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Filing date: **12/13/2021**

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

Proceeding	91268509
Party	Plaintiff The Wonderful Company LLC
Correspondence Address	DANIELLE M. CRIONA ROLL LAW GROUP PC 11444 WEST OLYMPIC BLVD., 7TH FLOOR LOS ANGELES, CA 90064 UNITED STATES Primary Email: danielle.criona@roll.com Secondary Email(s): ipdocketing@roll.com 310-966-8771
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Michael M. Vasseghi
Filer's email	michael.vasseghi@roll.com, ipdocketing@roll.com
Signature	/ Michael M. Vasseghi /
Date	12/13/2021
Attachments	de Mesa - Mot Compel.pdf(136712 bytes ) de Mesa - Decl of Vasseghi.pdf(841034 bytes )

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

THE WONDERFUL COMPANY LLC,

Opposer,

v.

LETICIA FERNANDFEZ DE MESA,

Applicant.

Opposition No. 91268509

**OPPOSER'S MOTION TO COMPEL DISCOVERY**

The Wonderful Company LLC (or "Opposer") moves the Board under Trademark Rule 2.120(e) for an order compelling LETICIA FERNANDFEZ DE MESA ("Applicant") to serve its responses to Opposer's First Set of Request for the Production of Documents (the "Discovery Requests").

As detailed below, Opposer has made the required good-faith effort to resolve this matter with Applicant short of filing this motion. Despite Opposer's efforts, Applicant failed to serve its responses to Opposer's Discovery Requests. Applicant should be compelled to serve its responses (without objections), and the proceeding should be suspended pending disposition of this motion, and trial dates should be modified as appropriate after the motion is resolved. If Applicant continues to obstruct discovery by refusing to provide discovery responses, judgment should be entered against Applicant as a sanction for its discovery misconduct.

## **I. RELEVANT FACTUAL BACKGROUND**

On April 1, 2021, Opposer filed its Notice of Opposition against Applicant, and the Board issued an order instituting the proceeding and setting the trial calendar. (Docket Nos. 1-2.) The Board's Scheduling Order set the deadline for the parties to exchange Initial Disclosures for August 10, 2021, and Opposer timely served its Initial Disclosures on July 9, 2021. (Michael M. Vasseghi Decl. ¶ 5 ("Vasseghi Decl.")).

On November 5, 2021, Opposer served its First Set of Requests for the Production of Documents on Applicant. (Vasseghi Decl. ¶ 2 and Ex. A thereto".)

On December 7, 2021, having not received Applicant's discovery responses, Opposer's counsel wrote to Applicant about the overdue responses and asked Applicant to provide the required information and documents. (Vasseghi Decl. ¶ 3 and Ex. B thereto). Opposer received no response to this email or any responses to the Discovery Requests. Vasseghi Decl. ¶ 4. Opposer's counsel followed up again on December 9, 2021, but received no response to that email either. (Vasseghi Decl. ¶ 4).

## **II. ARGUMENT**

### **A. Applicant Should Be Compelled to Respond to Opposer's Discovery Request Without Objections, Which Have Been Forfeited**

Under Federal Rules of Civil Procedure 33 and 34, Applicant's objections and responses to the Discovery Requests were due on December 6, 2021. As detailed above, Applicant never responded to discovery.

If a party fails to respond to interrogatories and document requests, the party seeking discovery may file a motion to compel with the Board. TBMP § 523.01. A party that fails to respond to written discovery, without showing that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right

to object *to* discovery. TBMP § 403.03; Fed. R. Civ. P. 33(b)(4) ("Any ground not stated in a timely objection is waived unless the court, for good cause, excuses the failure."). This is such a case. Applicant failed to serve discovery objections and/or responses and continues to ignore its discovery obligations. Applicant should thus be ordered to provide complete responses to the Discovery Requests, to produce documents and electronically stored information responsive to all such requests; and, if appropriate, to produce a privilege log in accordance with Fed. R. Civ. P. 26(b)(5), within 15 days from the mailing date of the Board's ruling.

**B. The Proceeding Should Be Suspended Pending Resolution of Opposer's Motion to Compel**

Trademark Rule 2.120(e)(2) provides that when a party files a motion to compel, the Board will suspend all matters not germane to the motion. Further, the Board has the discretion to suspend proceedings for good cause shown under 37 C.F.R. § 2.117(c) and TBMP § 510.

