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

Proceeding no.	91276027
Party	Plaintiff Motus, LLC
Correspondence address	SUZANN MOSKOWITZ THE MOSKOWITZ FIRM LLC 24870 FAIRMOUNT BLVD BEACHWOOD, OH 44122 UNITED STATES Primary email: suzann@themoskowitzfirm.com Secondary email(s): admin@themoskowitzfirm.com 2163391111
Submission	Motion to Compel Discovery or Disclosure
Filer's name	Suzann Moskowitz
Filer's email	suzann@themoskowitzfirm.com
Signature	/Suzann Moskowitz/
Date	02/11/2023
Attachments	2023.02.11 Motion to Compel.pdf(581612 bytes)

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

MOTUS, LLC.,)	
)	
Opposer,)	Opposition No. 91276027
)	
v.)	
)	
LUXURY AUTOMOTIVE)	
TRANSPORTATION SERVICES, LLC)	
)	
Applicant.)	

**OPPOSER’S MOTION TO COMPEL
AND DEEM REQUESTS FOR ADMISSION ADMITTED**

Under the authority of FED CIV. R. P. 36 and 37, TBMP § 523.02, and 37 C.F.R. § 2.120, Opposer Motus, LLC respectfully requests that the Board issue an Order compelling Applicant Luxury Automotive Transportation Services, LLC (“LATS”) to answer interrogatories and produce documents responsive to *Opposer’s First set of Combined Discovery Requests with Requests to Admit* (the “Discovery Requests”) and deem admitted Opposer’s requests for admission.

SERVICE OF DISCOVERY REQUESTS AND LACK OF RESPONSE

Opposer served the Discovery Requests on Applicant’s counsel on December 5, 2022. A copy of the Discovery Requests is attached hereto as EXHIBIT 1. Applicant’s responses were due on or before January 4, 2023, however Applicant did not serve any objections or responses by that time and has failed to do so to date. Opposer has made a good faith effort to resolve this dispute, pursuant to Trademark Rule 2.120(e)(1), by engaging Applicant’s counsel in an attempt to receive responses to Discovery Requests. *See, e.g.*, e-mail exchange between counsel, attached as EXHIBIT

2. However, Applicant's counsel has not responded as of the date of this filing. Pursuant to FED. R. CIV. P. 37, Opposer requests the Board Order Applicant to serve its responses to the interrogatories and requests for production of documents in the Discovery Requests.

REQUESTS FOR ADMISSION ARE ADMITTED

The Discovery Requests served on Applicant's counsel included four requests for admission. Objections or responses to those requests were due on or before January 4, 2023. Applicant has similarly failed to object or respond to the requests for admission, rendering them admitted under FED. R. CIV. P. 36(a)(3). See *Giersch v. Scripps Networks, Inc.*, 85 USPQ2d 1306, 1307 (TTAB 2007) ("Under Fed. R. Civ. P. 36, a requested admission is deemed admitted unless a written answer or objection is provided to the requesting party within thirty days after service of the request, or within such time as the parties agree to in writing."); *Fram Trak Indus. Inc. v. WireTracks L.L.C.*, 77 USPQ2d 2000, 2005 (TTAB 2006) ("Respondent failed to respond to petitioner's requests for admission and failed to file a motion to amend or withdraw those admissions. Accordingly, those requests for admission are deemed admitted and conclusively established."); *Pinocchio's Pizza, Inc. v. Sandra Inc.*, 11 USPQ2d 1227, 1228 n.5 (TTAB 1989) ("Since no responses were made to the requests for admission, they are deemed admitted.").

Opposer served its Discovery Requests on Applicant December 5, 2022. More than a month has passed since their due date and Applicant has failed to provide any response or any indication that it intends to comply with its discovery obligations. Accordingly, Opposer requests the Board deem Opposer's four requests for admission admitted and that the Board Order Applicant to file serve its responses to Opposer's interrogatories and requests for production.

