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

Proceeding no.	91277995
Party	Plaintiff Cleveland Guardians Baseball Company, LLC
Correspondence address	MARY L. KEVLIN/JUSTIN I. KARASICK COWAN, LIEBOWITZ, & LATMAN P.C. 114 WEST 47TH STREET NEW YORK, NY 10036-1525 UNITED STATES Primary email: trademark@ccl.com Secondary email(s): mlk@ccl.com, jik@ccl.com, lrm@ccl.com, tmf@ccl.com 212-790-9200
Submission	Motion to Compel Discovery or Disclosure
Filer's name	Justin I. Karasick
Filer's email	mlk@ccl.com, rsm@ccl.com, jik@ccl.com, lrm@ccl.com, trademark@ccl.com
Signature	/Justin I. Karasick/
Date	04/10/2023
Attachments	CLEVELAND SPIDERS Motion to Compel.pdf(226330 bytes) CLEVELAND SPIDERS Motion to Compel - J. Karasick Declaration.pdf(194392 bytes) Exhibit A.pdf(648187 bytes) Exhibit B.pdf(455460 bytes) Exhibit C.pdf(160112 bytes) Exhibit D.pdf(500201 bytes) Exhibit E.pdf(4592458 bytes) Exhibit F.pdf(641918 bytes) Exhibit G.pdf(271526 bytes) Exhibit H.pdf(276920 bytes)

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

In re Application Serial No. 90617936
Filed: April 1, 2021
For Mark: CLEVELAND SPIDERS

In re Application Serial No. 90624215
Filed: April 5, 2021
For Mark: CLEVELAND SPIDERS and Design

In re Application Serial No. 90755923
Filed: June 4, 2021
For Mark: C and Design

All Published in the Official Gazette: April 19, 2022

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CLEVELAND GUARDIANS BASEBALL	:	
COMPANY, LLC,	:	Opposition No. 91277995
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Opposer,	:	
	:	
v.	:	
ADAM BARRINGTON,	:	
	:	
Applicant.	:	
-----X		

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

OPPOSER’S MOTIONS TO COMPEL AND TO SUSPEND

Upon the following memorandum and the annexed Declaration of Justin I. Karasick and the exhibits thereto, Opposer Cleveland Guardians Baseball Company, LLC (“Opposer”) hereby moves for an order pursuant to 37 C.F.R. § 2.120(e), T.B.M.P. § 523 and Fed. R. Civ. P. 37(a) compelling Applicant Adam Barrington (“Applicant”) to respond to Opposer’s First Set of Requests for Production of Documents and Things. As grounds for the motion to compel, Opposer states that Applicant has failed to produce centrally important documents that Applicant

undertook to produce in its discovery responses—despite repeated good-faith follow-up efforts undertaken by Opposer to obtain Applicant’s production and responses in the limited time frame available to the parties in the above-captioned opposition proceeding (the “Opposition”), in which discovery has nearly closed and trial deadlines are imminent.

Pursuant to 37 C.F.R. § 2.120(e), and in light of the discovery closure date of April 23, 2023, Opposer also requests that this matter be suspended pending consideration of this motion to compel (the “Motion”) and that the trial periods be reset once the Board decides this Motion. In addition, Opposer requests that in resetting the schedule, sufficient time be allowed for Opposer to notice a deposition.

MEMORANDUM IN SUPPORT OF MOTIONS

STATEMENT OF FACTS

The facts on which this Motion is based are set forth fully in the accompanying declaration of Justin I. Karasick (“Karasick Decl.”) and summarized here for the Board’s convenience.

1. Opposer initiated this proceeding by filing a Consolidated Notice of Opposition on August 17, 2022 against:
 - i. Application Serial No. 90/617,936, which was filed by Applicant on April 1, 2021 seeking to register the mark CLEVELAND SPIDERS in standard characters (“Applicant’s CLEVELAND SPIDERS Standard Character Mark”) for “Clothing, namely, shirts, hoodies, sweaters, hats, jackets, coats, headbands, pants, shorts, sports jerseys” in International Class 25, with a claimed first use date of January 1, 1991 and a claimed first use in commerce date of August 1, 2000;

- ii. Application Serial No. 90/624,215, which was filed by Applicant on April 5, 2021 seeking to register the mark CLEVELAND SPIDERS and Design



as depicted here: (“Applicant’s CLEVELAND SPIDERS Design Mark,” together with Applicant’s CLEVELAND SPIDERS Standard Character mark, “Applicant’s CLEVELAND SPIDERS Marks”) for “Clothing, namely, shirts, hoodies, sweaters, hats, jackets, coats, headbands, pants, shorts, sports jerseys” in International Class 25, with a claimed first use date of August 1, 1990 and a claimed first use in commerce date of July 1, 1999; and

- iii. Application Serial No. 90/755,923, which was filed by Applicant on June 4, 2021 seeking to register the mark C and Design as depicted here:



(“Applicant’s C and Design Mark”) (together with Applicant’s CLEVELAND SPIDERS Marks, “Applicant’s Marks”) for “Clothing, namely, shirts, hoodies, sweaters, hats, jackets, coats, headbands, pants, shorts, sport jerseys” in International Class 25, based on an intent to use.

Karasick Decl. ¶ 2. The Notice of Opposition was based on the grounds of likelihood of confusion, false suggestion of a connection, lack of bona fide use-in commerce (as to Applicant’s Cleveland Spiders Marks), and lack of bona fide intent to use (as to Applicant’s C and Design

Mark). Karasick Decl. ¶ 3; 1 TTABVUE 10-12. Applicant filed an Answer to the Notice of Opposition on August 27, 2022. Karasick Decl. ¶ 4; 4 TTABVUE 2-4.

Per the Board's initial trial schedule order, discovery in this Opposition is scheduled to close on April 23, 2023. Karasick Decl. ¶ 5; 2 TTABVUE 3.

On January 20, 2023, Opposer served Applicant with Opposer's First Set of Interrogatories (the "Interrogatories") and Requests for Production of Documents and Things (the "Document Requests" and each a "Document Request" and, together with the Interrogatories, the "Discovery Requests" and each a "Discovery Request") on Applicant by transmitting them via email to Applicant's counsel and correspondent of record. Karasick Decl. ¶ 6 and Exhibit A thereto. Applicant provided written responses (the "Responses") to Opposer's Discovery Requests on January 30, 2023. Karasick Decl. ¶ 7 and Exhibit B thereto.

In response to most of Opposer's Document Requests (namely, Document Requests Nos. 1-2, 4-6, 9-13, 16-17, and 19-20), Applicant stated that "Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control." Karasick Decl. ¶ 8 and Exhibit C thereto. However, Applicant did not produce any documents on January 30, 2023, nor did Applicant produce any documents on or before February 19, 2023, the date when its response to Opposer's Discovery Requests was due. Karasick Decl. ¶ 9.

Shortly after the deadline for Applicant to submit its complete discovery responses (on February 22, 2023), Opposer's counsel emailed Applicant's counsel asking by when he expected to provide Applicant's document production. Karasick Decl. ¶ 10 and Exhibit D thereto. On February 27, 2023, Applicant's counsel sent an email attaching a total of 25 images (none of which bear Bates numbers), and 3 URLs that Applicant's counsel characterized as Applicant's "document production." Karasick Decl. ¶ 11 and Exhibit E thereto.

After reviewing the images and URLs provided by Applicant in light of Opposer's Discovery Requests, Opposer noted numerous deficiencies therewith. Karasick Decl. ¶ 12. Accordingly, on March 23, 2023, Opposer sent a discovery deficiency letter to Applicant's counsel (the "Deficiency Letter") in a good-faith attempt to resolve the issues. Karasick Decl. ¶ 13 and Exhibit F thereto.

In the Deficiency Letter, Opposer noted that Applicant had agreed to produce documents responsive to Document Requests Nos. 12, 16-17 and 19-20 but, as of March 22, 2023, had failed to do so. Karasick Decl. ¶ 14. Opposer also noted in the Deficiency Letter that Applicant had agreed to produce documents responsive to Document Requests Nos. 9 and 11, but that Applicant had in fact not produced any responsive documents but merely provided a series of URLs. Karasick Decl. ¶ 15 and Exhibit F at 2-3.

Opposer's Deficiency Letter also set out the following objections to Applicant's deficient responses to Opposer's Document Requests Nos. 4, 12, 16-17, 19-20, as quoted below:

Request No. 4

In response to Request No. 4, which contains five subparts lettered (a) through (f), Applicant states that he "will produce any relevant, non-privileged documents" that are responsive to the Request. However, Applicant has produced only what appear to be partial, undated website screenshots. The complete URL and date of access are not visible in the produced documents, leaving Opposer unable to identify either the website from which the purported screenshots were captured or the date on which such capture took place. Accordingly, Opposer is unable to meaningfully determine what these screenshots are intended to represent and, therefore, to what extent they are responsive.

Moreover, the screenshots themselves appear to be incomplete. For example, the source of the screenshots is not visible and the materials depicted appear to be cut off.

Additionally, despite indicating that he will produce documents responsive to all five subparts of Request No. 4, Applicant has failed to produce any documents that are clearly responsive to the following subparts of Request No. 4:

- (b) The geographic area(s) of use of each of Applicant's Marks;

(e) The annual volume of sales, in dollars and units, of Applicant's Products/Services for each year from the date of first use to the present for each of Applicant's Marks

(f) The annual volume of any other revenues, such as licensing or sponsorship revenues, for each year from the date of first use to the present for each of Applicant's Marks.

Please provide a supplemental production that includes documents showing all responsive information requested by Request No. 4 (and, to the extent website screenshots are produced, provides the complete URL and date of access for each such screenshot).

Requests Nos. 12, 16-17 and 19-20

In response to each of Requests Nos. 12, 16-17 and 19-20, Applicant has failed to produce any responsive documents despite stating that "Applicant will produce any relevant, non-privileged documents responsive to" each of the above-listed Requests "that are within its custody or control." Among the documents that Applicant has agreed, yet thus far failed, to produce are:

- documents sufficient to show the amount of sales of Applicant's CLEVELAND SPIDERS Marks in connection with Applicant's Products/Services in each and every year between August 1, 1990 and the present date (Req. No. 12)
- documents showing every one of Applicant's posts on any of Applicant's Websites or third party websites or social media concerning the Cleveland Guardians formerly known as the Cleveland Indians and/or the terms CLEVELAND SPIDERS (Reg. No. 16)
- documents concerning the Cleveland Guardians formally known as the Cleveland Indians and/or Opposer's Marks (Req. No. 17)
- documents concerning any objection to the use or attempted registration of any of Applicant's Marks, such as cease-and-desist letters, claims, complaints and/or notices of opposition (Req. No. 19)
- any other documents identified in or otherwise referred to by Applicant in answering Opposer's First Set of Interrogatories (Req. No. 20).

If documents responsive to some or all of these Requests do not exist, then Applicant should amend its responses to indicate that this is so. Otherwise, Applicant should, as soon as possible, make a supplemental production of documents responsive to the above Requests. In light of the operative deadlines in this proceeding, Opposer requests that Applicant confirm, by March 25, 2023, that he will produce Bates stamped copies of all responsive documents within his possession, custody or control by no later than March 29, 2023.

