or governmental entity or association, and any act of a “person” shall include the acts of its directors, officers, owners, members, employees, agents, attorneys, and all other representatives acting on the person’s behalf.

13. As used herein, “communication” means any transmission of information by one or more persons and/or between two or more persons by any means.

14. As used herein, “document” has the full meaning ascribed by Federal Rule of Civil Procedure 34(a), including without limitation any tangible thing or object, written or graphic matter, electronically-stored information, any medium of any type or description upon which information is produced, reproduced, or stored, and any recording or writing, as these terms are defined in Rule 1001 of the Federal Rules of Evidence. “Document” shall further encompass all tangible things including prototypes, models, and physical specimens, all originals (or if originals are not available, identical copies thereof), all non-identical copies of a document, all drafts of a final document, and all other written, printed, or recorded matter of any kind. A draft or non-identical copy is a separate document within the meaning of this term. Translations of a document into another language or languages are also separate documents within the meaning of this term.

15. As used herein, “thing” means any physical object other than a document.

16. As used herein, “state” means to describe, in detail sufficient to communicate the information given, the facts known to you concerning the subject matter of the Request.

17. As used herein, the terms “identify” or “identification” as applied to an event means to provide a description of the event, the date of the event, the location of the event, and the participants in the event.

18. As used herein, the terms “identify” or “identification” as applied to factual or legal bases means to state in detail each and every fact, and each and every legal proposition or interpretation, upon which a belief or contention is based, and identify all documents, persons and events that support that belief or contention.

19. As used herein, “identify” or “identification” as applied to a product means to state the product name, product type, product number, model/revision number, and any other designation known to Hirsch.

20. As used herein, “identify” or “identification” as applied to a person means to state the person’s name, current or last known employer and title, and current or last known work or home addresses and telephone numbers.

21. As used herein, “identify” or “identification” as applied to an entity means to state its full name, present or last known address and place of incorporation or formation, and to identify each agent that acted for it with respect to the matters relating to the response.

22. As used herein, “identify” or “identification” as applied to an oral communication or statement means to state the date, place, each person making or listening to the oral communication or statement, all other persons present at the time, a

summary of the substance, and the identities of each document referring or relating to, in whole or in part, such oral communication or statement.

23. As used herein, “identify” or “identification” as applied to a document means to state the document’s production numbers, the type or nature of the document (e.g., letter, memorandum, chart, report, etc.), the date of its preparation, the identity of the person(s) who prepared the document, the identity of the person(s) who signed the document, the sender, the recipient(s) and addressee(s), a description of the subject matter and content, the name and address of any person having possession, custody, or control of the same or a true copy thereof, and all other means of identifying the document with sufficient particularity so as to satisfy the requirements for inclusion in an interrogatory or demand for its production pursuant to Federal Rule of Civil Procedure 34.

24. As used herein, “relating to” any given subject matter means concerning, describing, discussing, regarding, reflecting, mentioning, pertaining to, showing, depicting, bearing upon, embodying, supporting, refuting, evidencing, comprising, constituting, or referring in any way to that subject matter.

INSTRUCTIONS

1. Each Request is continuing in nature, such that you are required to promptly supplement your answers in accordance with your obligations under the Federal Rules of Civil Procedure should you obtain additional information responsive to these Requests at a later date.

2. If a document or thing has been lost, discarded, transferred to another person or entity, or destroyed, or is otherwise no longer in your possession, custody, or control, you are requested to:

a) identify each unavailable document or thing by describing, as completely as possible, the content, nature, type, and substance of the document or thing;

b) state the date of, manner of, reason(s) of, and person(s) responsible for authorizing, and performing the document or thing's destruction, loss, transfer, discarding, or other action by which the document or thing left your possession, custody, or control;

c) state the last known locations of all originals and copies of the document or thing; and

d) list all person(s) who prepared or received such documents or things.

3. If, in answering these Requests, you claim that any Request is ambiguous, identify the part of the Request that is ambiguous and your interpretation of that part in your response.

4. For any requested document or thing that is withheld or not produced based on attorney-client privilege, pursuant to the attorney work-product doctrine, common interest privilege, joint defense privilege, or for any other reason, for each item withheld:

a) state the reasons for and the facts supporting the withholding;

b) identify the documents withheld;

c) state the general nature and a brief description of the subject matter of the documents withheld; and

d) identify the specific Request(s) to which each such withheld document is responsive.

REQUESTS FOR PRODUCTION NOS. 1-17

REQUEST FOR PRODUCTION NO. 1

All documents and things referring or relating to Hub Pen or any Hub Pen Products and Services.

REQUEST FOR PRODUCTION NO. 2

All documents and things referring or relating to Hirsch or any Hirsch Products and Services.

REQUEST FOR PRODUCTION NO. 3

To the extent it has not been requested, any and all documents and things referring or relating to requests for information, examination and analysis, by Hirsch or a party acting on behalf of Hirsch, of the Hub Pen Mark or any Hub Pen Products and Services.

REQUEST FOR PRODUCTION NO. 4

To the extent it has not been requested, any and all documents and things referring or relating to any communications with any third parties regarding Hub Pen, the Hub Pen Mark, any Hub Pen Products and Services, or the Hirsch Mark.

REQUEST FOR PRODUCTION NO. 5

All documents and things referring or relating to any evaluation, study, analysis and/or investigation undertaken before initiating this Proceeding regarding whether the Hub Pen Mark and/or the Hub Pen Products and Services were likely to cause confusion

with Hirsch, the Hirsch Products and Services, or the Hirsch Mark, including, without limitation, opinions and reports (written or oral).

REQUEST FOR PRODUCTION NO. 6

All documents and things referring or relating to any plans, suggestions, or contemplated actions regarding the assertion of the Hirsch Mark, or any of Hirsch's alleged intellectual property, against Hub Pen or any other party, including without limitation, corporate minutes, emails, meetings of the Hirsch Board of Directors, and meetings of Hirsch's Shareholders.

REQUEST FOR PRODUCTION NO. 7

To the extent not already requested, all documents and things referring or relating to any discussion or communication, written or oral, concerning Hub Pen, the Hub Pen Mark, or any of the Hub Pen Products and Services, including all notes, minutes, or memoranda of any meeting attended by any officer, director, employee, agent or manager of Hirsch.

REQUEST FOR PRODUCTION NO. 8

All documents referring or relating to licenses, covenants not to sue, or other agreements for intellectual property involving the Hirsch Mark to which Hirsch is a party.

REQUEST FOR PRODUCTION NO. 9

To the extent it has not been requested, all documents and things comparing any of the Hirsch Products and Services to any products and services of any third party.

REQUEST FOR PRODUCTION NO. 10

Documents sufficient to identify the name, job title, and responsibility of each person who has or has had responsibilities relating the research, design, development,

testing, operation, sales, marketing, or pricing of the Hirsch Products and Services.

REQUEST FOR PRODUCTION NO. 11

Past and present management and organizational charts and other documents sufficient to show the corporate structure and reporting relationships within each division, subsidiary, joint venture or other Hirsch entity that develops, markets, or sells the Hirsch Products and Services.

REQUEST FOR PRODUCTION NO. 12

All documents and things referring or relating to the marketing, advertising, or promotion of any of the Hirsch Products and Services.

REQUEST FOR PRODUCTION NO. 13

All documents and things referring or relating to any comparison of any of the Hirsch Products and Services with any of the Hub Pen Products and Services.

REQUEST FOR PRODUCTION NO. 14

All documents and things relating to attempts by Hirsch to enforce the Hirsch Mark against third parties.

REQUEST FOR PRODUCTION NO. 15

All documents and things referring or relating to any plans, suggestions, or strategies for the acquisition and enforcement of trademark rights for the Hirsch Mark.

REQUEST FOR PRODUCTION NO. 16

All documents and things referring or relating to Hirsch's first use in commerce of the Hirsch Mark.