Respectfully submitted,

/s/ Suzann R. Moskowitz
Suzann Moskowitz
The Moskowitz Firm
24870 Fairmount Blvd.
Beachwood, OH 44122
suzann@themoskowitzfirm.com
Tel: 216-339-1111
Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on February 11, 2023, I caused a true and correct copy of the foregoing to be served via email, upon Karen Kline, at kkcline@duanemorris.com.

/s/ Suzann R. Moskowitz

EXHIBIT 1

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

Registration Nos: 6,193,383; 4,819,183
Mark: MOTUS

MOTUS, LLC,)	
)	
Opposer,)	Opposition No. 91276027
)	
v.)	
)	
LUXURY AUTOMOTIVE)	
TRANSPORTATION SERVICES, LLC)	
)	
Applicant.)	

**OPPOSER’S FIRST SET OF WRITTEN DISCOVERY REQUESTS
TO APPLICANT WITH REQUESTS TO ADMIT**

Opposer propounds these discovery requests, with requests to admit, upon Applicant, to be answered in writing and under oath within thirty (30) days in accordance with 37 C.F.R. § 2.120 and Rules 33, 34, and 36 of the Federal Rules of Civil Procedure and in the form prescribed by those Rules. Opposer requests that documents, electronically stored information, and tangible things be produced within 30 thirty days at the offices of The Moskowitz Firm, 24870 Fairmount Boulevard, Beachwood, Ohio 44120, or such other location as the parties mutually agree.

Opposer requests that electronically stored information (“ESI”) be produced in its native form or forms in which the information is ordinarily maintained, with all metadata preserved. If that form is not reasonably useable, Opposer requests that the information be produced in Excel format or, if unavailable, CSV standard file format, on DVDs or other storage media, or as otherwise agreed among counsel.

DEFINITIONS AND INSTRUCTIONS

The following definitions and instructions apply to these Interrogatories and Requests:

(a) When asked to identify a person, state his or her name, title (or position or classification), employer, business address, residence address (or last known address) and telephone number.

(b) When asked to identify an entity, state its full legal name, its principal place of business, and (if different) its mailing address.

(c) The term “document” refers to any and all writings or other means of recording or preserving information now or previously in your possession or the possession of your attorneys or agents, including, but without limitation, any and all correspondence, memoranda, handwritten notes, drawings, graphs, charts, designs, plans, specifications, journals, tape recordings, time sheets, index cards and other indices, invoices, purchase orders, forms, books and other published literature, and computer print-outs.

(d) The term “ESI” means and refers to “electronically stored information” as that term is used in Rule 34 of the Federal Rules of Civil Procedure. It includes, but is not limited to, any information stored or preserved in computers or on diskettes, tapes, compact discs, or other media.

(e) If any document responsive to these interrogatories and requests was formerly in your possession or control but has been lost, destroyed, or otherwise separated from your possession or control, so state and, in addition, describe the circumstances or reasons for such loss, destruction, or separation, identify any persons currently having custody or control over it, and provide any other information you have concerning its present whereabouts.

(f) If you withhold (under claim of privilege or otherwise) any document that is responsive to any of these requests for production, state that you have withheld the document and, in

addition, state the type of document and its date, identify its author or originator, identify each recipient, identify its custodian, state the reason for or purpose of its preparation, and state the basis of your belief or contention that you are entitled to withhold the document (under claim of privilege or otherwise).

(g) Anything attached or affixed to a responsive document shall be deemed a part of, and shall be produced with, such responsive document, whether or not the attachment is itself independently responsive.

(h) If one or more copies of any responsive document exist, then it shall be sufficient to produce only the original, unless any such copy reveals or contains handwritten notes, attachments, or other material or information not revealed by the original, in which case each such copy shall be produced.

(i) The phrase “such documents as will reveal” means documents sufficient to reveal the requested information accurately and completely.