Request Nos. 2, 5, 6, 10 and 13

Despite undertaking to “produce any relevant, non-privileged documents responsive to this request that are within [Applicant’s] custody or control,” in response to each of Request Nos. 2, 5, 6, 10 and 13—and despite purporting to produce one or more documents allegedly responsive to each of the foregoing—it appears that Applicant has not made a complete production in response to these Requests.

In response to Request No. 2, which seeks “documents concerning Applicant’s adoption of each of Applicant’s Marks,” Applicant has produced partial screenshots that appear to be dated September 10, 2022. These incomplete documents could not show the initial *adoption* of Applicant’s Marks, two of which claim first use dates in 1990 and one of which was filed on June 4, 2021. Please produce documents that are responsive to this Request as posed. If no responsive documents exist, please supplement the written response to this Request.

In response to Requests Nos. 5 and 6, which seek, respectively, “[d]ocuments sufficient to show Applicant’s annual expenditures on advertising and/or promoting each of Applicant’s Marks and/or Applicant’s Products/Services” and “documents concerning the advertising and/or promotion of each of Applicant’s Marks and/or Applicant’s Products/Services,” Applicant produced images appearing to consist of screenshots taken from a smartphone. Certain of the screenshots appear to be taken from an unknown smartphone application, certain of them appear to show an excerpt of an email, and certain of them appear to show an excerpt of search engine results pages. These documents are facially incomprehensible because they fail to display key information. Please supplement the responses to these Requests with additional documents and/or information sufficient for Opposer to identify:

- the nature of the screenshot shown in Req. No. 5, including without limitation, the smartphone application from which it was captured and the date on which it was captured;
- the complete email thread shown in Req. No. 5, including, without limitation: i) any and all other emails on the thread; and ii) information or metadata sufficient to show and identify all senders, recipients and copyees on the email thread; and
- the nature of the screenshots shown in Req. No. 6, including, without limitation: i) whether these screenshots show a search engine results page; ii) the query that was searched to produce said search results; and iii) the date on which the search was conducted and when the screenshots were captured.

In response to Request No. 10, which seeks “All documents concerning Applicant’s bona fide intention to use, prior to or as of June 4, 2021, Applicant’s C and Design Mark,” Applicant has produced only a partial screenshot from what appears to be an unknown user’s customink.com profile. Please produce complete documents that are responsive to this Request.

In response to Request No. 13, which seeks “[d]ocuments sufficient to identify Applicant’s current inventory of products bearing or offered in connection with each of Applicant’s Marks (collectively, “Applicant’s Inventory”),” Applicant has produced three

incomplete screenshots. To begin, it is unclear where this list is located and whether it is associated with, let alone managed by, Applicant. Additionally, the list appears to be partially cut off in at least one of the screenshots, suggesting that the screenshots that have been produced are incomplete. Please produce complete documents that are responsive to this Request.

Requests Nos. 9 and 11

In response to Request Nos. 9 and 11, Applicant stated he “produce any relevant, non-privileged documents responsive to this request that are within its custody or control.” However, Applicant failed to produce any documents in response to either of these requests, and instead merely produced a series of URLs.

Please provide a supplementary production which provides actual documents responsive to the above Requests.

Karasick Decl. ¶ 16 and Exhibit F at 1-4. Opposer’s First Deficiency Letter requested that Applicant provide a substantive response to Opposer’s objections, including a complete Bates stamped document production, by no later than March 29, 2023. *Id.* and Exhibit F at 4.

On March 25, 2023 Applicant’s counsel, emailed to Opposer’s counsel a message stating “I am consulting with my client regarding revised responses / supplemental production, and I expect to be back in touch with you during the week.” Karasick Decl. ¶ 17 and Exhibit G thereto.

On April 4, 2023, having received no further communication from Applicant, Opposer’s counsel emailed Applicant’s counsel to inform him that that if Opposer did not receive Applicant’s supplemental documents and responses by the end of that week (Friday April 7), Opposer will have no choice but to file a motion to compel. Karasick Decl. ¶ 18 and Exhibit H thereto.

As of April 10, 2023, Applicant has not provided any supplemental responses or document production, leaving Opposer unable to adequately prepare for its impending trial period and possible taking of a deposition. Karasick Decl. ¶ 19. Accordingly, Opposer has no choice but to make the instant Motion to compel Applicant’s production of documents responsive to Opposer’s Document Requests Nos. Nos. 12, 16-17 and 19-20, as well as

supplemental responses to Opposer's Document Requests Nos. 4, 9-12, 16-17, 19-20.
Karasick Decl. ¶ 20.

ARGUMENT

OPPOSER'S MOTION TO COMPEL SHOULD BE GRANTED

A motion to compel should be granted where, as here, after a movant has made a good faith effort to resolve the matter, a party refuses to provide timely (and adequate) discovery responses, including interrogatory responses as well as requested documents and things. 37 C.F.R. § 2.120(e); T.B.M.P. § 523; Envirotech Corp. v. Compagnie Des Lampes, 219 U.S.P.Q. 448 (T.T.A.B. 1979); General Sealer Corp. v. H.H. Robertson Co., 193 U.S.P.Q. 384 (T.T.A.B. 1976). An order compelling Applicant to adequately respond to Opposer's Discovery Requests is plainly warranted here.

As set out in this Motion, Applicant has still not produced documents responsive to many of Opposer's Discovery Requests despite undertaking to do so in Applicant's written Responses. As a result, Opposer cannot definitively conclude whether any documents responsive to these Document Requests exist and have simply not been produced by Applicant, or whether no responsive documents have ever existed. This leaves Opposer unable to properly make trial arguments, as it is unclear (by way of example only) when Applicant first sold goods bearing Applicant's CLEVELAND SPIDERS Marks. Opposer's arguments at trial would be greatly impacted by different answers to these, and many other, questions left unanswered by Applicant's deficient document production.

Moreover, and as detailed in Opposer's Deficiency Letter, many of the documents produced by Applicant consist of partial, cut-off and undated website screenshots which do not bear a URL or date of access. These documents need to be produced in entirety and with the

URLs and dates of access. Other of the documents produced by Applicant appear to consist of screenshots taken from a smartphone application, but which do not identify the application or the nature of what is being shown in the screenshots; others show a partial screenshot of what appears to be an email chain, but is lacking key information such as the senders, recipients and copyees on the email thread. Complete copies need to be provided.

Opposer is entitled to proper responses to its Document Requests, as well as a proper document production with Bates stamps and identification of Document Requests to which they respond, in order to be able to prepare for trial and submit appropriate evidence in support of its claims as well as to determine need for a deposition.

As set forth above and in the attached Declaration of Justin I. Karasick, before filing this motion, Opposer, by its attorneys, made good faith efforts to resolve these issues. Nevertheless, Applicant has failed to properly produce documents and to provide adequate responses to a majority of Opposer's Discovery Requests, leaving Opposer no choice but to seek the Board's assistance in compelling Applicant's production and responses in light of the impending trial deadlines.

CONCLUSION

For the foregoing reasons, Opposer respectfully requests that the Board issue an order compelling Applicant to produce:

- Complete and legible Bates-stamped documents responsive to Opposer's Document Requests No. 4 showing all responsive information requested by Requests No. 4.
- Supplementary Bates-stamped documents responsive to Opposer's Document Requests Nos. 12, 16-17 and 19-20, including, without limitation, complete and

legible documents showing the following information, or a statement that no responsive documents exist:

- documents sufficient to show the amount of sales of Applicant's CLEVELAND SPIDERS Marks in connection with Applicant's Products/Services in each and every year between August 1, 1990 and the present date (Req. No. 12)
- documents showing every one of Applicant's posts on any of Applicant's Websites or third party websites or social media concerning the Cleveland Guardians formerly known as the Cleveland Indians and/or the terms CLEVELAND SPIDERS (Reg. No. 16)
- documents concerning the Cleveland Guardians formally known as the Cleveland Indians and/or Opposer's Marks (Req. No. 17)
- documents concerning any objection to the use or attempted registration of any of Applicant's Marks, such as cease-and-desist letters, claims, complaints and/or notices of opposition (Req. No. 19)
- any other documents identified in or otherwise referred to by Applicant in answering Opposer's First Set of Interrogatories (Req. No. 20).

- Supplementary Bates-stamped documents responsive to Opposer's Document

Requests Nos. 2, 5, 6, 10 and 13, including, without limitation, complete and legible documents showing the following information, or a statement that no

responsive documents exist:

- document(s) responsive to Req. No. 2;
- information on the nature of the screenshot shown in Req. No. 5, including without limitation, the smartphone application from which it was captured and the date on which it was captured;
- the complete email thread shown in Req. No. 5, including, without limitation: i) any and all other emails on the thread; and ii) information or metadata sufficient to show and identify all senders, recipients and copyees on the email thread;
- the nature of the screenshots shown in Req. No. 6, including, without limitation: i) whether these screenshots show a search engine results page; ii) the query that was searched to produce said search results; and iii) the date on which the search was conducted and when the screenshots were captured.
- document(s) responsive to Req, No. 10; and
- document(s) responsive to Req. No. 13.

- Bates-stamped complete and legible documents responsive to Document Requests

Nos. 9 and 11, or a statement that no responsive documents exist.

Opposer further requests that the Board order Applicant, when producing said documents, to provide the documents in their entirety and with the complete URL and date of access for any documents consisting of website or smartphone screenshots.

Opposer further requests that this matter be suspended and that the discovery and trial periods be reset once the Board decides this motion and that such resetting allow sufficient time to notice a deposition.

Dated: April 10, 2023

Respectfully submitted,

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Justin I. Karasick/
Mary L. Kevlin
Richard S. Mandel
Dasha Chestukhin
Justin I. Karasick

114 West 47th Street
New York, New York 10036-1525
(212) 790-9200

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that, on April 10, 2023, I caused a true and complete copy of the foregoing **Opposer's Motions to Compel and to Suspend** and accompanying **Declaration of Justin I. Karasick in Support of Opposer's Motions to Compel and to Suspend** and **Exhibits A-H thereto** to be served on Applicant by emailing a copy thereof to Applicant's Attorney and Correspondent of Record, Todd Wengrovsky, Esq. of Law Offices of Todd Wengrovsky, PLLC at contact@twlegal.com.

/Justin I. Karasick/

Justin I. Karasick

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

In re Application Serial No. 90617936
Filed: April 1, 2021
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All Published in the Official Gazette: April 19, 2022

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CLEVELAND GUARDIANS BASEBALL	:	
COMPANY, LLC,	:	Opposition No. 91277995
	:	
Opposer,	:	
	:	
v.	:	
ADAM BARRINGTON,	:	
	:	
Applicant.	:	
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**DECLARATION OF JUSTIN I. KARASICK IN SUPPORT OF
OPPOSER’S MOTIONS TO COMPEL AND SUSPEND**

JUSTIN I. KARASICK, pursuant to 28 U.S.C. §1746, declares:

1. I am an associate attorney with Cowan, Liebowitz & Latman, P.C., attorneys for Opposer Cleveland Guardians Baseball Company, LLC (“Opposer”). I submit this declaration in support of Opposer’s Motions to (a) compel Applicant Adam Barrington (“Applicant”) to respond to Opposer’s First Set of Interrogatories and Requests for Production of Documents and Things; and (b) suspend the above-captioned opposition proceeding (the “Opposition”).