REQUEST FOR PRODUCTION NO. 17

All documents and things which purport to identify the scope of the Hirsch Mark.

DATED this 14th day of September, 2020.

Respectfully submitted,

THORPE NORTH & WESTERN, LLP

A handwritten signature in blue ink, appearing to read 'Peter M. de Jonge', with a stylized flourish at the end.

Peter M. de Jonge
*Attorney for Applicant,
Hub Pen Company, LLC*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
**APPLICANT HUB PEN COMPANY, LLC'S FIRST SET OF REQUESTS FOR
PRODUCTION TO OPPOSER** was served upon the following party by the methods
indicated below:

Zachary Hiller
Law Office of Zachary Hiller
1415 North Loop West Suite 1013
Houston, TX 77008
zack@zhillerlaw.com

- | | |
|--|---------------------------------|
| <input checked="checked" type="checkbox"/> | Electronic Mail |
| <input type="checkbox"/> | United States Mail, First Class |
| <input type="checkbox"/> | Overnight Delivery |
| <input type="checkbox"/> | Fax Transmission |
| <input type="checkbox"/> | CM/ECF Notification |

DATED this 14th day of September, 2020.

/s/ Joshua Gray
Josh Gray

Exhibit C

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

HIRSCH GIFT, INC

Opposer,

v.

HUB PEN COMPANY, LLC

Applicant.

**OPPOSER'S OBJECTIONS AND
RESPONSES TO APPLICANT'S
FIRST SET OF
INTERROGATORIES**

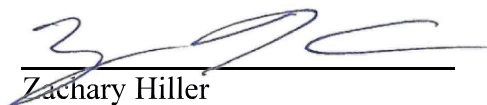
Opposition No. 91256218

To: Applicant, Hub Pen Company, LLC by and through counsel of record, Peter M. de Jonge, THORPE NORTH & WESTERN, LLP, 175 South Main Street, Suite 900, Salt Lake City, UT 84111.

COMES NOW, Opposer, Hirsch Gift, Inc, and serves these, Objections and Responses to Applicant, Hub Pen Company, LLC's, First Set of Interrogatories.

Respectfully submitted,

LAW OFFICE OF ZACHARY HILLER



Zachary Hiller

zack@zhillerlaw.com

1415 North Loop W, Ste 1013

Houston, TX 77008

(832) 830-8016

Attorney for Opposer
Hirsch Gift, Inc

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST SET OF
INTERROGATORIES was served upon the following party by electronic mail:

Peter M. de Jonge
THORPE NORTH & WESTERN, LLP
175 South Main Street, Suite 900
Salt Lake City, UT 84111
Telephone: (801) 566-6633
Facsimile: (801) 566-0750
DeJonge@tnw.com

DATED this 15th day of October, 2020.

/s/ Zachary Hiller
Zachary Hiller

**OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST SET OF
REQUESTS FOR PRODUCTION**

GENERAL OBJECTIONS

- A. Plaintiff objects to the Interrogatories, including the Definitions and Instructions therein, to the extent that they purport to impose obligations beyond those required.
- B. Plaintiff objects to the Interrogatories to the extent they seek information protected from disclosure by the attorney-client privilege, the attorney work-product doctrine, or any other applicable privilege or protection.
- C. Plaintiff objects to the Interrogatories to the extent they seek the disclosure of confidential, commercial, financial, or business information or trade secrets.
- D. Plaintiff objects to the Interrogatories to the extent they seek the disclosure of confidential commercial information in the absence of an appropriate confidentiality agreement and protective order.
- E. Plaintiff objects to the Interrogatories as overly broad and unduly burdensome to the extent they are subject to an unspecified time period.
- F. Plaintiff incorporates these general objections into each of its specific responses below.
- G. Plaintiff reserves the right to supplement its responses as additional documents or information become available.

INTERROGATORY RESPONSES

- 1. Describe in detail the facts relating to the conception and development of the Hirsch Mark, its first use anywhere, and its first use in commerce.

RESPONSE: The Hirsch Mark was designed and incorporated into marketing materials in 2006. The earliest use anywhere and in commerce that is known to still be in existence is the 2006 product catalog.

- 2. Describe all investigations made by or on behalf of Hirsch prior to the filing of the Proceeding regarding the likelihood of confusion between the Hub Pen Mark and any of the Hub Pen Products and Services and the Hirsch Mark.

RESPONSE: When the existence of the Hub Pen Mark was discovered by Hirsch representatives it was circulated internally to which all persons inquired believed there to be a likelihood of confusion between the Hub Pen Mark and the Hirsch Mark.

- 3. Describe in detail the factual and legal basis for the claim that the Hub Pen Mark and any Hub Pen Products and Services are likely to cause confusion with the Hirsch Mark.

RESPONSE: All factors traditionally used in a likelihood of confusion analysis are in favor of the Opposer. This includes, but is not limited to, identical or substantially indistinguishable goods, services, trade channels, customer base, and the appearance of the mark.

4. Identify and describe every instance where Hirsch has contacted or communicated with any third party regarding the Hirsch Mark, including the circumstances surrounding the contact and specifically identifying any instances or communications in which Hirsch attempted to enforce the Hirsch Mark.

RESPONSE: None exist as there have been no other known incidents of trademark infringement on either the design or literal elements of the Hirsch Mark.

5. Identify and describe in detail every instance in which Hirsch has communicated with a third party regarding the alleged likelihood of confusion between Hub Pen and the Hirsch Mark.

RESPONSE: None exist outside communications that are privilege in a manner listed in the general objections to this discovery.

6. Identify and describe in detail every investigation and/or analysis of the nature, characteristics, qualities, features or substance of any of the Hub Pen Products and Services alleged to cause a likelihood of confusion with the Hirsch Mark, undertaken by or on behalf of Hirsch.

RESPONSE: Opposer spent time reviewing Applicant's offerings with respect to the Hub Pen Mark that are readily available to the public. It was clear upon even a cursory review that all the elements of likelihood of confusion were rampant.

Exhibit D

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

HIRSCH GIFT, INC

Opposer,

v.

HUB PEN COMPANY, LLC

Applicant.

**OPPOSER'S OBJECTIONS AND
RESPONSES TO APPLICANT'S
FIRST SET OF REQUESTS FOR
PRODUCTION**


Opposition No. 91256218

To: Applicant, Hub Pen Company, LLC by and through counsel of record, Peter M. de Jonge, THORPE NORTH & WESTERN, LLP, 175 South Main Street, Suite 900, Salt Lake City, UT 84111.

COMES NOW, Opposer, Hirsch Gift, Inc, and serves these, Objections and Responses to Applicant, Hub Pen Company, LLC's, First Request for Production.

Respectfully submitted,

LAW OFFICE OF ZACHARY HILLER



Zachary Hiller

zack@zhillerlaw.com

1415 North Loop W, Ste 1013

Houston, TX 77008

(832) 830-8016

Attorney for Opposer
Hirsch Gift, Inc

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST SET OF
REQUESTS FOR PRODUCTION was served upon the following party by electronic mail:

Peter M. de Jonge
THORPE NORTH & WESTERN, LLP
175 South Main Street, Suite 900
Salt Lake City, UT 84111
Telephone: (801) 566-6633
Facsimile: (801) 566-0750
DeJonge@tnw.com

DATED this 15th day of October, 2020.

/s/ Zachary Hiller
Zachary Hiller

**OPPOSER'S OBJECTIONS AND RESPONSES TO APPLICANT'S FIRST SET OF
REQUESTS FOR PRODUCTION**

1. All documents and things referring or relating to Hub Pen or any Hub Pen Products and Services.

OBJECTIONS:

Opposer objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.