(j) If you object to an interrogatory or request in the belief that part but not all of the interrogatory or request is objectionable, then so state, and provide the information and produce the documents and ESI requested by those parts of the interrogatory or request to which you do not object.

(k) The terms “you” and “your” refer to each respective Applicant, its directors, officers and employees, and relevant agents, as well as any attorneys, experts, investigators or persons acting or purporting to act on its behalf.

(l) Unless otherwise stated, the relevant period for these discovery requests is the period November 1, 2017 to the present.

(m) The term “challenged mark” means the mark that is the subject of U.S. Trademark Serial No. 88742826 and this proceeding.

(n) The term “Opposer’s Mark” or “Opposer’s Marks” means the marks that are the subject of U.S. Trademark Registration Nos: 6,193,383; 4,819,183.

INTERROGATORIES

INTERROGATORY NO. 1: Identify each person you believe has information relating to the claims or allegations set forth in the *Notice of Opposition* and *Answer to Notice of Opposition*, along with the subjects on which you believe he or she has knowledge.

RESPONSE:

INTERROGATORY NO. 2: Identify each person that furnished information for the responses to these interrogatories and requests, designating the number of each interrogatory and request for which such person furnished information.

RESPONSE:

INTERROGATORY NO. 3: If your response to any of Opposer’s requests for admission is anything other than an unequivocal admission, for each such request state the facts and circumstances that support your denial or response, including identification of any documents that support your denial or response.

RESPONSE:

INTERROGATORY NO. 4: Identify (by name and job title) the employees who were involved in one or more of the following during the relevant period. If any such employee is no longer

associated with Applicant or in its employ, so state, provide his or her current or last known address, phone number, and email address, and state the inclusive dates of the period in which he or she had such responsibility.

- a) conception of the Challenged Mark
- b) creation of the Challenged Mark
- c) registration of the Challenged Mark
- d) adoption of the Challenged Mark for use on or in connection with any of your goods or services.

RESPONSE:

INTERROGATORY NO. 5: Identify each trademark search, investigation, or any other inquiry conducted by or for you concerning the availability to use or register the Challenged Mark.

RESPONSE:

INTERROGATORY NO. 6: Identify by jurisdiction and registration or serial number any and all federal and state trademark registration(s) and application(s), whether current (including pending) or dead, for the Challenged Mark or any mark that resembles or incorporates the Challenged Mark in whole or in part.

RESPONSE:

INTERROGATORY NO. 7: Identify all goods and services that you have offered for sale, sold, or provided under or in connection with the Challenged Mark in the United States.

RESPONSE:

INTERROGATORY NO. 8: For each good or service that you have offered, sold, or provided under or in connection with the Challenged Mark, state the date ranges of actual and planned use of the Challenged Mark in connection with the good or service, including the specific date of first use or intended first use of the mark for each good or service.

RESPONSE:

INTERROGATORY NO. 9: Describe the nature of any advertisements, promotional materials, and marketing materials (for example, newspaper advertisements, magazine advertisements, internet websites, television commercials, brochures), including by identifying the specific media (for example, The New York Times, Time magazine, Google.com, CBS Network television) in which you are using, have used, or plan to use the Challenged Mark.

RESPONSE:

INTERROGATORY NO. 10: Identify all persons who participated in or were or are responsible for the marketing or advertising of any goods or services offered for sale, sold, or intended to be offered for sale or sold by or for you under or in connection with the Challenged Mark.

RESPONSE:

INTERROGATORY NO. 11: Identify all website(s) displaying the Challenged Mark that are owned, operated, or controlled by you, and all persons who participated in or were or are responsible for the creation and development of each website.

RESPONSE:

INTERROGATORY NO. 12: Describe all channels of trade in the United States through which you have offered for sale, sold, or intend to offer for sale or sell goods or services under or in connection with the Challenged Mark.

RESPONSE:

INTERROGATORY NO. 13: Describe all classes and/or types of customers (for example, age, gender, socioeconomic group) that comprise the intended market for goods or services offered for sale, sold, or intended to be offered for sale or sold under or in connection with the Challenged Mark.