2. Opposer initiated this proceeding by filing a Consolidated Notice of Opposition on August 17, 2022 against:

- i. Application Serial No. 90/617,936, which was filed by Applicant on April 1, 2021 seeking to register the mark CLEVELAND SPIDERS in standard characters (“Applicant’s CLEVELAND SPIDERS Standard Character Mark”) for “Clothing, namely, shirts, hoodies, sweaters, hats, jackets, coats, headbands, pants, shorts, sports jerseys” in International Class 25, with a claimed first use date of January 1, 1991 and a claimed first use in commerce date of August 1, 2000;
- ii. Application Serial No. 90/624,215, which was filed by Applicant on April 5, 2021 seeking to register the mark CLEVELAND SPIDERS and Design



as depicted here: (“Applicant’s CLEVELAND SPIDERS Design Mark,” together with Applicant’s CLEVELAND SPIDERS Standard Character mark, “Applicant’s CLEVELAND SPIDERS Marks”) for “Clothing, namely, shirts, hoodies, sweaters, hats, jackets, coats, headbands, pants, shorts, sports jerseys” in International Class 25, with a claimed first use date of August 1, 1990 and a claimed first use in commerce date of July 1, 1999; and

- iii. Application Serial No. 90/755,923, which was filed by Applicant on June 4, 2021 seeking to register the mark C and Design as depicted here:



(“Applicant’s C and Design Mark”) (together with Applicant’s CLEVELAND SPIDERS Marks, “Applicant’s Marks”) for “Clothing, namely, shirts, hoodies, sweaters, hats, jackets, coats, headbands, pants, shorts, sport jerseys” in International Class 25, based on an intent to use.

3. The Notice of Opposition was based on the grounds of likelihood of confusion, false suggestion of a connection, lack of bona fide use-in commerce (as to Applicant’s Cleveland Spiders Marks), and lack of bona fide intent to use (as to Applicant’s C and Design Mark). 1 TTABVUE 10-12.

4. Applicant filed an Answer to the Notice of Opposition on August 27, 2022. 4 TTABVUE 2-4.

5. Per the Board’s initial trial schedule order, discovery in this Opposition is scheduled to close on April 23, 2023. 2 TTABVUE 3.

6. On January 2, 2023, Opposer served Applicant with Opposer’s First Set of Interrogatories (the “Interrogatories”) and Requests for Production of Documents and Things (the “Document Requests” and each a “Document Request” and, together with the Interrogatories, the “Discovery Requests” and each a “Discovery Request”) on Applicant by transmitting them via email to Applicant’s counsel and correspondent of record. Attached as **Exhibit A** are true and correct copies of (a) the January 20, 2023 email by which my colleague Mary L. Kevlin, Esq., served Opposer’s Discovery Requests on Applicant and (b) Opposer’s Discovery Requests.

7. Applicant provided written responses (the “Responses” and each a “Response”) to Opposer’s Discovery Requests on January 30, 2023. Attached as **Exhibit B** is true and correct copy of the January 30, 2023 email by which Applicant’s counsel served Applicant’s Responses to Opposer’s Discovery Requests on Opposer.

8. In response to most of Opposer’s Document Requests (namely, Document Requests Nos. 1-2, 4-6, 9-13, 16-17, and 19-20), Applicant stated that “Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control.” Attached as **Exhibit C** is a true and correct copy Applicant’s “Responses to Requests for Production.”

9. However, Applicant did not produce any documents whatsoever on January 30, 2023, nor did Applicant produce any documents on or before February 19, 2023, the date when its response to Opposer’s Discovery Requests was due.

10. Shortly after the deadline for Applicant to submit its complete discovery responses (on February 22, 2023), Opposer’s undersigned counsel emailed Applicant’s counsel asking by when he expected to provide Applicant’s document production. Attached as **Exhibit D** is a true and correct copy of the email Opposer’s counsel sent to Applicant’s counsel on February 22, 2023 regarding the timing of Applicant’s document production, and requesting the production no later than February 28, 2023.

11. On February 27, 2023, Applicant’s counsel sent an email attaching a total of 25 images (none of which bear Bates numbers), and 3 URLs that Applicant’s counsel characterized as Applicant’s “document production.” Attached as **Exhibit E** is a true and correct copy of the email sent by Applicant’s counsel with said images and URLs.

12. After reviewing the images and URLs provided by Applicant in light of Opposer's Discovery Requests, Opposer noted numerous deficiencies therewith.

13. Accordingly, on March 23, 2023, Opposer sent a discovery deficiency letter to Applicant's counsel (the "Deficiency Letter") in a good-faith attempt to resolve the issues. Attached as **Exhibit F** are true and correct copies of (a) the March 22, 2023 email by which Opposer's undersigned counsel served Opposer's Deficiency Letter on Applicant and (b) Opposer's Deficiency Letter.

14. In the Deficiency Letter, Opposer noted that Applicant had agreed to produce documents responsive to Document Requests Nos. 12, 16-17 and 19-20 but, as of March 22, 2023, had failed to do so. **Exhibit F** at 2-3.

15. Opposer also noted in the Deficiency Letter that Applicant had agreed to produce documents responsive to Document Requests Nos. 9 and 11, but that Applicant had in fact not produced any responsive documents but merely provided a series of URLs. **Exhibit F** at 4.

16. Opposer's Deficiency Letter also set out the additional following objections to Applicant's deficient responses to Opposer's Document Requests Nos. 4, 12, 16-17, 19-20, as quoted below:

Request No. 4

In response to Request No. 4, which contains five subparts lettered (a) through (f), Applicant states that he "will produce any relevant, non-privileged documents" that are responsive to the Request. However, Applicant has produced only what appear to be partial, undated website screenshots. The complete URL and date of access are not visible in the produced documents, leaving Opposer unable to identify either the website from which the purported screenshots were captured or the date on which such capture took place. Accordingly, Opposer is unable to meaningfully determine what these screenshots are intended to represent and, therefore, to what extent they are responsive.

Moreover, the screenshots themselves appear to be incomplete. For example, the source of the screenshots is not visible and the materials depicted appear to be cut off.

Additionally, despite indicating that he will produce documents responsive to all five subparts of Request No. 4, Applicant has failed to produce any documents that are clearly responsive to the following subparts of Request No. 4:

- (b) The geographic area(s) of use of each of Applicant's Marks;
- (e) The annual volume of sales, in dollars and units, of Applicant's Products/Services for each year from the date of first use to the present for each of Applicant's Marks
- (f) The annual volume of any other revenues, such as licensing or sponsorship revenues, for each year from the date of first use to the present for each of Applicant's Marks.

Please provide a supplemental production that includes documents showing all responsive information requested by Request No. 4 (and, to the extent website screenshots are produced, provides the complete URL and date of access for each such screenshot).

Requests Nos. 12, 16-17 and 19-20

In response to each of Requests Nos. 12, 16-17 and 19-20, Applicant has failed to produce any responsive documents despite stating that "Applicant will produce any relevant, non-privileged documents responsive to" each of the above-listed Requests "that are within its custody or control." Among the documents that Applicant has promised, yet thus far failed, to produce are:

- documents sufficient to show the amount of sales of Applicant's CLEVELAND SPIDERS Marks in connection with Applicant's Products/Services in each and every year between August 1, 1990 and the present date (Req. No. 12)
- documents showing every one of Applicant's posts on any of Applicant's Websites or third-party websites or social media concerning the Cleveland Guardians formerly known as the Cleveland Indians and/or the terms CLEVELAND SPIDERS (Req. No. 16)
- documents concerning the Cleveland Guardians formally known as the Cleveland Indians and/or Opposer's Marks (Req. No. 17)
- documents concerning any objection to the use or attempted registration of any of Applicant's Marks, such as cease-and-desist letters, claims, complaints and/or notices of opposition (Req. No. 19)
- any other documents identified in or otherwise referred to by Applicant in answering Opposer's First Set of Interrogatories (Req. No. 20).

If documents responsive to some or all of these Requests do not exist, then Applicant should amend its responses to indicate that this is so. Otherwise, Applicant should, as soon as possible, make a supplemental production of documents responsive to the above Requests. In light of the operative deadlines in this proceeding, Opposer requests that Applicant confirm, by March 25, 2023, that he will produce Bates stamped copies of all

responsive documents within his possession, custody or control by no later than March 29, 2023.

Request Nos. 2, 5, 6, 10 and 13

Despite undertaking to “produce any relevant, non-privileged documents responsive to this request that are within [Applicant’s] custody or control,” in response to each of Request Nos. 2, 5, 6, 10 and 13—and despite purporting to produce one or more documents allegedly responsive to each of the foregoing—it appears that Applicant has not made a complete production in response to these Requests.

In response to Request No. 2, which seeks “documents concerning Applicant’s adoption of each of Applicant’s Marks,” Applicant has produced partial screenshots that appear to be dated September 10, 2022. These incomplete documents could not show the initial *adoption* of Applicant’s Marks, two of which claim first use dates in 1990 and one of which was filed on June 4, 2021. Please produce documents that are responsive to this Request as posed. If no responsive documents exist, please supplement the written response to this Request.

In response to Requests Nos. 5 and 6, which seek, respectively, “[d]ocuments sufficient to show Applicant’s annual expenditures on advertising and/or promoting each of Applicant’s Marks and/or Applicant’s Products/Services” and “documents concerning the advertising and/or promotion of each of Applicant’s Marks and/or Applicant’s Products/Services,” Applicant produced images appearing to consist of screenshots taken from a smartphone. Certain of the screenshots appear to be taken from an unknown smartphone application, certain of them appear to show an excerpt of an email, and certain of them appear to show excerpt of search engine results pages. These documents are facially incomprehensible because they fail to display key information. Please supplement the responses to these Requests with additional documents and/or information sufficient for Opposer to identify:

- the nature of the screenshot shown in Req. No. 5, including without limitation, the smartphone application from which it was captured and the date on which it was captured;
- the complete email thread shown in Req. No. 5, including, without limitation: i) any and all other emails on the thread; and ii) information or metadata sufficient to show and identify all senders, recipients and copyees on the email thread; and
- the nature of the screenshots shown in Req. No. 6, including, without limitation: i) whether these screenshots show a search engine results page; ii) the query that was searched to produce said search results; and iii) the date on which the search was conducted and when the screenshots were captured.

In response to Request No. 10, which seeks “All documents concerning Applicant’s bona fide intention to use, prior to or as of June 4, 2021, Applicant’s C and Design Mark,” Applicant has produced only a partial screenshot from what appears to be an unknown

user's customink.com profile. Please produce complete documents that are responsive to this Request.