2. All documents and things referring or relating to Hirsch or any Hirsch Products and Services.

OBJECTIONS:

Opposer objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

Please see documents attached hereto which may be responsive to this request. Opposer reserves the right to further supplement this response as necessary as discovery continues.

3. To the extent it has not been requested, any and all documents and things referring or relating to requests for information, examination and analysis, by Hirsch or a party acting on behalf of Hirsch, of the Hub Pen Mark or any Hub Pen Products and Services.

OBJECTIONS:

Opposer objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.

4. To the extent it has not been requested, any and all documents and things referring or relating to any communications with any third parties regarding Hub Pen, the Hub Pen Mark, any Hub Pen Products and Services, or the Hirsch Mark.

OBJECTIONS:

Opposer objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

Please see documents attached hereto which may be responsive to this request. Opposer reserves the right to further supplement this response as necessary as discovery continues.

5. All documents and things referring or relating to any evaluation, study, analysis and/or investigation undertaken before initiating this Proceeding regarding whether the Hub Pen Mark and/or the Hub Pen Products and Services were likely to cause confusion with Hirsch, the Hirsch Products and Services, or the Hirsch Mark, including, without limitation, opinions and reports (written or oral).

OBJECTIONS:

Opposer objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.

6. All documents and things referring or relating to any plans, suggestions, or contemplated actions regarding the assertion of the Hirsch Mark, or any of Hirsch's alleged intellectual property, against Hub Pen or any other party, including without limitation, corporate minutes, emails, meetings of the Hirsch Board of Directors, and meetings of Hirsch's Shareholders.

OBJECTIONS:

Opposer objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.

7. To the extent not already requested, all documents and things referring or relating to any discussion or communication, written or oral, concerning Hub Pen, the Hub Pen Mark, or any of the Hub Pen Products and Services, including all notes, minutes, or memoranda of any meeting attended by any officer, director, employee, agent or manager of Hirsch.

OBJECTIONS:

Opposer objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.

8. All documents referring or relating to licenses, covenants not to sue, or other agreements for intellectual property involving the Hirsch Mark to which Hirsch is a party.

OBJECTIONS:

Opposer objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.

9. To the extent it has not been requested, all documents and things comparing any of the Hirsch Products and Services to any products and services of any third party.

OBJECTIONS:

Opposer objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.

10. Documents sufficient to identify the name, job title, and responsibility of each person who has or has had responsibilities relating the research, design, development, testing, operation, sales, marketing, or pricing of the Hirsch Products and Services.

OBJECTIONS:

Opposer objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

The identity of such individuals have already been disclosed via Initial Disclosures. Opposer

has no additional documents at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.

11. Past and present management and organizational charts and other documents sufficient to show the corporate structure and reporting relationships within each division, subsidiary, joint venture or other Hirsch entity that develops, markets, or sells the Hirsch Products and Services.

OBJECTIONS:

Opposer objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

The identity of such individuals have already been disclosed via Initial Disclosures. Opposer has no additional documents at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.

12. All documents and things referring or relating to the marketing, advertising, or promotion of any of the Hirsch Products and Services.

OBJECTIONS:

Opposer objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

Please see documents attached hereto which may be responsive to this request. Opposer reserves the right to further supplement this response as necessary as discovery continues.

13. All documents and things referring or relating to any comparison of any of the Hirsch Products and Services with any of the Hub Pen Products and Services.

OBJECTIONS:

Opposer objects to this request as duplicative of Request No. 9. Opposer further objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.

14. All documents and things relating to attempts by Hirsch to enforce the Hirsch Mark against third parties.

OBJECTIONS:

Opposer objects to this request as duplicative of Request No. 9. Opposer further objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.

15. All documents and things referring or relating to any plans, suggestions, or strategies for the acquisition and enforcement of trademark rights for the Hirsch Mark.

OBJECTIONS:

Opposer objects to this request as duplicative of Request No. 9. Opposer further objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.

16. All documents and things referring or relating to Hirsch's first use in commerce of the Hirsch Mark.

OBJECTIONS:

Opposer objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

RESPONSE:

Please see documents attached hereto which may be responsive to this request. Opposer reserves the right to further supplement this response as necessary as discovery continues.

17. All documents and things which purport to identify the scope of the Hirsch Mark.

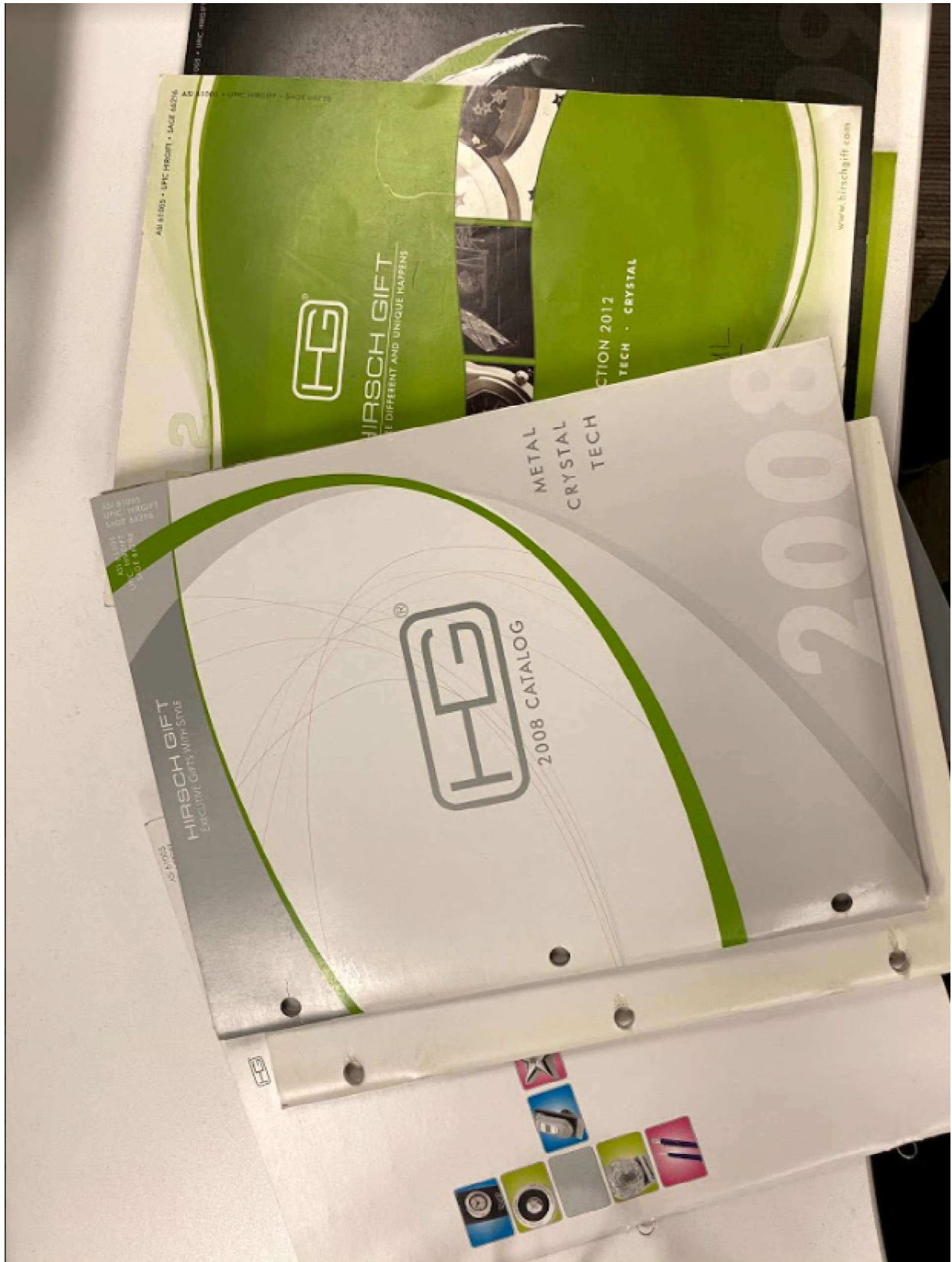
OBJECTIONS:

Opposer objects to this request as overly broad and unduly burdensome and to the extent such request seeks documents in violation of the attorney-client and/or work-product privileges. Subject to and without waiving the foregoing objections,

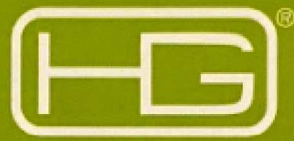
RESPONSE:

Please see documents attached hereto which may be responsive to this request. Opposer reserves the right to further supplement this response as necessary as discovery continues.