RESPONSE:

INTERROGATORY NO. 14: Identify by name and location all trade shows in the United States where goods or services under the Challenged Mark have been displayed, promoted, or sold.

RESPONSE:

INTERROGATORY NO. 15: Identify and describe all expenditures incurred by you in connection with the development, production, distribution, promotion, advertisement, and sale of any goods or services under the Challenged Mark, including by identifying the nature and amount of each expenditure.

RESPONSE:

INTERROGATORY NO. 16: Describe the date and circumstances of you first becoming aware of Opposer's use and registration of Opposer's Mark.

RESPONSE:

INTERROGATORY NO. 17: Identify all agreements concerning the Challenged Mark by date, parties to the agreement, and the subject matter of the agreement.

RESPONSE:

INTERROGATORY NO. 18: Describe in detail any communications between you and any third party concerning Opposer or Opposer's Mark, and any actions taken by you as a result of such communications.

RESPONSE:

INTERROGATORY NO. 19: Describe in detail any communications between you and Opposer, and for each such communication the date the communication occurred and whether any documents, notes, or recordings related to the communication exist.

RESPONSE:

INTERROGATORY NO. 20: Describe each and every instance of which you are aware in which any person has been in any way confused, mistaken, or deceived as to the origin or sponsorship of any goods or services sold or offered for sale under or in connection with the Challenged Mark.

RESPONSE:

INTERROGATORY NO. 21: Identify and describe all administrative proceedings and litigation involving the Challenged Mark or any allegation that you violated the trademark rights of any third party, other than this proceeding.

RESPONSE:

INTERROGATORY NO. 22: Describe all facts and circumstances that support your affirmative defense that the Opposition fails to state a claim as described in paragraph 29 of your Affirmative Defenses.

RESPONSE:

INTERROGATORY NO. 23: Describe all facts and circumstances that support your affirmative defense that MOTUS is subject to widespread uncontrolled third party use, is not inherently distinctive, and is not associated exclusive with Opposer's goods or services as described in paragraph 30 of your affirmative defenses.

RESPONSE:

INTERROGATORY NO. 24: Describe all facts and circumstances that support your affirmative defense that Opposer lacks standing as described in paragraph 31 of your affirmative defenses.

RESPONSE:

INTERROGATORY NO. 25: Describe all facts and circumstances that support your affirmative defense that the Challenged Mark does not resemble Opposer's Mark when used on or in connection with their respective goods and services as described in paragraph 32 of your affirmative defenses.

RESPONSE:

INTERROGATORY NO. 26: Describe all facts and circumstances that support any additional affirmative defenses not asserted in your Answer that you allege bar, in whole or in part, Opposer's claims.

RESPONSE:

REQUESTS FOR PRODUCTION

1. All documents you were required to identify in your initial disclosures pursuant to Federal Rule of Civil Procedure 26(a).
2. All documents you believe to contain facts or information relating to the claims or allegations set forth in the Petition for Cancellation or Answer.
3. All witness statements that you have obtained that relate to this action.
4. All documents you intend to use as exhibits in support of your Trial Brief in this action.
5. Documents sufficient to describe any policy or practice regarding the retention, storage, backing-up, purging, or destruction of records, computer files, e-mails, or other documents or ESI.
6. Documents sufficient to show all steps you have taken to ensure that documents, including ESI, relevant to this case have been and will be maintained and not destroyed.
7. All documents identified in response to Opposer's Interrogatories served herein.
8. All documents you relied upon in drafting your Answer to this proceeding.
9. All documents concerning your consideration, selecting, conception, creation, or adoption of the Challenged Mark for use on or in connection with any goods or services.