In response to Request No. 13, which seeks “[d]ocuments sufficient to identify Applicant’s current inventory of products bearing or offered in connection with each of Applicant’s Marks (collectively, “Applicant’s Inventory”),” Applicant has produced three incomplete screenshots. To begin, it is unclear where this list is located and whether it is associated with, let alone managed by, Applicant. Additionally, the list appears to be partially cut off in at least one of the screenshots, suggesting that the screenshots that have been produced are incomplete. Please produce complete documents that are responsive to this Request.

Requests Nos. 9 and 11

In response to Request Nos. 9 and 11, Applicant stated he would “produce any relevant, non-privileged documents responsive to this request that are within its custody or control.” However, Applicant failed to produce any documents in response to either of these requests, and instead merely produced a series of URLs.

Please provide a supplementary production which provides actual documents responsive to the above Requests.

Exhibit F at 1-4.

Opposer’s First Deficiency Letter requested that Applicant provide responses to Opposer’s objections, including a complete Bates-stamped document production, by no later than March 29, 2023. Exhibit F at 4.

17. On March 25, 2023 Applicant’s counsel, emailed to Opposer’s counsel a message stating “I am consulting with my client regarding revised responses / supplemental production, and I expect to be back in touch with you during the week.” **Exhibit G** is a true and correct copy of this email.

18. On April 4, 2023, having received no further communication from Applicant following that March 25, 2023, email, Opposer’s undersigned counsel sent Applicant’s counsel an email noting that Applicant’s counsel had indicated he would respond by the end of the previous week (the week ending March 31), but that nothing had been received. In that email,

Opposer's counsel informed Applicant's counsel that if Opposer did not receive Applicant's supplemental documents and responses by the end of that week (Friday April 7), Opposer would have no choice but to file a motion to compel. **Exhibit H** is a true and correct copy of this email.

19. As of April 10, 2023, Applicant has not provided any supplemental responses or document production, leaving Opposer unable to adequately prepare for its impending trial period or a possible deposition.

20. Accordingly, Opposer has no choice but to make the instant Motion to compel Applicant's production of documents responsive to Opposer's Document Requests Nos. 12, 16-17 and 19-20, as well as supplemental responses to Opposer's Document Requests Nos. 4, 9-12, 16-17, 19-20. Additionally, in view of the impending Close of Discovery Deadline, Opposer also moves for a suspension and a resetting of deadlines to allow sufficient time to take a deposition.

Declaration

The undersigned, being duly warned that willful false statements and the like so made are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements may jeopardize the validity of the declaration to which it pertains, declares that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

EXECUTED ON APRIL 10, 2023 AT BROOKLYN, NEW YORK.

/Justin I. Karasick/
JUSTIN I. KARASICK

EXHIBIT A

From: [Kevlin, Mary](#)
To: [Todd Wengrovsky](#)
Cc: [Karasick, Justin I.](#); [Middleton, LaToya](#); [Chestukhin, Dasha](#)
Subject: CLEVELAND SPIDERS Opposition No. 91277995
Date: Friday, January 20, 2023 5:23:23 PM
Attachments: [ClevelandSpidersRequests.pdf](#)

Dear Todd:

Attached are Opposer's Discovery Requests.

Mary L. Kevlin

Cowan, Liebowitz & Latman, P.C.
114 West 47th Street
New York, NY 10036-1525
t: (212) 790-9216 | f: (212) 575-0671
[cll.com](#) | [bio](#) | [vCard](#) | MLK@cll.com



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

In re Application Serial No. 90617936
Filed: April 1, 2021
For Mark: CLEVELAND SPIDERS

In re Application Serial No. 90624215
Filed: April 5, 2021
For Mark: CLEVELAND SPIDERS and Design

In re Application Serial No. 90755923
Filed: June 4, 2021
For Mark: C and Design

All Published in the Official Gazette: April 19, 2022

-----X		
CLEVELAND GUARDIANS BASEBALL	:	Opposition No. 91277995
COMPANY, LLC,	:	
	:	
Opposer,	:	
	:	
v.	:	
ADAM BARRINGTON,	:	
	:	
Applicant.	:	
-----X		

**OPPOSER’S FIRST SET OF INTERROGATORIES AND
REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rules 33 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R.
§ 2.120, Opposer Cleveland Guardians Baseball Company, LLC requests that Applicant Adam
Barrington answer under oath the following interrogatories and produce the following documents
and things for inspection and copying at the offices of Cowan, Liebowitz & Latman, P.C., 114
West 47th Street, New York, New York 10036 within thirty (30) days after service hereof.
These requests are deemed to be continuing, so as to require prompt production of additional
documents and supplemental interrogatory answers should Applicant obtain additional

responsive information or documents between the time the answers are served and the time of the final hearing of this opposition proceeding (the “**Opposition**”).

DEFINITIONS AND INSTRUCTIONS

A. “**Applicant**” means Adam Barrington and any entities or businesses that he owns or controls, or any persons, parties, businesses or entities with which he is directly or indirectly connected that are involved with any of Applicant’s Marks as defined in Paragraph N below.

B. “**Opposer**” means Opposer Cleveland Guardians Baseball Company, LLC, and all parent, subsidiary, affiliated, related, predecessor and/or successor entities and/or divisions, as well as the officers, directors, shareholders, employees, agents and/or representatives thereof.


C. “**Cleveland Guardians**” means Opposer, its CLEVELAND GUARDIANS club, its Minor League Baseball affiliates, and/or its managers, coaches or players.


D. “**Cleveland Guardians Locations**” means the geographic regions and/or designations Cleveland, Ohio (or OH), Goodyear, Arizona (or AZ), Columbus, OH, Akron, OH, Lake County, OH and Lynchburg, Virginia (or VA).

E. “**Major League Baseball**” means MLB Advanced Media, L.P., Major League Baseball Properties, Office of the Commissioner of Baseball, the thirty individual MAJOR LEAGUE BASEBALL clubs, including Opposer, and their respective affiliated and related entities, and each of their respective parent, subsidiary, related, predecessor and/or successor entities, and divisions, employees, partners, agents and/or representatives thereof.

F. “**Opposer’s CLEVELAND Marks**” means the names or marks comprising or containing the word CLEVELAND, including in distinctive stylizations, alone or with other word, letter and/or design elements, used, registered or sought to be registered by Opposer.

G. **“Opposer’s C Marks”** means the names or marks comprising or containing the letter C, including, without limitation, various distinctive C stylizations, including, but not

limited to, the following stylizations and colors: 

 , alone or with other word, letter and/or design elements, used, registered or sought to be registered by Opposer.

H. **“Opposer’s Marks”** means Opposer’s CLEVELAND Marks and Opposer’s C Marks, collectively.

I. **“Applicant’s CLEVELAND SPIDERS Standard Character Mark”** means Applicant’s mark CLEVELAND SPIDERS in standard characters, as shown in Application Serial No. 90617936 (the **“CLEVELAND SPIDERS Standard Character Application”**).

J. **“Applicant’s CLEVELAND SPIDERS Design Mark”** means Applicant’s



mark CLEVELAND SPIDERS with Spider Design, as shown here: and in Application Serial No. 90624215 (the **“CLEVELAND SPIDERS Design Application”**).

K. The **“CLEVELAND SPIDERS Marks”** means Applicant’s CLEVELAND SPIDERS Standard Character Mark together with Applicant’s CLEVELAND SPIDERS Design Mark.

L. The “**CLEVELAND SPIDERS Applications**” means the CLEVELAND SPIDERS Standard Character Application together with the CLEVELAND SPIDERS Design Application.

M. “**Applicant’s C and Design Mark**” means the C and Spider Design mark shown



here: _____ and in Application Serial No. 90755923 (the “**C and Design Application**”).

N. “**Applicant’s Marks**” means Applicant’s CLEVELAND SPIDERS Marks and Applicant’s C and Design Mark, collectively.

O. The “**Applications**” means the CLEVELAND SPIDERS Applications and the C and Design Application, collectively.

P. The term “commerce” shall refer to commerce subject to regulation by Congress, as defined in 15 U.S.C. § 1127.

Q. The term “person” shall refer to any natural and/or juristic person, including, without limitation, individuals, governmental entities, organizations, business or other entities (incorporated or unincorporated), companies, corporations, partnerships, associations, joint ventures and/or any other individual or group of individuals that has the purpose of conducting or, in fact, conducts business.

R. The term “document” shall be given the broadest possible scope under Fed. R. Civ. P. 34 and includes, but is not limited to, all writings, correspondence, memoranda, handwritten notes, drafts, invoices, contracts, purchase orders, letters, checks, receipts, books, pamphlets, flyers, advertisements, web pages, publications, stickers, posters, catalogs, labels,

displays, photographs, CDs, DVDs, cover art for CDs and DVDs, slides, videotapes, films, artwork, drawings, sketches, illustrative materials, layouts, tear sheets, magnetic recording tapes, microfilms, computer printouts, e-mail, work sheets, and files from any personal computer, notebook or laptop computer, file server, minicomputer, mainframe computer or any other storage means by which information is retained in retrievable form, including files that are still on any storage media, but that are identified as “erased but recoverable,” and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by a mechanical or electronic process.

S. The term “identify,” when used in connection with a natural person or persons, requires Applicant to state the person’s full name and last known business and residential addresses, telephone number and e-mail address.

T. The term “identify,” when used in connection with a document, requires Applicant to:

(i) Furnish the name or title, date and general description (e.g., letter, memorandum, etc.) of the document, the name and address of the person from whom the document originated, the name and address of the persons to whom the document was addressed or delivered, and the names and addresses of all persons to whom copies of the document were sent; and

(ii) State whether Applicant is in possession of the original of the document or a copy thereof and, if Applicant is not in possession of the original or a copy, furnish the name and address of the custodian of the original or a copy; and

(iii) Furnish a general description of the subject matter to which the document(s) pertains.

U. The term “identify,” when used in connection with a company, organization or other business entity, requires Applicant to state the name, address, and phone number of the company, organization or other business entity.

V. The term “concerning” means referring to, relating to, embodying, connected with, commenting on, responding to, showing, describing, analyzing or constituting.

W. The singular and plural forms are used herein interchangeably, as are the masculine and feminine forms and the present and past tenses, and such terms should be construed as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

X. The terms “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the interrogatory/document request all documents and information which might otherwise be construed to be outside its scope.

Y. If any information or document called for in any interrogatory or request is withheld in whole or in part by reason of a claim of attorney-client privilege or any other claim of immunity from discovery, then, at the time the information or document is to be produced, a list is to be furnished identifying any such information or document withheld together with the following information: date and title of the document; name and job title of each author, writer or sender of the document; name and job title of each recipient, addressee or other person to whom the original or any copy of the document was sent or furnished; if Applicant contends that an author or recipient of the document is an attorney for purposes of claiming privilege or immunity from discovery, identify the State Bar of which he or she was a member at the time of the

communication in question; the general subject matter of the information or document withheld; the basis for the claim of privilege or immunity from discovery; and the interrogatory or request to which the information or document is responsive.