Here, suspension of all proceedings pending disposition of this motion is warranted because Applicant failed to provide any information in response to Discovery Requests.

Additionally, under 37 CFR § 2.120(e)(2), Opposer requests that upon resumption, the testimony periods be reset to allow sufficient time for Opposer to prepare for its testimony period and for Applicant to comply with any discovery obligations.

**III. CONCLUSION**

For the reasons stated above, Opposer respectfully requests that the Board:

(1) grant Opposer's motion to compel and order Applicant to provide complete responses to Discovery Requests within 15 days from the mailing date of the Board's ruling; (2) order that

any and all objections to the Discovery Requests are waived; (3) that responses to the requests  
(4) the proceeding is suspended pending disposition of this motion.

DATED: December 13, 2021

THE WONDERFUL COMPANY LLC

By:           /s/ MICHAEL M. VASSEGHI          

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michael.vasseghi@roll.com;  
ipdocketing@roll.com  
Attorneys for Opposer

**CERTIFICATE OF SERVICE**

I, Susan Bryant, hereby certify that a copy of this OPPOSER’S MOTION TO COMPEL DISCOVERY has been served upon attorney for Applicant:

Jesus Sanchelima, Esq.  
Sanchelima & Associates, P.A.  
235 S.W. Le Jeune Road  
Miami, Florida 33134  
Telephone: (305) 447-1617  
Facsimile: (305) 445-8484  
Email: [jesus@sanchelima.com](mailto:jesus@sanchelima.com); [tm@sanchelima.com](mailto:tm@sanchelima.com); [legal@sanchelima.com](mailto:legal@sanchelima.com);  
[chris@sanchelima.com](mailto:chris@sanchelima.com)

Attorneys for Applicant

by email on this 13<sup>th</sup> day of December, 2021.

\_\_\_\_\_  
*/s/ SUSAN BRYANT*

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ROLL LAW GROUP PC  
11444 West Olympic Boulevard  
Los Angeles, California 90064-1557  
Telephone: (310) 966-8400  
Facsimile: (310) 966-8810

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

THE WONDERFUL COMPANY LLC,

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LETICIA FERNANDFEZ DE MESA,

Applicant.

Opposition No. 91268509

**DECLARATION OF MICHAEL VASSEGGHI IN SUPPORT OF THE WONDERFUL  
COMPANY LLC'S MOTION TO COMPEL DISCOVERY RESPONSES**

I, Michael M. Vasseghi, declare as follows:

1. I am Senior Managing Counsel at Roll Law Group PC and counsel for The Wonderful Company LLC. I have personal knowledge of the facts set forth herein and, if called upon to testify, could and would competently testify thereto. I submit this declaration in support of Motion to Compel Discovery Responses.

2. Attached as Exhibit A is a true and correct copy of Opposer's First Set of Request for the Production of Documents and Things to Applicant as served on Applicant on November 5, 2021.

3. Attached as Exhibit B is a true and correct copy of the emails sent to Applicant on December 7 and December 9, 2021 advising that responses to Opposer's discovery requests were overdue.

4. To date Applicant has neither provided any objections or responses to the discovery nor responded to the my emails.

5. Opposer served its initial disclosures on July 9, 2021.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct and that this declaration was executed in Los Angeles, California on December 13, 2021.

                  / MICHAEL M. VASSEGHI /  
MICHAEL M. VASSEGHI



# **EXHIBIT A**

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

THE WONDERFUL COMPANY LLC,

Opposer,

v.

LETICIA FERNANDEZ DE MESA,

Applicant.