10. Documents sufficient to identify all persons who were responsible for, participated in, or have information or were consulted concerning the consideration, selection, conception, creation, or adoption of the Challenged Mark for use on or in connection with any of your goods or services.
11. Documents sufficient to show the circumstances of your first use of the Challenged Mark anywhere in the United States, including but not limited to the time, place, and manner of such use.
12. Documents sufficient to show the circumstances of your first use of the Challenged Mark in United States commerce, including but not limited to the time, place and manner of such use.
13. All documents concerning United States Trademark Application Serial Number 88742826, including but not limited to all documents concerning the decision to file the application and copies and all documents submitted to or received from the United States Patent and Trademark Office in connection with the application.
14. All documents concerning any state trademark registrations sought or obtained by you for the Challenged Mark, including but not limited to copies of all documents submitted to or received from any state trademark registration agency.
15. Documents sufficient to identify all goods and services actually or planned or intended to be sold, offered, or licensed by you under or in connection with the Challenged Mark.
16. Documents sufficient to identify all words, terms, phrases, and other designations used by you to categorize, describe, or define the goods and services actually or intended to be sold, offered, or licensed by you under or in connection with the Challenged Mark.
17. Documents sufficient to show any plans for development or expansion of the goods or services that are offered, sold, provided, or licensed in connection with the Challenged Mark.
18. Documents sufficient to identify all channels of trade through which you advertise, promote, distribute, sell, offer, or license, or plan to advertise, promote, distribute, sell, offer, or license, any goods or services under or in connection with the Challenged Mark.
19. Documents sufficient to identify the distributors, retail, or other business outlets that offer or will offer your goods or services in connection with the Challenged Mark.
20. Documents sufficient to identify the geographic regions in the United States in which you have or caused to be advertised, promoted, distributed, sold, offered, or licensed, or plans or intend to advertise, promote, distribute, sell, offer, or license, any goods or services under or in connection with the Challenged Mark.

21. Documents sufficient to show each visual, oral, and other manner in which you have presented or authorized the presentation of the Challenged Mark, including, but not limited to, all pronunciations of and typestyles, fonts, typefaces, designs, shapes, graphics, and colors used for or in connection with the Challenged Mark.
22. Representative samples of each type of advertisement and promotional material (e.g., print, radio, television, brochures, catalogues, flyers, press releases, website pages, website banners, in-store displays, point-of-sale promotional items) that has displayed or that will display the Challenged Mark, including documents sufficient to show every manner of presentation of the Challenged Mark in each type of advertisement or promotional material.
23. Representative samples of all tags, labels, signs, and packaging that have displayed or that will display the Challenged Mark, including documents sufficient to show every manner of presentation of the Challenged Mark in such materials.
24. All newspaper, magazine, newsletter, trade journal, website, and other media coverage, in any form or medium (print, electronic, or other), concerning any Challenged Mark, whether or not authored by any official member of the press.
25. Documents sufficient to identify the target purchasers or potential purchasers of goods or services actually or planned or intended to be sold, offered, distributed, or licensed by you under or in connection with the Challenged Mark.
26. Documents sufficient to identify all trade shows or trade conferences where goods or services under the Challenged Mark have been displayed, promoted, or sold.
27. All Documents concerning or identifying any person to or with whom you have marketed, sold, offered, distributed, or licensed, or intends to market, sell, offer, distribute, or license any goods or services under or in connection with the Challenged Mark.
28. Documents sufficient to identify any graphic, package, product, or other designers contacted or engaged by you with respect to the preparation of any materials bearing or otherwise using the Challenged Mark, and all documents concerning Communications between you and each designer.
29. All Documents concerning your knowledge of Opposer's Mark, United States Trademark Reg Nos. 6193383, 4819183.
30. All Documents concerning any trademark searches, trademark clearances, internet print-outs, and other inquiries conducted by or on behalf of you concerning the availability to use or register the Challenged Mark.
31. All studies, surveys, investigations, research, development, analyses, or opinions concerning the Challenged Mark, including, but not limited to, any such documents

comparing the Challenged Mark to any of Opposer's Marks or concerning any actual confusion or likelihood of confusion between the Challenged Mark and any of Opposer's Marks.