Z. In the event that any document called for by this request has been destroyed, lost, discarded or otherwise disposed of, identify any such document as completely as possible, including, without limitation, the date of disposal, manner of disposal, reason for disposal, person authorizing the disposal and person disposing of the document.

AA. Documents shall be produced as they are kept in the ordinary course of business or shall be organized and labeled to correspond to the document request to which they are responsive.

INTERROGATORIES

Interrogatory No. 1

State the dates when Applicant first selected each of Applicant's Marks for use or intended use.

Interrogatory No. 2

Identify all persons involved in the adoption of each of Applicant's Marks, with a description of his/her/its involvement.

Interrogatory No. 3

Describe in detail the reason(s) for the adoption of each of Applicant's Marks.

Interrogatory No. 4

Identify any investigations, including trademark searches, concerning each of Applicant's Marks, including the persons involved, date(s), and results.

Interrogatory No. 5

Identify each of Applicant's Marks that Applicant has used as of the present date.

Interrogatory No. 6

For each mark identified in response to Interrogatory No. 5, identify each product or service on or in connection with which each such mark has been used (collectively, "**Applicant's Products/Services**").

Interrogatory No. 7

For each of Applicant's Products/Services identified for each of Applicant's Marks in response to Interrogatory No. 6, state:

- (a) The date of first use;
- (b) The period of time during which it has been offered for sale or rendered;
- (c) The geographic area(s) in which it has been offered for sale or rendered;
- (d) The annual volume of sales, in dollars and units, for each year from the date of first use to the present;
- (e) The annual volume of any other revenues, such as licensing or sponsorship revenues, for each year from the date of first use to the present;
- (f) The retail and wholesale price in each year from the date of first use to the present;
- (g) The channels of trade through which it has been offered for sale or distributed; and
- (h) The actual or intended classes of consumers.

Interrogatory No. 8

Identify any agreement (such as a license, assignment or other) between Applicant and another person concerning any of Applicant's Marks and/or Applicant's Products/Services, including the grantor, date and material terms thereof.

Interrogatory No. 9

Identify each website, including social media page, concerning any of Applicant's Marks and/or Applicant's Products/Services (collectively, "**Applicant's Websites**").

Interrogatory No. 10

Identify each kind of advertising or promotional material used or intended to be used in connection with each of Applicant's Marks.

Interrogatory No. 11

Describe each instance in which any person has indicated a belief that Applicant is associated with or related to Opposer, and/or that Applicant's Products/Services are associated with or related to the Cleveland Guardians, including identifying all persons knowledgeable about any instance and describing the nature of their knowledge.

Interrogatory No. 12

State whether Applicant has marketed or intends to market Applicant's Products/Services to:

- (a) Fans of Major League Baseball;
- (b) Fans of the Cleveland Guardians; and/or
- (c) Consumers located in the Cleveland Guardians Locations.

And, if so, describe the means by which Applicant has or intends to do so.

Interrogatory No. 13

State whether, prior to adopting each of Applicant's Marks, Applicant was aware of the Cleveland Guardians formerly known as the Cleveland Indians.

Interrogatory No. 14

State whether, prior to the first use of each of Applicant's CLEVELAND SPIDERS Marks, Applicant was aware of the Cleveland Guardians formerly known as the Cleveland Indians.

Interrogatory No. 15

State whether, prior to adopting each of Applicant's Marks, Applicant was aware of any professional baseball team in Cleveland that used the name Spiders.

Interrogatory No. 16

State whether Applicant has any documentation concerning Applicant's bona fide intention to use, prior to or as of June 4, 2021, Applicant's C and Design Mark.

Interrogatory No. 17

State whether Applicant has documentation that it has used each of Applicant's CLEVELAND SPIDERS Marks without any interruption since August 1, 1990.

Interrogatory No. 18

Identify any period of time between August 1, 1990 and the present date during which Applicant did not use each of Applicant's CLEVELAND SPIDERS Marks.

Interrogatory No. 19

State whether Applicant has ever intended or currently intends for any of Applicant's Marks to relate to the Cleveland Guardians formerly known as the Cleveland Indians.

REQUESTS FOR PRODUCTION

Request No. 1

Specimens showing use of any of Applicant's Marks on or in connection with Applicant's Products/Services, including on labels or packaging.

Request No. 2

All documents concerning Applicant's adoption of each of Applicant's Marks.

Request No. 3

All documents concerning any investigations, including trademark searches, concerning each of Applicant's Marks.

Request No. 4

Documents sufficient to show:

- (a) The date of first use of each of Applicant's Marks;
- (b) The geographic area(s) of use of each of Applicant's Marks;
- (c) The persons to which Applicant's Product/Services have been sold and/or rendered for each of Applicant's Marks;
- (d) The channels of trade (e.g., retail stores, online platforms or websites, catalogs, mail order, promotional sales, private sales, etc.) through which Applicant's Product/Services for each of Applicant's Marks have been offered for sale or rendered;
- (e) The annual volume of sales, in dollars and units, of Applicant's Products/Services for each year from the date of first use to the present for each of Applicant's Marks; and
- (f) The annual volume of any other revenues, such as licensing or sponsorship revenues, for each year from the date of first use to the present for each of Applicant's Marks.

Request No. 5

Documents sufficient to show Applicant's annual expenditures on advertising and/or promoting each of Applicant's Marks and/or Applicant's Products/Services, for each year from the date of first use to the present.

Request No. 6

All documents concerning the advertising and/or promotion of each of Applicant's Marks and/or Applicant's Products/Services, including specimens of each advertising material or

promotional item that bears any of Applicant's Marks and has been used or is intended to be used.

Request No. 7

All documents concerning any actual or proposed agreement (license, assignment or other) between Applicant and another person concerning Applicant's Mark and/or Applicant's Products/Services.

Request No. 8

All documents concerning news or media coverage of Applicant and/or any of Applicant's Marks.

Request No. 9

Documents sufficient to show the existence and content of each of Applicant's Websites.

Request No. 10

All documents concerning Applicant's bona fide intention to use, prior to or as of June 4, 2021, Applicant's C and Design Mark, including documents sufficient to show all actions taken by or on behalf of Applicant in preparation to use Applicant's C and Design Mark.

Request No. 11

Documents sufficient to show the use of each of Applicant's CLEVELAND SPIDERS Marks in connection with Applicant's Products/Services in each and every year between August 1, 1990 and the present date.

Request No. 12

Documents sufficient to show the amount of sales of Applicant's CLEVELAND SPIDERS Marks in connection with Applicant's Products/Services in each and every year between August 1, 1990 and the present date.

Request No. 13

Documents sufficient to identify Applicant's current inventory of products bearing or offered in connection with each of Applicant's Marks (collectively, "**Applicant's Inventory**"), such as the amount of units in Applicant's Inventory, the dollar value of Applicant's Inventory, the location of Applicant's Inventory, and/or any efforts being made to sell Applicant's Inventory.

Request No. 14

All documents concerning the use or intended use of each of Applicant's Marks in connection with any indicia associated with or related to Major League Baseball and/or the Cleveland Guardians.

Request No. 15

All documents concerning Applicant's awareness, prior to adopting each of Applicant's Marks, of the Cleveland Guardians formerly known as the Cleveland Indians.

Request No. 16

Documents sufficient to show every one of Applicant's posts on any of Applicant's Websites (including social media) or third party websites or social media concerning the Cleveland Guardians formerly known as the Cleveland Indians and/or the terms CLEVELAND SPIDERS.

Request No. 17

All documents concerning the Cleveland Guardians formally known as the Cleveland Indians and/or Opposer's Marks.

Request No. 18

All documents concerning any confusion, on the part of any member of the public, between Opposer and Applicant and/or their respective marks and/or goods or services.

Request No. 19

All documents concerning any objection to the use or attempted registration of any of Applicant's Marks, such as cease-and-desist letters, claims, complaints and/or notices of opposition.

Request No. 20

All documents identified in or otherwise referred to by Applicant in answering Opposer's First Set of Interrogatories above.

Dated: January 20, 2023

COWAN, LIEBOWITZ & LATMAN, P.C.
Attorneys for Opposer

By: /Mary L. Kevlin /
Mary L. Kevlin
Dasha Chestukhin
Justin I. Karasick
114 West 47th Street
New York, New York 10036
(212) 790-9200
trademark@cll.com; mlk@cll.com; dxs@cll.com;
jik@cll.com

CERTIFICATE OF SERVICE

I hereby certify that, on January 20, 2023, I caused a true and complete copy of the foregoing *Opposer's First Set of Interrogatories and Requests for Production of Documents and Things* to be served on Applicant by sending a copy thereof via email to Applicant's Attorney and Correspondent of Record, Todd Wengrovsky, Esq. of Law Offices of Todd Wengrovsky, PLLC at contact@twlegal.com.

/Mary L. Kevlin /

Mary L. Kevlin

EXHIBIT B

From: [Todd Wengrovsky](#)
To: [Kevlin, Mary](#)
Cc: [Karasick, Justin I.](#); [Middleton, LaToya](#); [Chestukhin, Dasha](#)
Subject: RE: CLEVELAND SPIDERS Opposition No. 91277995
Date: Monday, January 30, 2023 2:57:21 PM
Attachments: [Barrington Guardians - Answers to Interrogatories.pdf](#)
[Barrington Guardians - Applicant's Responses to RPDs.pdf](#)

Counsel-

Please see the attached discovery responses in the above-referenced Proceeding-

Todd Wengrovsky

From: Kevlin, Mary <MLK@cll.com>
Sent: Friday, January 20, 2023 5:23 PM
To: Todd Wengrovsky <contact@twlegal.com>
Cc: Karasick, Justin I. <JIK@cll.com>; Middleton, LaToya <LRM@cll.com>; Chestukhin, Dasha <DXC@cll.com>
Subject: CLEVELAND SPIDERS Opposition No. 91277995

Dear Todd:

Attached are Opposer's Discovery Requests.

Mary L. Kevlin
Cowan, Liebowitz & Latman, P.C.
114 West 47th Street
New York, NY 10036-1525
t: (212) 790-9216 | f: (212) 575-0671
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EXHIBIT C

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

-----X
CLEVELAND GUARDIANS BASEBALL
COMPANY, LLC,

Opposer,

-against-

ADAM BARRINGTON,

Applicant.

**APPLICANT'S
RESPONSES TO
OPPOSER'S FIRST
REQUESTS FOR
PRODUCTION**

Proceeding No. 91277995

-----X
Applicant, in response to Opposer's First Requests for Production, states as follows:

RESPONSES TO REQUESTS FOR PRODUCTION

Document Request No. 1

Response:

Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control.

Document Request No. 2

Response:

Applicant objects to this Request as overly broad and overly burdensome. Subject to and without waiving this objection, Applicant responds as follows:

Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control.

Document Request No. 3

Response:

None.

Document Request No. 4

Response:

Applicant objects to this Request as overly broad and overly burdensome and/or irrelevant.

Subject to and without waiving this objection, Applicant responds as follows:

Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control.

Document Request No. 5

Response:

Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control.

Document Request No. 6

Response:

Applicant objects to this Request as overly broad and overly burdensome. Subject to and without waiving this objection, Applicant responds as follows:

Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control.