Opposition No. 91268509

**OPPOSER THE WONDERFUL COMPANY LLC'S FIRST REQUEST FOR  
PRODUCTION OF DOCUMENTS TO OPPOSER LETICIA FERNANDEZ DE MESA**

PROPOUNDING PARTY: Opposer, THE WONDERFUL COMPANY LLC

RESPONDING PARTY: Applicant, LETICIA FERNANDEZ DE MESA

SET NO.: ONE

In accordance with Rule 34 of the Federal Rules of Civil Procedure, and Rules 2.116 and 2.120 of the Trademark Rules of Practice, Opposer, THE WONDERFUL COMPANY LLC (“Opposer”), requests that Applicant, LETICIA FERNANDEZ DE MESA (“Applicant”) produce for inspection and copying the documents in the possession, custody or control of Opposer that are called for in the numbered requests set forth hereinafter. The documents are to be produced within thirty (30) days of the date of service hereof at the offices of Roll Law Group P.C. 11444 West Olympic Blvd., Los Angeles, California 90064.

## **DEFINITIONS AND INSTRUCTIONS**

As used herein, unless the context in which it appears clearly suggests otherwise, each of the following terms has the meaning set forth below:

1. “Opposer” means THE WONDERFUL COMPANY LLC and any and all predecessors, affiliates, parents, subsidiaries and divisions thereof, and all officers, directors, employees, agents, representatives, attorneys or other Persons acting, or who at any time acted or purported to act, on behalf of THE WONDERFUL COMPANY LLC or on behalf of any such predecessors, affiliates, parents, subsidiaries and divisions thereof.

2. “Applicant” or “you” means LETICIA FERNANDEZ DE MESA and any and all predecessors, affiliates, parents, subsidiaries and divisions thereof, and all officers, directors, employees, agents, representatives, attorneys or other persons acting, or who at any time acted or purported to act, on behalf of LETICIA FERNANDEZ DE MESA, or on behalf of any such predecessors, affiliates, parents, subsidiaries and divisions thereof.

3. “Person” means any natural person, firm, association, organization, partnership, joint venture, corporation, limited partnership, business, trust, limited liability corporation, limited liability partnership, government agency or other form of entity or governmental body.

4. The terms “Referring To”, “Relating To” or “Evidencing” shall mean reflecting, concerning, pertaining to, mentioning, discussing, summarizing, describing, regarding, containing, referring to, depicting, connected with, embodying, evidencing, constituting, reporting, or in any way connected to the matter discussed.

5. The term “Goods” refers to products that are being sold or will be sold under the applied for POM POM mark.

6. The term “Document” refers to any written or recorded matter as described in Rule 34 of the Federal Rules of Civil Procedure including but not limited to any and all writings,

correspondence, books, memoranda, invoices, contracts, purchase orders, receipts, publications, studies, catalogs, periodicals, labels, packaging, displays, pamphlets, slides, videotapes, films, artwork, drawings, charts, sketches, photographs, illustrative materials, circulars, price lists, advertisements, layouts, tear sheets, magnetic recording tapes, microfilm and other storage means by which information is retained in retrievable form, and all other materials whether printed, typewritten, handwritten, recorded, or reproduced by any process written or recorded matter, and shall include the original and every non identical copy, draft or reproduction in the possession, custody or control of Applicant. The definition also includes information stored or recorded by any electronic means, including, without limitation, in a computer, hard drive, compact disc, floppy disk, diskette, tape, record, cassette, electronic mail or voice mail, any other electronic recording or other data compilation from which information can be obtained or translated, or any matters defined in Rule 1001 of the Federal Rules of Evidence. Any such document bearing on any sheet (front or back), margin, attachment or enclosure thereof, any marks, such as, without limitation, initials, stamped initials, comments, or notations of any character, which are not part of the original text or reproduction thereof, is to be considered and produced as a separate document.

7. The terms “all” and “each” shall both be construed as all and each.

8. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside its scope.

9. The use of the singular form of any word includes the plural and vice-versa.

10. The term “prosecution” shall mean proceedings before the USPTO, including any interviews, correspondence or other materials, whether or not included in the prosecution file history maintained at the USPTO.

11. “Thing” or “Things” means any tangible item, including without limitation models, prototypes and samples of any device, product or apparatus.