Exhibit E

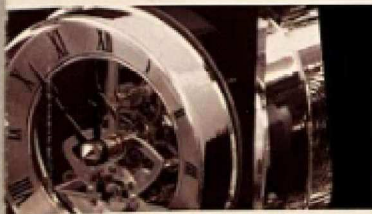
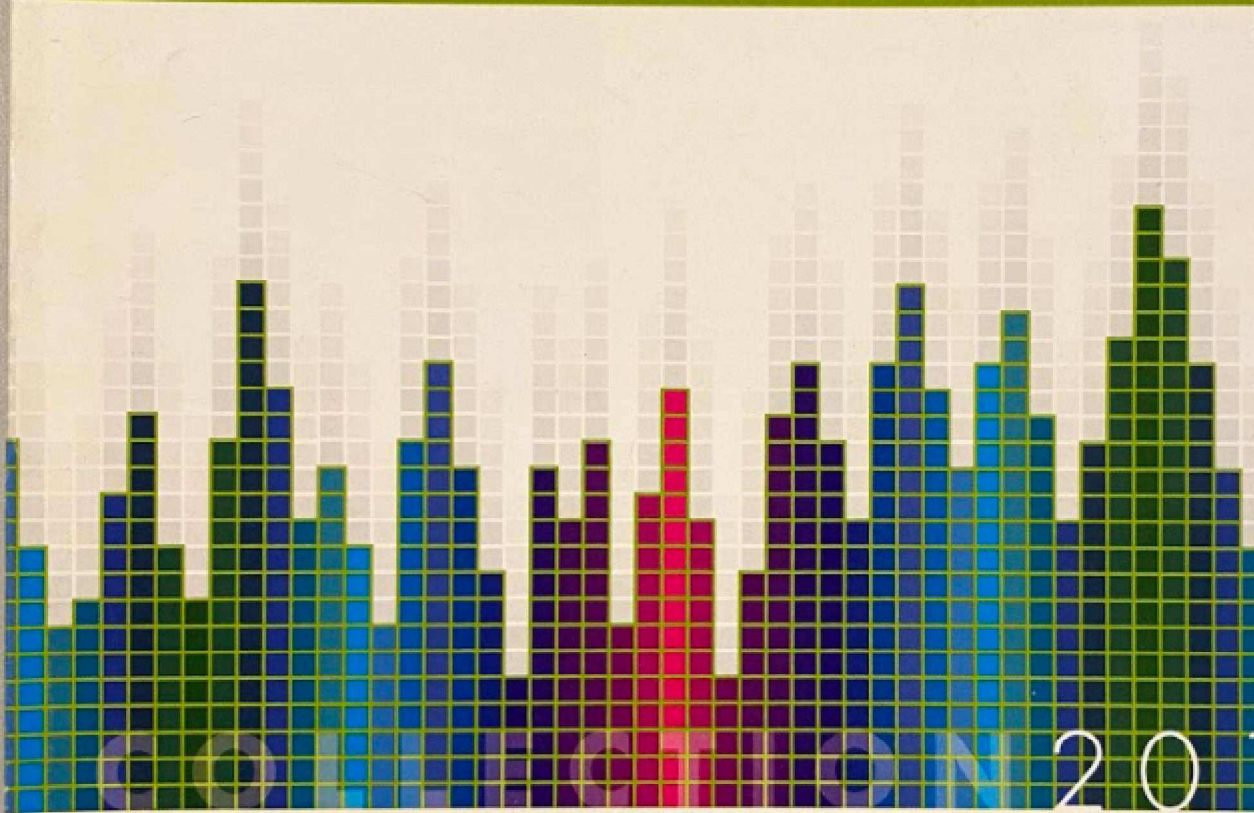


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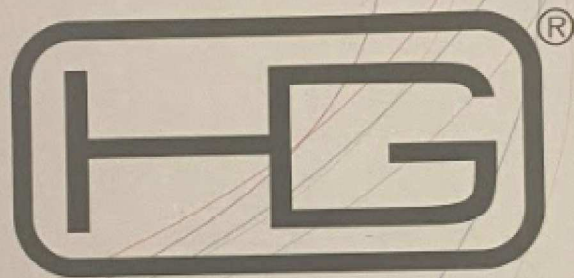
PAUL



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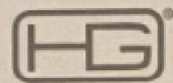


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AND MORE!

Leave a lasting impression with the premium brands they know and trust! With more than 30 brands to choose from, we have a product for every occasion.

Exhibit F

From: Catherine Maness

Sent: Friday, May 07, 2021 4:30 PM

To: 'Zachary Hiller' <zack@zhillerlaw.com>

Cc: Peter deJonge <DeJonge@tnw.com>; Joshua Gray <Joshua.Gray@tnw.com>; Joseph Harmer <Joseph.Harmer@tnw.com>; Jillaine Chaston <Jillaine.Chaston@tnw.com>

Subject: RE: Hirsch Gift, Inc. v. Hub Pen Company, LLC; Opposition No. 91256218; Initial Disclosures

Hi Zachary,

Per my below emails, we still have not received any of the documents we have been requesting since last fall, including those you claimed to have sent in February. As the Parties have engaged in months of discussions and we still have not received the requested documents, HPG believes the parties are at an impasse on the issue and HPG plans to file a motion to compel production of those documents.

I also spoke with HPG regarding the press release you inquired about in other emails. I can confirm that HPG has and will continue to use their HPG mark and will continue to seek registration of the HPG mark. The change noted in the press release was only for a small portion of the entire HPG business.

Additionally, attached please find HPG's First Set of RFAs, Second Set of RFPs, and Second Set of ROGs to Hirsch Gift.

Please let me know if you have any questions.

Best,

Catherine Maness • ATTORNEY

Thorpe North & Western | 801.566.6633 | tnw.com

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From: Catherine Maness

Sent: Wednesday, March 10, 2021 2:02 PM

To: Zachary Hiller <zack@zhillerlaw.com>

Cc: Peter deJonge <DeJonge@tnw.com>; Joshua Gray <Joshua.Gray@tnw.com>; Joseph Harmer <Joseph.Harmer@tnw.com>; Jillaine Chaston <Jillaine.Chaston@tnw.com>
Subject: RE: Hirsch Gift, Inc. v. Hub Pen Company, LLC; Opposition No. 91256218; Initial Disclosures

Hi Zachary,

I spoke with Peter and it looks like we still have not received the documents that you said were sent at the end of February. Can you send us the documents again?

Best,

Catherine Maness • ATTORNEY

Thorpe North & Western | 801.566.6633 | tnw.com

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From: Catherine Maness

Sent: Friday, March 05, 2021 12:32 PM

To: Zachary Hiller <zack@zhillerlaw.com>

Cc: Peter deJonge <DeJonge@tnw.com>; Joshua Gray <Joshua.Gray@tnw.com>; Joseph Harmer <Joseph.Harmer@tnw.com>; Jillaine Chaston <Jillaine.Chaston@tnw.com>

Subject: RE: Hirsch Gift, Inc. v. Hub Pen Company, LLC; Opposition No. 91256218; Initial Disclosures

Hi Zachary,

Thanks for confirming the extension. We will get that on file shortly.