Document Request No. 7

Response:

None.

Document Request No. 8

Response:

None.

Document Request No. 9

Response:

Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control.

Document Request No. 10

Response:

Applicant objects to this Request as overly broad and overly burdensome. Subject to and without waiving this objection, Applicant responds as follows:

Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control.

Document Request No. 11

Response:

Applicant objects to this Request as overly broad and overly burdensome. Subject to and without waiving this objection, Applicant responds as follows:

Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control.

Document Request No. 12

Response:

Applicant objects to this Request as overly broad and overly burdensome. Subject to and without waiving this objection, Applicant responds as follows:

Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control.

Document Request No. 13

Response:

Applicant objects to this Request as overly broad and overly burdensome. Subject to and without waiving this objection, Applicant responds as follows:

Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control.

Document Request No. 14

Response:

None.

Document Request No. 15

Response:

Applicant was aware of the team, but has no responsive documents.

Document Request No. 16

Response:

Applicant objects to this Request as overly broad and overly burdensome. Subject to and without waiving this objection, Applicant responds as follows:

Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control.

Document Request No. 17

Response:

Applicant objects to this Request as overly broad and overly burdensome. Subject to and without waiving this objection, Applicant responds as follows:

Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control.

Document Request No. 18

Response:

None.

Document Request No. 19

Response:

Applicant objects to this Request as overly broad and overly burdensome. Subject to and without waiving this objection, Applicant responds as follows:

Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control.

Document Request No. 20

Response:

Applicant will produce any relevant, non-privileged documents responsive to this request that are within its custody or control.

Dated: Calverton, New York
January 30, 2023

/s/ Todd Wengrovsky
Todd Wengrovsky - TW4823
Law Offices of
Todd Wengrovsky, PLLC.
285 Southfield Road, Box 585
Calverton, NY 11933
Tel (631) 727-3400
Attorney for Applicant

EXHIBIT D

From: [Karasick, Justin I.](#)
To: [Todd Wengrovsky](#)
Cc: [Kevlin, Mary](#); [Chestukhin, Dasha](#)
Subject: CLEVELAND SPIDERS Consolidated Opposition No. 91277995
Date: Wednesday, February 22, 2023 9:49:10 AM
Attachments: [Barrington Guardians - Answers to Interrogatories.pdf](#)
[Barrington Guardians - Applicant's Responses to RPDs.pdf](#)

Dear Todd,

We're following up on your client's discovery responses in the subject opposition (re-attached here), as the response deadline has now passed and we have not received any documents. Please provide your client's document production no later than February 28, 2023, including indicating if there are no documents responsive to any of the Requests.

Regards,
Justin

Justin I. Karasick
Associate Attorney
Cowan, Liebowitz & Latman, P.C.
114 West 47th Street
New York, NY 10036-1525
t: (212) 790-9272 | f: (212) 575-0671
cll.com | JIK@cll.com



From: Todd Wengrovsky <contact@twlegal.com>
Sent: Monday, January 30, 2023 2:57 PM
To: Kevlin, Mary <MLK@cll.com>
Cc: Karasick, Justin I. <JIK@cll.com>; Middleton, LaToya <LRM@cll.com>; Chestukhin, Dasha <DXC@cll.com>
Subject: RE: CLEVELAND SPIDERS Opposition No. 91277995

Counsel-

Please see the attached discovery responses in the above-referenced Proceeding-

Todd Wengrovsky

EXHIBIT E

From: [Todd Wengrovsky](#)
To: [Karasick, Justin I.](#)
Cc: [Kevlin, Mary](#); [Chestukhin, Dasha](#)
Subject: CLEVELAND SPIDERS Opposition No. 91277995
Date: Monday, February 27, 2023 12:44:03 PM
Attachments: [image.png](#)
[Screenshot \(60\).png](#)
[Screenshot \(86\).png](#)
[Screenshot \(87\).png](#)
[Screenshot \(88\).png](#)
[Screenshot \(89\).png](#)
[Screenshot \(41\).png](#)
[Screenshot \(42\).png](#)
[Screenshot \(43\).png](#)
[Screenshot \(45\).png](#)
[Screenshot \(50\).png](#)
[Screenshot \(51\).png](#)
[Screenshot \(52\).png](#)
[Screenshot \(92\).png](#)
[Screenshot \(93\).png](#)
[Screenshot \(94\).png](#)
[Screenshot \(106\).png](#)
[Screenshot \(109\).png](#)
[Screenshot \(108\).png](#)
[Screenshot \(107\).png](#)

Caution: This e-mail originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe.

Counsel:

Please see the below document production in the above-referenced Proceeding-

Todd Wengrovsky

Law Offices of Todd Wengrovsky, PLLC.
285 Southfield Road, Box 585
Calverton, NY 11933
Tel (631) 727-3400
Fax (631) 727-3401
contact@twlegal.com

Request #1:

FW: CLEVELAND SPIDERS Oppo... x Commerce Hub x Cleveland Spiders x +

clelandspiders.com/home/ols/products

Analytics Trademark Registra... How to Make Your... MakersPlace Marke... Blockchain: Everythi... Decentralized appli... My Secure Checkou... 2018 Topps Now M... Picstart Editor

FREE SHIPPING Cleveland Spiders Streetwear, Solid Beanie (SOLD OUT) \$44.89 \$38.89 Out of Stock	FREE SHIPPING Cleveland Spiders, Classic Toboggan Hat \$34.89 \$29.89	FREE SHIPPING Cleveland Spiders, Embroidered Knit Beanie \$38.89 \$29.89
--	---	--

1 2 >

✖ Non-Affiliation Disclaimer ✔

We are proudly NOT affiliated or associated with the Cleveland Guardians, Roller Derby Club, Cleveland Guardians Baseball Club or the University of Richmond.

Cleveland Spiders Streetwear

Cleveland Spiders

31°F Heavy snow


New Tab x Custom Ink - Your Designs x University of Richmond's First S... x Cleveland Spiders x +

clelandspiders.com

Analytics Trademark Registra... How to Make Your... MakersPlace Marke... Blockchain: Everythi... Decentralized appli... My Secure Checkou... 2018 Topps Now M... Picstart Editor

Free Shipping

Home About Us Spiders Cheerleaders Our Fans



https://clelandspiders.com/spiders-cheerleaders


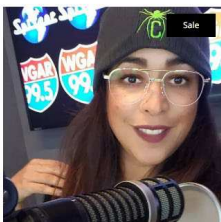
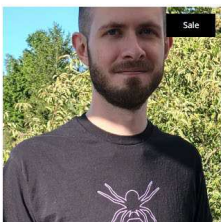
77°F Sunny

FW: CLEVELAND SPIDERS Oppo... x Commerce Hub x Cleveland Spiders x +

FW: CLEVELAND SPIDERS Oppo... x Commerce Hub x Cleveland Spiders x +

clelandspiders.com

Analytics Trademark Registra... How to Make Your... MakersPlace Marke... Blockchain: Everythi... Decentralized appli... My Secure Checkou... 2018 Topps Now M... Picstart Editor

 <p>FREE SHIPPING Cleveland Spiders, Embroidered Hoodies \$59.89 \$49.89</p>	 <p>FREE SHIPPING Cleveland Spiders, Embroidered Knit Beanie \$38.89 \$29.89</p>	 <p>FREE SHIPPING Cleveland Spiders "Purple Lines", Black Tee Shirt \$39.89 \$32.89</p>
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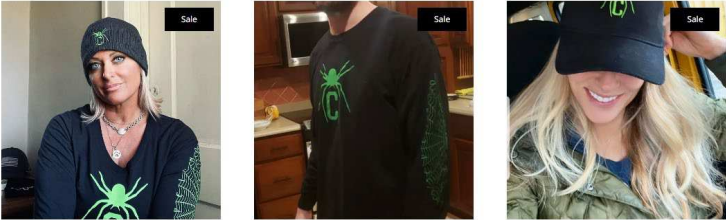
31°F Heavy snow

FW: CLEVELAND SPIDERS Oppo... Commerce Hub Cleveland Spiders

clelandspiders.com

Analytics Trademark Registra... How to Make Your... MakersPlace Marke... Blockchain: Everythi... Decentralized appli... My Secure Checkou... 2018 Topps Now M... Picstart Editor

939.89 \$32.89



LIMITED EDITION
Limited Halloween Edition "Spider Bite", Cleveland Spiders, women's V-neck black long sleeve shirt
\$43.89 \$39.89

LIMITED EDITION
Limited Halloween Edition "Spider Bite", Cleveland Spiders - Black long sleeve shirt
\$43.89 \$39.89

FREE SHIPPING
Cleveland Spiders Streetwear, Classic Brushed Twill Cap
\$34.89 \$29.89

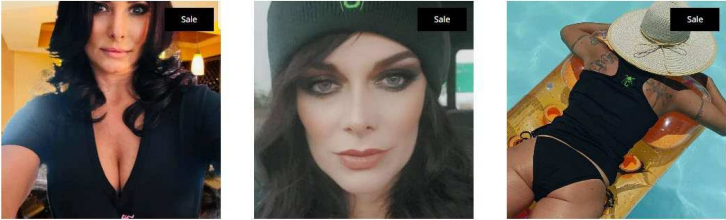
31°F Heavy snow

FW: CLEVELAND SPIDERS Oppo... Commerce Hub Cleveland Spiders

clelandspiders.com

Analytics Trademark Registra... How to Make Your... MakersPlace Marke... Blockchain: Everythi... Decentralized appli... My Secure Checkou... 2018 Topps Now M... Picstart Editor

939.89 \$39.89 \$34.89 \$29.89



LIMITED EDITION
Cleveland Spiders "Pink Spider", women's V-Neck T-shirt
\$37.89 \$32.89

FREE SHIPPING
Cleveland Spiders, Classic Toboggan Hat
\$34.89 \$29.89

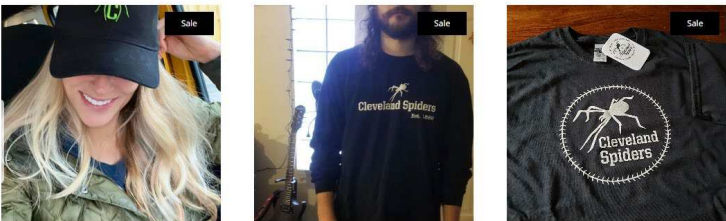
FREE SHIPPING
Women's Racerback Crop Tank Top, Cleveland Spiders Streetwear
\$43.89 \$36.89

31°F Snow

FW: CLEVELAND SPIDERS Oppo... Commerce Hub Cleveland Spiders

clelandspiders.com

Analytics Trademark Registra... How to Make Your... MakersPlace Marke... Blockchain: Everythi... Decentralized appli... My Secure Checkou... 2018 Topps Now M... Picstart Editor



FREE SHIPPING
Cleveland Spiders, Super Soft Washed Cap
\$38.89 \$29.89

FREE SHIPPING
Cleveland Spiders, Fall / Winter Long Sleeve T Shirt
\$49.89 \$36.89