12. The terms “Identify” or “Identity” shall have the following meanings, as the context shall make appropriate:

a. When used with respect to a person, Applicant shall state the name of the Person, describe the present or last known business address of that person or the present or last known residence address. If Applicant lacks such knowledge, state that Person’s present or last known business, occupation, and employer, if any. Once a Person has been thus identified in answer to an Interrogatory, it shall be sufficient, when again identifying that Person, to state only his, her or its name.

b. When used with respect to a Document, Applicant shall state the date of the Document, describe the general nature (e.g., letter, memorandum, photograph, computer printout, etc.) and subject matter of the Document and specify:

i. The author or originator of the Document;

ii. Each Person indicated as an addressee or copy recipient, or known by Applicant to have received a copy of the Document; and

iii. If privilege is claimed by Applicant with respect thereto, state sufficient particulars to evaluate and contest the claim of privilege, including the date, author, addressee, recipients of copies and a statement of the subject matter contained in the Document.

c. When used with respect to a communication, Applicant shall, even though it may claim privilege with respect thereto, state whether the communication was written or oral. If written, Applicant shall identify the Document or Documents in which the communication was made. If oral, Applicant shall state:

- i. The manner in which the communication was made (e.g., in person, by telephone, by radio, etc.);
- ii. The identity of each Person who participated in or witnessed the communication;
- iii. The present location of each Person who participated in or witnessed the communication; and
- iv. The date and place of the communication.

13. If Applicant objects that a term or phrase is ambiguous or indefinite, then provide your understanding of the term or phrase and respond accordingly, as if that term or phrase has been so defined.

14. “State” or “Describe” mean to set forth a complete and detailed statement of all information, circumstances and facts that refer to, relate to, reflect, comprise, or bear upon the matter concerning which information is requested.

### **DOCUMENT REQUESTS**

1. Documents sufficient to show all the various ways the POM POM mark is used in, or will be used in commerce.

2. Documents sufficient to show all the various ways the POM POM mark is seen or will be seen by the consuming public.

3. Documents sufficient to show all trade channels whereby Applicant offers or will offer Applicant’s Goods to the public.

4. Documents sufficient to show pricing or anticipated pricing for Applicant's Goods.
5. Documents sufficient to show where Applicant sources or plans to source spirits and liqueurs bearing the POM POM mark.
6. All Documents Referring To the facts and circumstances surrounding when Applicant first came to know of the existence of Opposer and its trademarks.
7. All Documents Referring To any determination or consideration by Applicant of whether or not Applicant's Goods are likely to cause confusion with any of Opposer's trademarks.
8. A sample of each different label, tag, wrapping, package, package insert, advertisement, marketing or promotional material, and website page used or planned to be used in connection with the POM POM mark.
9. All publications containing any articles, advertising or promotional material Evidencing the POM POM mark.
10. All Documents upon which Applicant relies or has relied on in formulating the opinion that the POM POM mark does not cause a Likelihood of Confusion with Opposer's trademarks, including, but not limited to, opinions of counsel, third-party uses, trademark applications or registrations, advertising brochures, manuals, photographs, physical specimen, drawings, or other materials Relating To Applicant's or third parties' products or trademark rights.
11. All Documents Relating To Communications between Applicant and Opposer.
12. All Communications from customers or other third parties to this action that support or refute the claims in the Opposition.

13. All Communications between Applicant and any third party to this action regarding the POM POM mark.
14. Documents sufficient to show Applicant's consideration, conception, creation, design, development, selection, adoption and first use of the POM POM mark including, but not limited to, searches, investigations, reports, and opinions.
15. Documents sufficient to identify each person involved in the consideration, conception, creation, design, development, selection, adoption and first use or planned first use of the POM POM mark.
16. All Documents evidencing your date of planned first use of the POM POM mark in commerce.
17. All Documents that support your intent to use the POM POM mark in commerce.
18. All Documents Relating To any assignment, license, or other transfer or grant of any rights to or from Applicant or any third party in the POM POM mark.
19. All Documents showing orders placed for Goods bearing the POM POM mark.
20. All Documents Relating To inquiries, including but not limited to purchase or distribution inquiries, about Goods bearing the POM POM mark.
21. All agreements or any other Documents between Applicant and any third party Relating To the POM POM mark.
22. All Documents that support or refute Applicant's denial of any allegation in the Notice of Opposition.
23. All documents that show the advertising or marketing budget or anticipated advertising or marketing for the sale of Goods under or in connection with the POM POM mark.



24. All Documents Relating to the name of stores that sell or will sell Goods under or in connection with the POM POM mark.