I spoke with Peter regarding the below email and we did not receive the documents. Please re-serve the documents. In the future, please copy all of the email addresses listed in the correspondence list for this opposition.

I will speak with the client regarding your other questions and circle back.

Best,

Catherine Maness

Sent from [Mail](#) for Windows 10

From: [Zachary Hiller](#)

Sent: Friday, March 5, 2021 11:53 AM

To: [Catherine Maness](#)

Cc: [Peter deJonge](#); [Joshua Gray](#); [Joseph Harmer](#); [Jillaine Chaston](#)

Subject: Re: Hirsch Gift, Inc. v. Hub Pen Company, LLC; Opposition No. 91256218; Initial Disclosures

Catherine,

You should have had all the discovery sent to Peter's email last week. I can resend when I get back to the office on Monday either way.

I also sent Peter a correspondence a few days ago regarding the potential abandonment of the HPG mark by your client. They circulated a marketing email indicating they were moving away from HPG. I am forwarding that to you now. Please let me know if your clients are in fact moving away from HPG since that would render this conflict moot.

I also do not oppose an additional extension.

Thanks,

Zachary Hiller
1415 North Loop West
Suite 1013
Houston, TX 77008
832-830-8016

Please excuse any typos. Sent from a mobile device.

On Mar 4, 2021, at 4:22 PM, Catherine Maness <Catherine.Maness@tnw.com> wrote:

Hi Zachary,

We hope you are well and have recovered from the storm. Since we have not received any additional response or document production from you, we assume you do not intend to produce the supplemental documents or continue to confer regarding this issue. If this is incorrect, please provide responses and the additional requested documents by tomorrow (Friday, March 5).

As noted in our original email on December 29, 2020, we previously extended the remaining case deadlines, including the deadline for expert reports, to allow Hirsch time to supplement its discovery responses as some of these requested documents may impact the need for experts. We are once again nearing the deadline for expert reports and Hub Pen has not received the additional document production and has been unable to determine the impact of those documents on expert discovery.

Please confirm by noon tomorrow (Friday, March 5) if Hirsch consents to another 60 day extension of the remaining deadlines. If Hirsch does not consent, Hub Pen will

unilaterally move for an extension of the remaining deadlines next week.

Please let me know if you have any questions.

Best,

Catherine Maness • ATTORNEY

Thorpe North & Western | 801.566.6633 | tnw.com

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From: Catherine Maness

Sent: Wednesday, February 17, 2021 1:12 PM

To: Zachary Hiller <zack@zhillerlaw.com>

Cc: Peter deJonge <DeJonge@tnw.com>; Joshua Gray <Joshua.Gray@tnw.com>; Joseph Harmer <Joseph.Harmer@tnw.com>; Jillaine Chaston <Jillaine.Chaston@tnw.com>

Subject: RE: FW: FW: Hirsch Gift, Inc. v. Hub Pen Company, LLC; Opposition No. 91256218; Initial Disclosures

Hi Zachary,

Thank you for the update. We look forward to receiving the updating discovery responses on or before February 25, 2021.

Stay safe.

Best,

Catherine Maness

Sent from [Mail](#) for Windows 10

From: [Zachary Hiller](#)

Sent: Tuesday, February 16, 2021 10:07 PM

To: [Catherine Maness](#)

Cc: [Peter deJonge](#); [Joshua Gray](#); [Joseph Harmer](#); [Jillaine Chaston](#)

Subject: Re: FW: FW: Hirsch Gift, Inc. v. Hub Pen Company, LLC; Opposition No. 91256218; Initial Disclosures

All,

I know you don't care for excuses, but I am going to throw some your way. It has been a weird year for us all, but for me personally as well. I was actually getting back into work and knocking things off the list finally. I finished with my discovery requests and mostly finished complying with your request when the winter storm shut down Texas. While I am lucky enough to still have power at my house, the power is now off at the office and we have no running water after a pipe burst. I need just a 1 week reprieve from your 2/18 deadline to respond to your request to supplement discovery. I hope to have it to you this week, but they are now saying we won't thaw out until Saturday. As soon as I can get back into the office to work or at least take home my server, this is the next task on the list.

Thank you for your understanding.

Thank you,

Zachary Hiller
Law Office of Zachary Hiller
1415 North Loop West
Suite 1013
Houston, TX 77008
(832) 830-8016

On Fri, Feb 12, 2021 at 3:29 PM Catherine Maness
<Catherine.Maness@tnw.com> wrote:

Hi Zachary,

Thank you again for agreeing to the below extension and to supplement discovery. However, to date, we still have not received a response to our letter sent on December 29, 2020 regarding Hirsch Gift's discovery deficiencies or received any supplemental discovery. While we would prefer to not file a motion with the Board, with the upcoming deadlines, Hub Pen will be forced to file a motion to compel production of the documents outlined in the December 29, 2020 letter if we do not receive a response and/or supplemental document production from Hirsch Gift as requested. Please provide a response to the December 29, 2020 letter and supplemental document production by no later than Thursday, February 18, 2020. If we do not receive a response from you by that date, Hub Pen will assume you do not intend to meaningfully participate in the meet and confer process and will file a motion to compel pursuant to TBMP 523 and 37 CFR 2.120(f).

If you have any questions, please let me know.

Best,

Catherine Maness

From: Zachary Hiller [<mailto:zack@zhillerlaw.com>]
Sent: Monday, January 4, 2021 12:18 PM
To: Joseph Harmer <Joseph.Harmer@tnw.com>
Cc: Peter deJonge <DeJonge@tnw.com>; Joshua Gray <Joshua.Gray@tnw.com>;
Jillaine Chaston <Jillaine.Chaston@tnw.com>
Subject: Re: FW: Hirsch Gift, Inc. v. Hub Pen Company, LLC; Opposition No. 91256218; Initial Disclosures

Hi Joseph,

My apologies for being out of touch. That extension is fine with me. I am working with my client to supplement discovery and should have some requests for you shortly as well.

Thank you,

Zachary Hiller
Law Office of Zachary Hiller
1415 North Loop West
Suite 1013
Houston, TX 77008
(832) 830-8016

On Mon, Jan 4, 2021 at 12:57 PM Joseph Harmer <Joseph.Harmer@tnw.com> wrote:

Hi Zachary,

Happy New Year! I am just following up on the email I sent last week. Expert disclosures are due a week from today. With your consent, we can prepare a motion to extend all deadlines by 60 days. Please let us know if you consent at your earliest convenience.

Thank you,

Joe

Joseph M. Harmer • REGISTERED PATENT ATTORNEY
Thorpe North & Western | 801.748.1974 | tnw.com

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From: Joseph Harmer
Sent: Tuesday, December 29, 2020 3:32 PM

To: Zachary Hiller <zack@zhillerlaw.com>
Cc: Peter deJonge <DeJonge@tnw.com>; Joshua Gray <Joshua.Gray@tnw.com>
Subject: FW: Hirsch Gift, Inc. v. Hub Pen Company, LLC; Opposition No. 91256218; Initial Disclosures

Hi Zachary,

Please see the attached deficiency letter (the "Letter"). Please provide responses to the Letter and produce the documents identified in the Letter no later than January 6, 2021. As detailed in my November 9, 2020 email to which I have not yet received a response, Hub Pen remains committed to discussing settlement options if Hirsch is inclined.

As you know, expert disclosures are currently due January 11, 2021. Because certain documents and discovery responses referenced in the Letter may impact the need for reports from any experts retained by Hub Pen and to provide sufficient time for Hirsch to respond to the Letter, we suggest extending all remaining deadlines by 60 days. If Hirsch agrees, we can prepare the motion for your approval and signature. Please let us know if Hirsch consents to this extension by no later than 12 PM MST on December 31, 2020.

Please let us know if you have any questions. Thank you.