FREE SHIPPING
Cleveland Spiders "Summer Classic", Black T Shirt
\$33.89 \$29.89

[View All Products >](#)

Request #2:

Browser: New Tab | T-shirt Design Lab - Design Your... | customink.com/nds/?cid=ftk0-00cm-as7p#textTools

Navigation: Analytics | Trademark Registra... | How to Make Your... | MakersPlace Marke... | Blockchain: Everythi... | Decentralized appli... | My Secure Checkou... | 2018 Topps Now M... | Picsart Editor

Header: CUSTOM INK | TALK TO A REAL PERSON 855-563-7465 | CHAT WITH A REAL PERSON Chat Now

Panel: Edit Text | Font: All-American Bold | Text Color: Charity Pink | Rotation: 0 | Outline: none | Text Shape: none | Text Size: 4

Product: Glidan Women's 100% Cotton T-shirt | Change Product | Black | Change Color | Save | Share | Get Price

Browser: New Tab | T-shirt Design Lab - Design Your... | customink.com/nds/?cid=ftk0-00cf-5r25#textTools

Header: CUSTOM INK | TALK TO A REAL PERSON 855-563-7465 | CHAT WITH A REAL PERSON Chat Now

Panel: Edit Text | Font: All-American Bold | Text Color: Vibrant Lime | Rotation: 0 | Outline: none | Text Shape: none | Text Size: 1.35

Product: Valucap Bio-Washed Hat | Change Product | black | Change Color | Save | Share | Get Price

Browser: New Tab | T-shirt Design Lab - Design Your... | customink.com/nds/?cid=ftk0-00cm-avu1#textTools

Header: CUSTOM INK | TALK TO A REAL PERSON 855-563-7465 | CHAT WITH A REAL PERSON Chat Now

Panel: Edit Text | Font: All-American Bold | Text Color: Charity Pink | Rotation: 0 | Outline: none | Text Shape: none | Text Size: 1.57

Product: Port & Company Women's Core Cotton V-Neck T-shirt | Change Product | Jet Black | Change Color | Save | Share | Get Price

Custom Ink T-shirt Design Lab - Design Your T-shirt

Font: **All-American Bold**

Text Color: Black

Text: Cleveland

Product: Comfort Colors 100% Cotton Long Sleeve Shirt

Color: Grey

Buttons: Add Products, Save | Share, Get Price

Notes: Pigment dye treatment gives shirts a broken in look. Colors may vary slightly from shirt to shirt.

Spiders

Search For Artwork

Product: Comfort Colors 100% Cotton Long Sleeve Shirt

Color: Grey

Buttons: Add Products, Save | Share, Get Price

Notes: Pigment dye treatment gives shirts a broken in look. Colors may vary slightly from shirt to shirt.

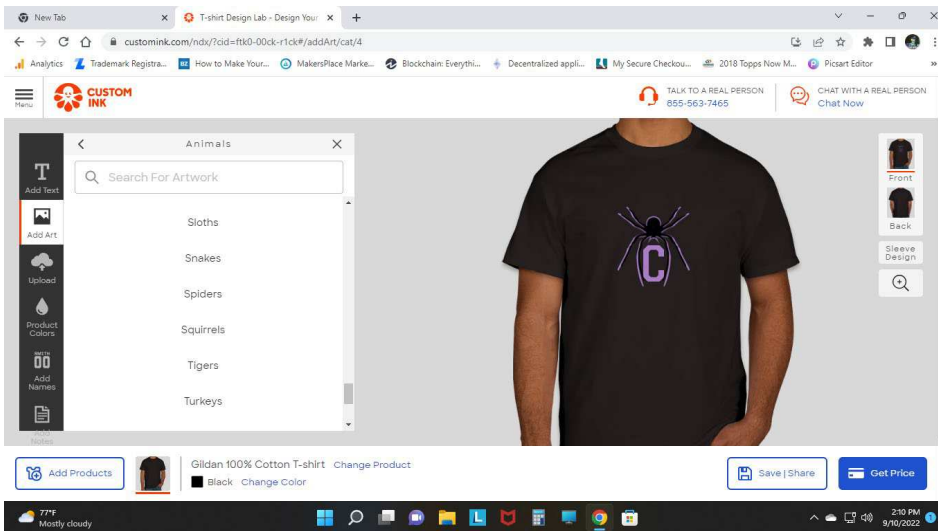
Spiders

Search For Artwork

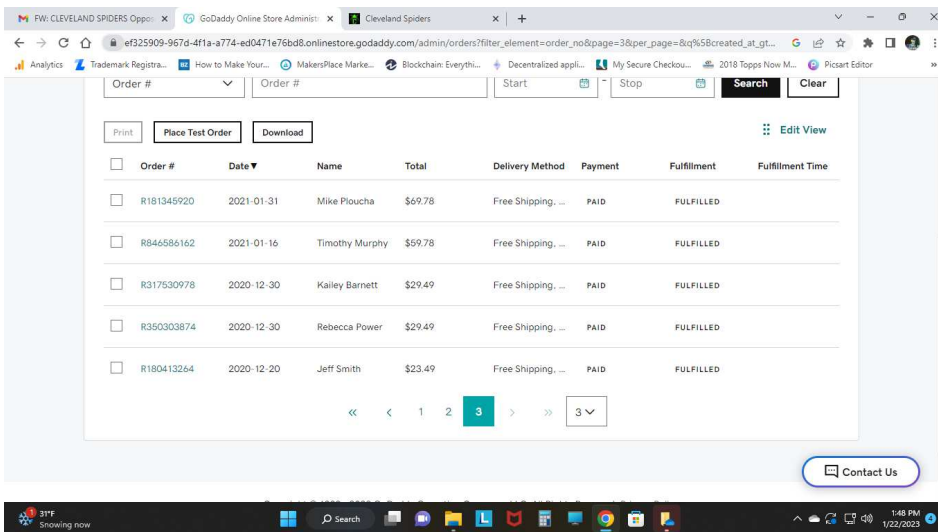
Product: Gildan 100% Cotton Long Sleeve T-shirt

Color: Black

Buttons: Add Products, Save | Share, Get Price



Request #4:



FW: CLEVELAND SPIDERS Oppo... x GoDaddy Online Store Admini... x Cleveland Spiders x +

ef325909-967d-4f1a-a774-ed0471e76bd8.onlinestore.godaddy.com/admin/orders?filter_element=order_no&page=2&per_page=8q%55created_at_gt...

Analytics Trademark Registra... How to Make Your... MakersPlace Marke... Blockchain: Everythi... Decentralized appli... My Secure Checkou... 2018 Topps Now M... Picart Editor

All Shipping Local Delivery In-Person Pickup Completed

Order # [dropdown] Order # [input] Start [calendar] - Stop [calendar] Search Clear

Print Place Test Order Download Edit View

<input type="checkbox"/>	Order #	Date	Name	Total	Delivery Method	Payment	Fulfillment	Fulfillment Time
<input type="checkbox"/>	R505758654	2021-10-13	Bob Gerland	\$80.67	Ships Free	PAID	FULFILLED	
<input type="checkbox"/>	R186305901	2021-07-31	Bob Gerland	\$26.89	Ships Free	PAID	FULFILLED	
<input type="checkbox"/>	R717606498	2021-07-26	Thomas Lovich	\$51.78	Ships Free	PAID	FULFILLED	
<input type="checkbox"/>	R703695761	2021-07-26	Allen Kinn	\$26.89	Ships Free	PAID	FULFILLED	
<input type="checkbox"/>	R149278665	2021-07-09	Jim Blaney	\$26.89	Ships Free	PAID	FULFILLED	
<input type="checkbox"/>	R834548822	2021-07-04	Carolyn Horvath	\$51.78	Ships Free	PAID	FULFILLED	

Contact Us

31°F Snowing now 1:49 PM 1/22/2023

FW: CLEVELAND SPIDERS Oppo... x My Account | Billing x Cleveland Spiders x +

account.godaddy.com/subscriptions

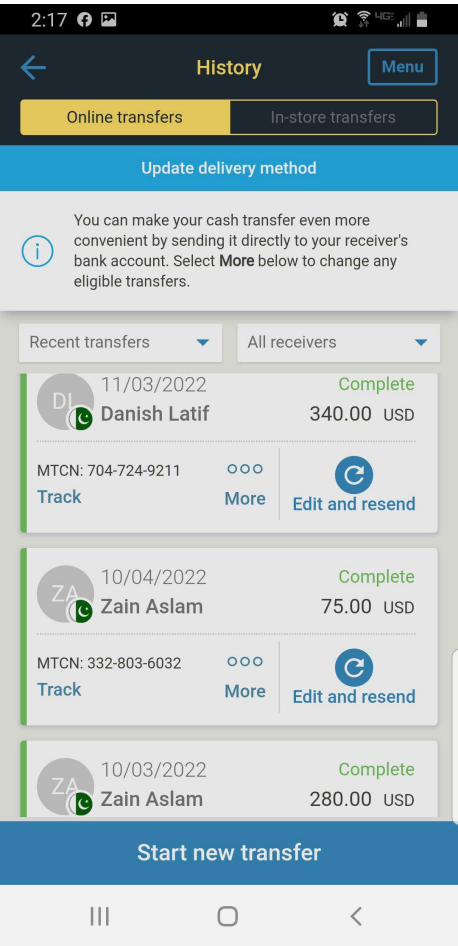
Analytics Trademark Registra... How to Make Your... MakersPlace Marke... Blockchain: Everythi... Decentralized appli... My Secure Checkou... 2018 Topps Now M... Picart Editor

15 results

Add to Cart Auto-Renew On Cancel Renewal Update Payment Filters

<input type="checkbox"/>	Description	Billing Date	Payment Method
<input type="checkbox"/>	No Protection	7/11/2023	
<input type="checkbox"/>	CLEVELANDSPIDERS.COM No Protection	... Auto Renews 8/1/2023	Paypal 62A
<input type="checkbox"/>	Websites + Marketing Commerce clevelandspiders.com	Upgrade → Auto Renews 11/16/2023	Paypal 62A

Request #5:



A artwiz icandigra... 10/8/2021
to me, 58 ▾

Hi Adam, Your order is done and ready to be picked up. We are open until 5:00pm



Eric Warnke
330.723.8337
Fax: 330.241.5610
650 West Smith Rd., Suite 3
Medina, Ohio 44256
icandigraphics.com



Request #6:

2:29



Images Shopping News Vi

Cleveland Spiders Streetwear
https://clevelandspiders.com

Cleveland Spiders Streetwear

Cleveland Spiders , Cleveland Spiders Tee Shirt , Cleveland Spiders Hoodie, Cleveland Spiders Hat, Cleveland Spiders...



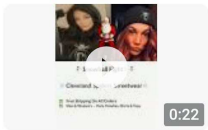
Approx. \$34 to \$50

You visited this page on 1/22/23.

twitter.com
https://mobile.twitter.com › cleveland...