25. All Documents Relating to the trade channels you anticipate the Goods under or in connection with the POM POM mark will be sold.

26. All Documents Relating To any studies, investigation, surveys, opinions or reports, including but not limited to studies, opinions or reports of advertising and marketing agencies, and polling, public relations, market research and public opinion agencies, consulted or retained by Applicant, which refer to any advertising or promotional materials for Applicant's Goods.

27. All Documents Evidencing Applicant's date of first use or planned first use of the POM POM mark on or in connection with each of Applicant's Goods in interstate and/or intrastate commerce.

28. All Documents Evidencing the contentions made in the Answer to the Notice of Opposition.

29. All Documents necessary to Identify the geographic locations of stores in which Goods using the POM POM mark will be, or are being, sold.

30. A copy of All agreements between You and any distributor or sub-distributor for Applicant's Goods.

31. All Documents evidencing all steps taken by You or anyone else to use the POM POM mark, in commerce.

32. All business plans relating to Goods to be sold in connection with the POM POM mark.

33. All Documents Relating to the retail price of Goods to be sold in connection with the POM POM mark.

DATED: November 5, 2021

THE WONDERFUL COMPANY LLC

By:           /s/ MICHAEL M. VASSEGHI          

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michael.vasseghi@roll.com;  
ipdocketing@roll.com  
Attorneys for Opposer

**CERTIFICATE OF SERVICE**

I, Susan Bryant, hereby certify that a copy of this OPPOSER THE WONDERFUL COMPANY LLC'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO OPPOSER LETICIA FERNANDEZ DE MESA has been served upon attorney for Opposer:

Jesus Sanchelima, Esq.  
Sanchelima & Associates, P.A.  
235 S.W. Le Jeune Road  
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Telephone: (305) 447-1617  
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[chris@sanchelima.com](mailto:chris@sanchelima.com)

Attorneys for Applicant

by email on this 5<sup>th</sup> day of November, 2021.

\_\_\_\_\_  
/s/ SUSAN BRYANT

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Telephone: (310) 966-8400  
Facsimile: (310) 966-8810

# **EXHIBIT B**

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**Subject:** FW: The Wonderful Company v. de Mesa, TTAB Opp. No. 91268509

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**From:** Vasseghi, Michael

**Sent:** Thursday, December 9, 2021 7:45 AM

**To:** [jesus@sanchelima.com](mailto:jesus@sanchelima.com); [tm@sanchelima.com](mailto:tm@sanchelima.com); [legal@sanchelima.com](mailto:legal@sanchelima.com); [chris@sanchelima.com](mailto:chris@sanchelima.com)

**Subject:** RE: The Wonderful Company v. de Mesa, TTAB Opp. No. 91268509

Counsel,

I am assuming no responses are forthcoming and plan to file a motion to compel. If I am incorrect in my assumption please let me know immediately.

Thanks,  
Michael

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**From:** Vasseghi, Michael

**Sent:** Tuesday, December 7, 2021 10:31 AM

**To:** [jesus@sanchelima.com](mailto:jesus@sanchelima.com); [tm@sanchelima.com](mailto:tm@sanchelima.com); [legal@sanchelima.com](mailto:legal@sanchelima.com); [chris@sanchelima.com](mailto:chris@sanchelima.com)

**Cc:** Roll - IP Docketing <[ipdocketing@roll.com](mailto:ipdocketing@roll.com)>

**Subject:** RE: The Wonderful Company v. de Mesa, TTAB Opp. No. 91268509

Counsel, I write to follow up on the responses to this discovery that was due yesterday. Please let me know when I can expect to receive them.

Thanks,  
Michael

**CERTIFICATE OF SERVICE**

I, Susan Bryant, hereby certify that a copy of this DECLARATION OF MICHAEL VASSEGHI IN SUPPORT OF THE WONDERFUL COMPANY LLC'S MOTION TO COMPEL DISCOVERY RESPONSES has been served upon attorney for Applicant:

Jesus Sanchelima, Esq.  
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[chris@sanchelima.com](mailto:chris@sanchelima.com)

Attorneys for Applicant

by email on this 13<sup>th</sup> day of December, 2021.

\_\_\_\_\_  
/s/ SUSAN BRYANT

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