Happy Holidays,

Joe

Joseph M. Harmer • REGISTERED PATENT ATTORNEY
Thorpe North & Western | 801.748.1974 | tnw.com

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From: Joseph Harmer
Sent: Monday, November 9, 2020 10:43 AM
To: Zachary Hiller <zack@zhillerlaw.com>
Cc: Peter deJonge <DeJonge@tnw.com>; Joshua Gray <Joshua.Gray@tnw.com>
Subject: FW: Hirsch Gift, Inc. v. Hub Pen Company, LLC; Opposition No. 91256218; Initial Disclosures

Hi Zachary,

Just following up. Please provide the documents referenced in Hirsch Gift's responses 2, 4, 12, 16, and 17 to Hub Pen's production requests. Also, it

might be beneficial to discuss potential options for resolving this matter.

Currently, Hirsch has provided no evidence of likelihood of confusion, which is Hirsch's burden. *Likely* means probable; it is irrelevant that confusion is "possible." In requiring proof of a "*substantial* likelihood of confusion," one court said that "[t]his is more than mere semantics" and declined "to speculate as to any imaginable confusion. . . ." *Church of Larger Fellowship Unitarian Universalist v. Conservation Law Found. of New England, Inc.*, 221 U.S.P.Q. 869, 871 (D. Mass. 1983) (emphasis in original); see Richard L. Kirkpatrick, *Likelihood of Confusion in Trademark Law* 1-3, (Practicing Law Institute 2010) (1995). Hirsch Gift must establish "more than a theoretical possibility of confusion." *TriMark USA, Inc. v. Performance Food Grp. Co., LLC*, 667 F. Supp. 2d 155, 160 (D. Mass. 2009). Hirsch has not shown that the Hub Pen mark "create[s] a likelihood of confounding an appreciable number of reasonably prudent purchasers exercising ordinary care." *Id.* That the Hub Pen mark may have been circulated internally among Hirsch representatives who "believed there to be a likelihood of confusion," is quite far from showing any likelihood of confusion. See Hirsch Interrogatory Response 2.

Obviously, if it is Hirsch's intent to prevent registration of the Hub Pen mark, we will continue to defend Hub Pen's registration. However, if there is something else that Hirsch Gift is seeking in this matter, let's discuss.

Thank you,

Joe

Joseph M. Harmer • REGISTERED PATENT ATTORNEY

Thorpe North & Western | 801.748.1974 | tnw.com

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From: Joseph Harmer
Sent: Thursday, October 29, 2020 4:42 PM
To: Zachary Hiller <zack@zhillerlaw.com>
Cc: Peter deJonge <DeJonge@tnw.com>; Joshua Gray <Joshua.Gray@tnw.com>
Subject: Hirsch Gift, Inc. v. Hub Pen Company, LLC; Opposition No. 91256218; Initial Disclosures

Hi Zachary,

Thank you for providing Hirsch Gift's responses. As a follow up, Hirsch Gift's responses 2, 4, 12, 16, and 17 to Hub Pen Company's requests for production state, "Please see the attached documents...." However, no

documents were attached to Hirsh Gift's responses. Please provide the referenced documents.

Thank you,

Joe

Joseph M. Harmer • REGISTERED PATENT ATTORNEY

Thorpe North & Western | 801.748.1974 | tnw.com

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From: Zachary Hiller <zack@zhillerlaw.com>
Sent: Thursday, October 15, 2020 5:28 PM
To: Peter deJonge <DeJonge@tnw.com>
Cc: Joseph Harmer <Joseph.Harmer@tnw.com>; Joshua Gray <Joshua.Gray@tnw.com>
Subject: Re: FW: Hirsch Gift, Inc. v. Hub Pen Company, LLC; Opposition No. 91256218; Initial Disclosures

Please find attached responses to the first set of discovery. Let me know if you have issues downloading the documents for the RFP. The file was too big to attach so it should show up as a GoogleDrive link.

I should have some requests for you shortly. Hope you have a good weekend.

<[image001.jpg](#)>
[Hirsch Gift RFP 20201015 Documents.pdf](#)
<[image001.jpg](#)>

Zachary Hiller
Law Office of Zachary Hiller
1415 North Loop West
Suite 1013
Houston, TX 77008
(832) 830-8016

On Wed, Oct 14, 2020 at 2:13 PM Joseph Harmer <Joseph.Harmer@tnw.com> wrote:

Hi Zachary,

No problem. Just so you know, we are not aware of any discovery requests from Hirsch Gift.

Joe

Joseph M. Harmer • REGISTERED PATENT ATTORNEY

Thorpe North & Western | 801.748.1974 | tnw.com

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From: Zachary Hiller <zack@zhillerlaw.com>

Sent: Wednesday, October 14, 2020 12:34 PM

To: Joshua Gray <Joshua.Gray@tnw.com>

Cc: Joseph Harmer <Joseph.Harmer@tnw.com>; Jillaine Chaston <Jillaine.Chaston@tnw.com>; Peter deJonge <DeJonge@tnw.com>

Subject: Re: Hirsch Gift, Inc. v. Hub Pen Company, LLC; Opposition No. 91256218; Initial Disclosures

Josh,

Do you have any objection to me taking an extra day or two to respond to your discovery? I can send you what I have now, but will just be supplementing later. Waiting on a few additional documents from the client, but have not received them yet. In any case, I would send you responses by the end of the week.

Thank you,

Zachary Hiller
Law Office of Zachary Hiller
1415 North Loop West
Suite 1013
Houston, TX 77008
(832) 830-8016

On Mon, Sep 14, 2020 at 5:18 PM Joshua Gray
<Joshua.Gray@tnw.com> wrote:

Counsel,

Please see the attached initial disclosures, 1st set of RFPs and 1st set of ROGs from Applicant Hub Pen Company, LLC. Feel free to contact our office with any questions or concerns.

Regards,

Josh Gray • Legal Assistant

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Exhibit G

DECEMBER 29, 2020

SENT VIA EMAIL (zack@zhillerllaw.com)

Zachary Hiller
Law Office of Zachary Hiller
1415 North Loop West
Suite 1013
Houston, TX 77008

RE: Hirsch Gift, Inc. v. Hub Pen Company, LLC; Opposition No.
91256218; TNW Matter No. 4499-013

Hi Zachary,

I write concerning certain discovery matters in the Hirsch v. Hub Pen Opposition No. 91256218. While Hub appreciates Hirsch's Responses to Hub Pen's Interrogatories and Requests for Production dated October 15, 2020, upon review and consideration the responses are inadequate, incomplete, and inconsistent. *See* 37 CFR § 2.120(f)(1). Moreover, Hirsch's objections are not specifically tailored as required under the federal rules, are irrelevant, and/or are "boilerplate" objections and, thus, do not meet the requirements for acceptable objections. *See* TBMP § 405.04(b).

Hub Pen requires amended and complete answers to the following specifically listed Interrogatories and Requests for Production in order to properly address the allegations contained in Hirsch's Notice of Opposition. Please note, any defined terms and language should be interpreted using the definitions set out in Hub Pen's Interrogatories and Requests for Production dated September 14, 2020.

In addition to the below issues, Hub Pen notes that Hirsch has failed to produce the documents with Bates labels as is standard operating procedure. Please reproduce these documents with the requested Bates labels such that both Parties can reference and identify the documents.

Interrogatory No. 1: *Describe in detail the facts relating to the conception and development of the Hirsch Mark, its first use anywhere, and its first use in commerce.*

In response, Hirsch states "The earliest use anywhere and in commerce that is known to still be in existence is the 2006 product catalog." This 2006 product catalog, however, was not produced even though it is responsive to Hub Pen's Request for Production No. 2. Please produce this identified document. Moreover, this response entirely ignores the remaining portions of the interrogatory, including, but not limited to, information regarding whether other

logos were considered or rejected during the conception and development of the mark. This information is necessary to establish Hirsch's actual use of the Hirsch Mark and likelihood of confusion. Please provide an amended response that properly responds to all portions of this interrogatory.