32. Documents sufficient to show any complaint, petition, demand, objection, administrative proceeding, or civil action made or brought by or against you in which any trademark, trade dress, dilution, unfair competition, copyright, or domain name claims were asserted.
33. All documents concerning any complaint, petition, demand, objection, administrative proceeding, or civil action concerning the Challenged Mark.
34. All Documents concerning any observations, perceptions, impressions, or inquiries of any person as to whether the goods or services actually or planned to be sold, offered, provided, or licensed by or on behalf of you under or in connection with the Challenged Mark are produced, sponsored, or endorsed by, or in any manner associated or affiliated with, Opposer or any goods or services offered under or in connection with any of Opposer's Marks.
35. All Documents concerning any instances of actual or possible confusion, mistake, deception, or association of any kind between Opposer, any of Opposer's Marks or Opposer's goods or services on the one hand, and you, the Challenged Mark or your goods or services on the other hand.
36. All agreements between or among you and any other person concerning the Challenged Mark, or the actual or planned manufacture, advertisement, promotion, marketing, distribution, sale, offer, or licensing of any goods or services under or in connection with the Challenged Mark.
37. Documents sufficient to identify all third parties that did, do, or will manufacture, sell, offer, distribute, or license goods or services under or in connection with the Challenged Mark.
38. All documents which show that the Challenged Mark has acquired distinctiveness.
39. All documents supporting your Affirmative Defenses.
40. If your response to Opposer's requests for admission is anything other than an unequivocal admission, provide all documents supporting each denial or response.

REQUESTS FOR ADMISSION

Request for Admission No. 1: Admit that the trademark office action referenced Opposer's Mark in your application for the Challenged Mark.

RESPONSE:

Request for Admission No. 2: Admit that the target customer of goods and services under the Challenged Mark are similar to those of customers of goods and services under Opposer's Mark.

RESPONSE:

Request for Admission No. 3: Admit that you have no documents or other evidence to support your affirmative defenses.

RESPONSE:

Request for Admission No. 4: Admit that Opposer's Mark has priority over the Challenged Mark.

RESPONSE:

/s/ Suzann R. Moskowitz
Suzann Moskowitz
The Moskowitz Firm
24870 Fairmount Blvd.
Beachwood, OH 44122
suzann@themoskowitzfirm.com
Tel: 216-339-1111
Attorney for Opposer

CERTIFICATE OF SERVICE

I hereby certify that on December 5, 2022, I caused a true and correct copy of the foregoing to be served via email, upon Karen Kline, at kckline@duanemorris.com.

/s/ Suzann R. Moskowitz

EXHIBIT 2



Suzann Moskowitz <suzann@themoskowitzfirm.com>

Motus - Discovery Requests 91276027

Suzann Moskowitz <suzann@themoskowitzfirm.com>
To: "Kline, Karen Chuang" <kckline@duanemorris.com>
Cc: "Jeffrey K. Riffer" <jriffer@elkinskalt.com>

Sun, Feb 5, 2023 at 6:07 PM

Karen,

Your responses to the below were due over a month ago. Can we expect responses early this week? If not we will need to move to compel.

Suzann Moskowitz
The Moskowitz Firm®
www.themoskowitzfirm.com

This email may contain information that is private, confidential, and/or privileged. Please delete this message if you are not the intended recipient. This email is not and should not be construed to be or contain a legal opinion.

On Mon, Dec 5, 2022 at 10:06 AM Suzann Moskowitz <suzann@themoskowitzfirm.com> wrote:

Karen,

Please see attached.

Sincerely,

Suzann Moskowitz
The Moskowitz Firm®
www.themoskowitzfirm.com

This email may contain information that is private, confidential, and/or privileged. Please delete this message if you are not the intended recipient. This email is not and should not be construed to be or contain a legal opinion.