Interrogatory No. 2: *Describe all investigations made by or on behalf of Hirsch prior to the filing of the Proceeding regarding the likelihood of confusion between the Hub Pen Mark and any of the Hub Pen Products and Services and the Hirsch Mark.*

In response, Hirsch states "When the existence of the Hub Pen Mark was discovered by Hirsch representatives it was circulated internally to which all persons inquired believed there to be a likelihood of confusion between the Hub Pen Mark and the Hirsch Mark." Hirsch's response is insufficient because it does not describe the investigation as required in the interrogatory. Moreover, Hirsch has entirely failed to produce any of the communications cited in its response or provide information regarding the timeframe for the response or who was involved in this response. This information is necessary for Hub Pen to accurately respond to the opposition. Please provide an amended response to adequately address the above insufficiencies.

Interrogatory No. 3: *Describe in detail the factual and legal basis for the claim that the Hub Pen Mark and any Hub Pen Products and Services are likely to cause confusion with the Hirsch Mark.*

In response, Hirsch states "All factors traditionally used in a likelihood of confusion analysis are in favor of the Opposer. This includes, but is not limited to, identical or substantially indistinguishable goods, services, trade channels, customer base, and the appearance of the mark." Hirsch's response is merely a conclusion without any reference to facts underlying Hirsch's claim argument that there is a likelihood of confusion. This information is clearly necessary for Hirsch to establish and for Hub Pen to understand the reasons Hirsch filed its opposition. Please provide an amended response adequately responding to this interrogatory.

Interrogatory No. 5: *Identify and describe in detail every instance in which Hirsch has communicated with a third party the alleged likelihood of confusion between Hub Pen and the Hirsch Mark.*

In response, Hirsch states "None exist outside communications that are privilege in a manner listed in the general objections to this discovery." Hirsch's response concerning privilege does not specifically explain how the information requested in the interrogatory is privileged as required under the federal rules. Moreover, merely referencing the general objections does not cure this defect and the general objections themselves fail to provide any information regarding the specific privilege objections. Please provide an amended response such that Hub Pen can understand the claim of privilege and adequately respond.

Interrogatory No. 6: *Identify and describe in detail every investigation and/or analysis of the nature, characteristics, qualities, features or substance of any of the Hub Pen Products and*

Services alleged to cause a likelihood of confusion with the Hirsch Mark, undertaken by or on behalf of Hirsch.

In response, Hirsch states “Opposer sent [sic] time reviewing Applicant’s offerings with respect to the Hub Pen Mark that are readily available to the public. It was clear upon even a cursory review that all the elements of likelihood of confusion were rampant.” Hirsch’s response is insufficient and appears to reference non-privileged documents that were not produced by Hirsch that Hub Pen has a right to review. Please produce any such documents as well as provide an amended response that adequately responds to Hub Pen’s interrogatory, including, but not limited to, identification of the persons who engaged in the review of Hub Pen’s mark and products and the specifics of that review.

Request for Production No. 1: *All documents and things referring or relating to Hub Pen or any Hub Pen Products and Services.*

In response, Hirsch states “None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.” While Hirsch’s objections are not sufficiently specific as required under the federal rules and the request is clearly relevant to Hirsch’s claim of a likelihood of confusion, Hirsch’s above response is also contradictory to its response in Interrogatory No. 2 concerning the circulation of information among Hirsch representatives. Please produce the above referenced documents and confirm that Hirsch has performed a search for documents responsive to this request.

Request for Production No. 2: *All documents and things referring or relating to Hirsch or any Hirsch Products and Services.*

In response, Hirsch states “Please see documents attached hereto which may be responsive to this request. Opposer reserves the right to further supplement this response as necessary as discovery continues.” While Hub Pen appreciates production of these documents, please confirm that complete product catalogs have been produced. Please also confirm whether there are additional product catalogs for year 2006 as well as 2009 to present. Hub Pen is also willing to discuss narrowing the scope of this request as the production of only catalogs is not a sufficient response to this Request. Please provide a time you are available to discuss the scope of this Request.

Request for Production No. 3: *To the extent it has not been requested, any and all documents and things referring or relating to requests for information, examination and analysis, by Hirsch or a party acting on behalf of Hirsch, of the Hub Pen Mark or any Hub Pen Products and Services.*

In response, Hirsch states “None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.” While Hirsch’s objections are not sufficiently specific as required under the federal rules and the request is clearly relevant to Hirsch’s claim of a likelihood of confusion, Hirsch’s response that there are no documents at this time is contradictory to Hirsch’s response to Interrogatory No. 2. Please produce the above

referenced documents and confirm that Hirsch has performed a search for documents responsive to this request.

Request for Production No. 4: *To the extent it has not been requested, any and all documents and things referring or relating to any communications with any third parties regarding Hub Pen, the Hub Pen Mark, any Hub Pen Products and Services, or the Hirsch Mark.*

In response, Hirsch states “Please see documents attached hereto which may be responsive to this request. Opposer reserves the right to further supplement this response as necessary as discovery continues.” While Hirsch’s objections are not sufficiently specific as required under the federal rules and the request is clearly relevant to Hirsch’s claim of a likelihood of confusion, Hirsch’s response that it produced documents that may be responsive to this Request is likely incorrect. By Hub Pen’s review, the only documents produced by Hirsch are examples of certain catalogs. If Hirsch disagrees and believes it has provided documents responsive to this Request, please amend Hirsch’s response and specifically note the Bates numbers of such documents. Otherwise, please produce the documents referenced by Hirsch in its response and confirm that Hirsch has performed a search for documents responsive to this request.

Request for Production No. 5: *All documents and things referring or relating to any evaluation, study, analysis and/or investigation undertaken before initiating this Proceeding regarding whether the Hub Pen mark and/or the Hub Pen Products and Services were likely to cause confusion with Hirsch, the Hirsch Products and Services, or the Hirsch Mark, including, without limitation, opinions and reports (written or oral).*

In response, Hirsch states “None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.” While Hirsch’s objections are not sufficiently specific as required under the federal rules, the request is clearly relevant to Hirsch’s claim of a likelihood of confusion and is necessary to determine if Hub Pen needs to conduct depositions of any Hirsch employees or representatives. Moreover, Hirsch’s response that there are no documents at this time is contradictory to Hirsch’s response to Interrogatory No. 2. Please produce the above referenced documents and confirm that Hirsch has performed a search for documents responsive to this request.

Request for Production No. 6: *All documents and things referring or relating to any plans, suggestions, or contemplated actions regarding the assertion of the Hirsch Mark, or any of Hirsch’s alleged intellectual property, against Hub Pen or any other party, including without limitation, corporate minutes, emails, meetings of the Hirsch Board of Directors, and meetings of Hirsch’s Shareholders.*

In response, Hirsch states “None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.” While Hirsch’s objections are not sufficiently specific as required under the federal rules, the request is clearly relevant to Hirsch’s claim of a likelihood of confusion and is necessary to determine if Hub Pen needs to conduct depositions of any Hirsch employees or representatives. Moreover, Hirsch’s response

that there are no documents at this time is contradictory to Hirsch's response to Interrogatory No. 2. Please produce the above referenced documents and confirm that Hirsch has performed a search for documents responsive to this request.

Request for Production No. 7: *To the extent not already requested, all documents and things referring or relating to any discussion or communication, written or oral, concerning Hub Pen, the Hub Pen Mark, or any of the Hub Pen Products and Services, including all notes, minutes, or memoranda of any meeting attended by any officer, director, employee, agent or manager of Hirsch.*

In response, Hirsch states "None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues." While Hirsch's objections are not sufficiently specific as required under the federal rules, the request is clearly relevant to Hirsch's claim of a likelihood of confusion and is necessary to determine if Hub Pen needs to conduct depositions of any Hirsch employees or representatives. Moreover, Hirsch's response that there are no documents at this time is contradictory to Hirsch's response to Interrogatory No. 2. Please produce the above referenced documents and confirm that Hirsch has performed a search for documents responsive to this request.

Request for Production No. 10: *Documents sufficient to identify the name, job title, and responsibility of each person who has had responsibilities relating the research, design, development, testing, operation, sales, marketing, or pricing of the Hirsch Products and Services.*

In response, Hirsch states "The identity of such individuals have already been disclosed via Initial Disclosures. Opposer has no additional documents at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues." Hirsch's Initial Disclosures did not list this information, rather it listed "Representatives of Opposer" as a category. This information is necessary to determine who Hub Pen may need to depose of any Hirsch current or former employees or representatives.

Request for Production No. 11: *Past and present management and organizational charts and other documents sufficient to show the corporate structure and reporting relationships within each division, subsidiary, joint venture or other Hirsch entity that develops, markets, or sells the Hirsch Products and Services.*

In response, Hirsch states "The identity of such individuals have already been disclosed via Initial Disclosures. Opposer has no additional documents at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues." Hirsch's Initial Disclosures did not list this information, rather it listed "Representatives of Opposer" as a category. This information is necessary to determine who Hub Pen may need to depose of any Hirsch current or former employees or representatives.

Request for Production No. 12: *All documents and things referring or relating to the marketing, advertising, or promotion of any of the Hirsch Products and Services.*

In response, Hirsch states “Please see documents attached hereto which may be responsive to this request. Opposer reserves the right to further supplement this response as necessary as discovery continues.” This information is necessary to identify the extent of Hirsch’s use of the Hirsch Mark and how it is perceived in the marketplace by consumers. Hirsch’s response is inadequate and includes only some relevant years’ catalogs or incomplete catalogs. In an effort to lessen the burden for Hirsch, Hub Pen requests representative examples of marketing, advertisements, and promotion of the Hirsch Products and Services for each channel of trade and method.

Request for Production No. 13: *All documents and things referring or relating to any comparison of any of the Hirsch Products and Services with any of the Hub Pen Products and Services.*

In response, Hirsch objected that this request is duplicative of Request for Production No. 9. However, No. 9 concerns third party comparisons.

In response, Hirsch further states “None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.” While Hirsch’s objections are not sufficiently specific as required under the federal rules, the request is clearly relevant to Hirsch’s claim of a likelihood of confusion and is necessary to determine if Hub Pen needs to conduct depositions of any Hirsch employees or representatives. Moreover, Hirsch’s response that there are no documents at this time is contradictory to Hirsch’s response to Interrogatory No. 2. Please produce the above referenced documents and confirm that Hirsch has performed a search for documents responsive to this request.

Request for Production No. 14: *All documents and things relating to attempts by Hirsch to enforce the Hirsch Mark against third parties.*

In response, Hirsch objected that this request is duplicative of Request for Production No. 9. However, No. 9 concerns third party comparisons.

In response, Hirsch further states “None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.” While Hirsch’s objections are not sufficiently specific as required under the federal rules, the request is clearly relevant to Hirsch’s claim of a likelihood of confusion and is necessary to determine if Hub Pen needs to conduct depositions of any Hirsch employees or representatives. Moreover, Hirsch’s response that there are no documents at this time is contradictory to Hirsch’s response to Interrogatory No. 2. Please produce the above referenced documents and confirm that Hirsch has performed a search for documents responsive to this request.

Request for Production No. 15: *All documents and things referring or relating to any plans, suggestions, or strategies for the acquisition and enforcement of trademark rights for the Hirsch Mark.*

In response, Hirsch objected that this request is duplicative of Request for Production No. 9. However, No. 9 concerns third party comparisons.

In response, Hirsch further states “None at this time. Opposer reserves the right to further supplement this response as necessary as discovery continues.” While Hirsch’s objections are not sufficiently specific as required under the federal rules, the request is clearly relevant to Hirsch’s claim of a likelihood of confusion and is necessary to determine if Hub Pen needs to conduct depositions of any Hirsch employees or representatives. Moreover, Hirsch’s response that there are no documents at this time is contradictory to Hirsch’s response to Interrogatory No. 2. Please produce the above referenced documents and confirm that Hirsch has performed a search for documents responsive to this request.

Request for Production No. 16: *All documents and things referring or relating to Hirsch’s first use in commerce of the Hirsch Mark.*

In response, Hirsch states “Please see documents attached hereto which may be responsive to this request. Opposer reserves the right to further supplement this response as necessary as discovery continues.” Hirsch stated in Interrogatory No. 1 that the 2006 product catalog is the oldest use still in existence. Please identify the documents responsive to this Request that have been produced by Bates number.

Please provide responses to this deficiency letter and produce the documents identified in this letter no later than January 6, 2021. As detailed in my November 9, 2020 letter to which I have not received a response, Hub Pen remains committed to discussing settlement options if Hirsch is inclined.

As you know, expert disclosures are currently due January 11, 2021. Because certain documents and discovery responses referenced above may impact the need for and reports from any experts retained by Hub Pen and to provide sufficient time for Hirsch to respond to this deficiency letter, Hub Pen suggests extending all remaining deadlines by 60 days. If Hirsch agrees, we can prepare the motion for your approval and signature. Please let Hub Pen know if Hirsch consents to this extension by no later than 12 PM MST on December 31, 2020.

If you have questions, please contact me.

Thank you,

/s/ Joseph Harmer
Joe Harmer

HA/jg

Exhibit H

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

HIRSCH GIFT, INC

Opposer,

v.

HUB PEN COMPANY, LLC

Applicant.

**APPLICANT HUB PEN COMPANY,
LLC'S INITIAL DISCLOSURES**

Opposition No. 91256218

Opposer Hirsh Gift, Inc hereby makes its initial disclosures pursuant to TBMP § 401.02 and Fed. R. Civ. P. 26(a)(1)(A)(i)-(ii). These Disclosures are based upon Opposer's present knowledge and investigation regarding the witnesses, documents, and other information relating to this proceeding. Opposer reserves the right to amend and supplement these Disclosures as additional information becomes available.

Fed. R. Civ. P. 26(a)(1)(A)(i): the name, and if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment.

Representatives of Opposer (Contact through counsel)	Opposer's acquisition and use of its mark; and advertisement, channels of trade, customer, and sales information related to Opposer's mark.
All persons identified in Applicant's Initial Disclosures	Subjects identified in Applicant's initial disclosures.

Fed. R. Civ. P. 26(a)(1)(A)(ii): a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment.

Opposer has available, upon request, for inspection and copying (at Applicant's

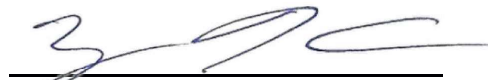
expense), the following documents and things:

1. Copies of documents evidencing Opposer's development and use of its mark.
2. Copies of pictures of Opposer's authentic goods offered under its mark; and
3. Exemplars of advertisements for Opposer's authentic goods and services offered under its mark.

DATED this 14th day of September, 2020.

Respectfully submitted,

LAW OFFICE OF ZACHARY HILLER



Zachary Hiller
Attorney for Opposer
Hirsch Gift, Inc

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing
OPPOSER HIRSH GIFT, INC'S INITIAL DISCLOSURES was served upon the following
party by electronic mail:

Peter M. de Jonge
THORPE NORTH & WESTERN, LLP
175 South Main Street, Suite 900
Salt Lake City, UT 84111
Telephone: (801) 566-6633
Facsimile: (801) 566-0750
DeJonge@tnw.com

DATED this 14th day of September, 2020.

/s/ Zachary Hiller
Zachary Hiller