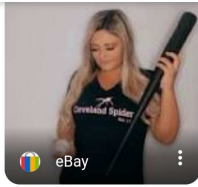
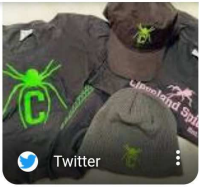
Cleveland Spiders Streetwear (@ClevelandSpider) / Twitter

Cleveland Spiders Streetwear.
@ClevelandSpider.
#clevelandspiders.
Cleveland, Ohio USA
clevelandspiders.com
Joined March 2009.



Discover Search Collections





Facebook
https://m.facebook.com/Cleveland...

Cleveland Spiders

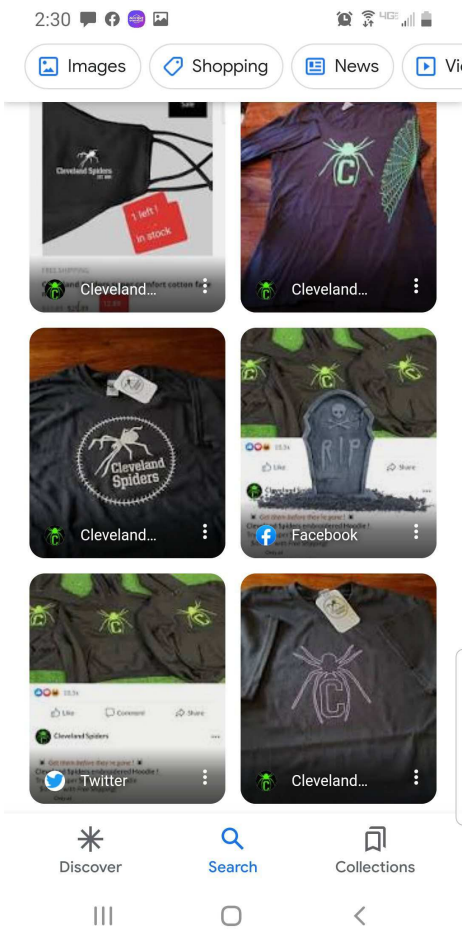
Cleveland Spiders Streetwear.
Page · Clothing (Brand).
clevelandspiders@gmail.com.
clevelandspiders.com · Not yet
rated (0 Reviews) ...



You visited this page on 9/10/22.

eBay Shop: Buying & Selling
App installed

Cleveland spiders, Women's " Pink
Spider", Cleveland Spiders V- ...

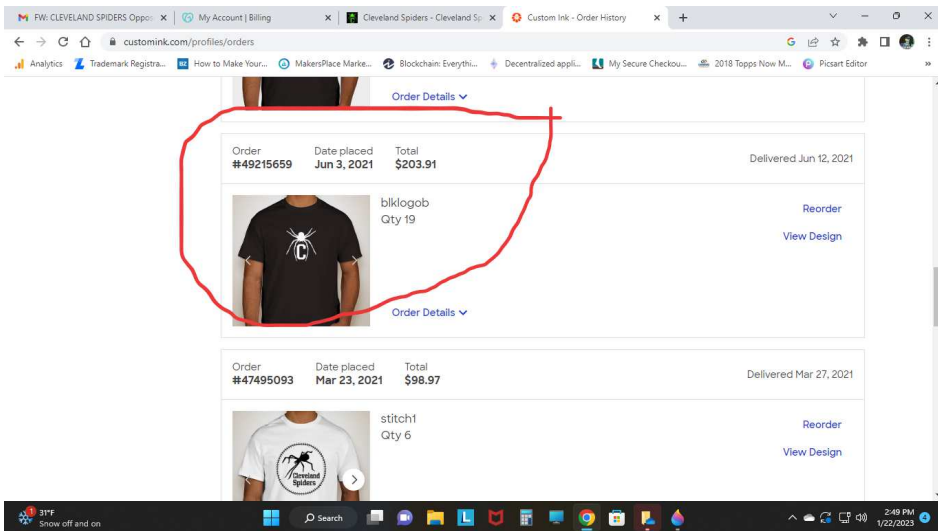


Request #9:

<https://clevelandspiders.com/spiders-cheerleaders-%F0%9F%94%A5-1>

<https://clevelandspiders.com/%E2%99%A1-our-fans-%E2%99%A1>

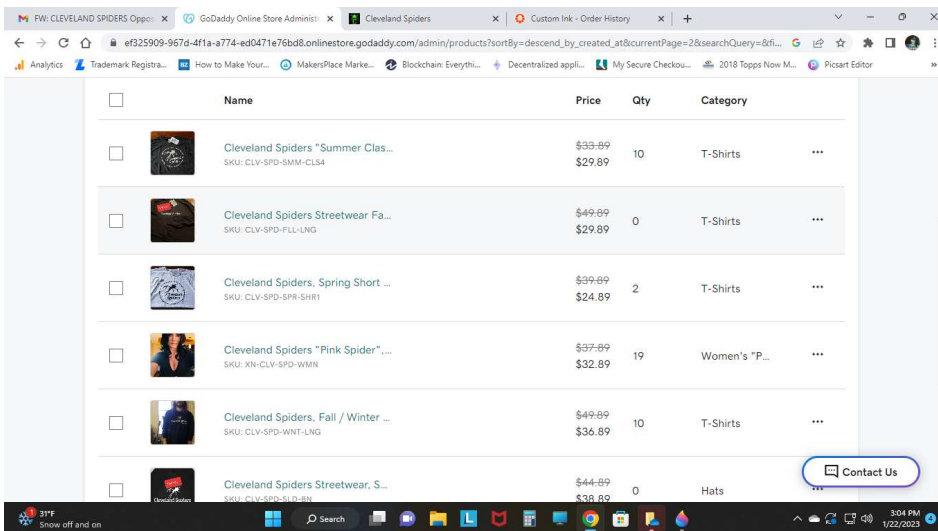
Request #10:



Request #11:

<https://smallseotools.com/domain-age-checker/>






Request #13:



FW: CLEVELAND SPIDERS Oppo... x GoDaddy Online Store Admini... x Cleveland Spiders x Custom Ink - Order History x +

ef325909-967d-4f1a-a774-ed0471e76bd8.onlinestore.godaddy.com/admin/products?ua_placement=shared_header

SKU: CLV-SPD-MBR-KNT 32,200

<input type="checkbox"/>		Cleveland Spiders Streetwear, Cl... SKU: CLV-SPD-STR-CLS2	\$54.89 \$29.89	1	Hats	...
<input type="checkbox"/>		Cleveland Spiders, Classic Tobo... SKU: CLV-SPD-CLS-TSG	\$54.89 \$29.89	1	Hats	...
<input type="checkbox"/>		Limited Halloween Edition "Spid... SKU: LMT-HLL-DTN-SPD	\$43.89 \$39.89	12	T-Shirts	...
<input type="checkbox"/>		Cleveland Spiders "Spider Bite *... SKU: CLV-SPD-SPD-BT	\$33.89 \$29.89	7	T-Shirts	...
<input type="checkbox"/>		Limited Halloween Edition "Spid... SKU: LMT-HLL-DTN-SPD1	\$43.89 \$39.89	10	T-Shirts	...







« < 1 2 > » 1 v

Contact Us

31°F Snow off and on

FW: CLEVELAND SPIDERS Oppo... x GoDaddy Online Store Admini... x Cleveland Spiders x Custom Ink - Order History x +

ef325909-967d-4f1a-a774-ed0471e76bd8.onlinestore.godaddy.com/admin/products?ua_placement=shared_header

<input type="checkbox"/>	Name	Price	Qty	Category		
<input type="checkbox"/>		Cleveland Spiders, Embroidered... SKU: CLV-SPD-MBR-HDS	\$59.89 \$49.89	9	Hoodies	...
<input type="checkbox"/>		Cleveland Spiders "Purple Lines ... SKU: CLV-SPD-PPP-LNS	\$39.89 \$32.89	12	T-Shirts	...
<input type="checkbox"/>		Cleveland Spiders, Super Soft W... SKU: CLV-SPD-STR-SFT	\$36.89 \$29.89	6	Hats	...
<input type="checkbox"/>		Women's Racerback Crop Tank ... SKU: WMN-S-RCB-CRP	\$43.89 \$36.89	13	Women's T...	...
<input type="checkbox"/>		Cleveland Spiders, Embroidered... SKU: CLV-SPD-MBR-KNT	\$36.89 \$29.89	6	Hats	...
<input type="checkbox"/>		Cleveland Spiders Streetwear, Cl... SKU: CLV-SPD-STR-CLS2	\$54.89 \$29.89	1	Hats	...

Contact Us

EXHIBIT F

From: [Karasick, Justin I.](#)
To: [Todd Wengrovsky](#)
Cc: [Kevin, Mary; Chestukhin, Dasha](#)
Subject: TTAB Opposition - CLEVELAND SPIDERS Marks (Opp. No. 91277995)
Date: Wednesday, March 22, 2023 6:08:02 PM
Attachments: [CLEVELAND SPIDERS \(Barrington\) - Discovery Deficiency Letter.pdf](#)

Dear Todd,

Please see attached letter.

Regards,

Justin

Justin I. Karasick
Associate Attorney
Cowan, Liebowitz & Latman, P.C.
114 West 47th Street
New York, NY 10036-1525
t: (212) 790-9272 | f: (212) 575-0671
cjl.com | JKK@cjl.com





Cowan, Liebowitz & Latman, P.C.
114 West 47th Street
New York, NY 10036

(212) 790-9200 Tel
(212) 575-0671 Fax
www.cll.com

Justin I. Karasick
(212) 790-9272
jik@cll.com

March 22, 2023

By Email (contact@twlegal.com)

Todd Wengrovsky, Esq.
Law Offices of Todd Wengrovsky, PLLC.
285 Southfield Road, Box 585
Calverton, NY 11933

Re: Discovery Deficiency Letter re:
Cleveland Guardians Baseball Company, LLC v. Adam Barrington,
Opposition No. 91277995 to CLEVELAND SPIDERS, CLEVELAND
SPIDERS and Design and C and Design,
U.S. Application Serial Nos. 90/617,936, 90/624,215 and 90/755,923

Dear Todd,

We write on behalf of Cleveland Guardians Baseball Company, LLC (“Opposer”) to address Applicant Adam Barrington’s (“Applicant”) responses and objections to Opposer’s First Set of Interrogatories and Requests for Production of Documents and Things. This letter is to address Applicant’s failure to provide adequate written responses and/or to produce responsive documents.

Although Applicant has produced certain screenshot images, these do not represent a complete production of all the categories of documents that Applicant has, in his written responses, undertaken to produce. We further detail our initial concerns below in an attempt to amicably resolve them without the need for a motion to compel. Opposer reserves the right to make further objections to the current and any supplemental written responses and/or productions depending on information revealed in further discussions between the parties and/or their counsel.

We look forward to receiving Applicant’s substantive response to this letter, as well as any further documents and/or supplemental written responses, by no later than **March 29, 2023**.

Request No. 4

In response to Request No. 4, which contains five subparts lettered (a) through (f), Applicant states that he “will produce any relevant, non-privileged documents” that are responsive to the Request. However, Applicant has produced only what appear to be partial,

undated website screenshots. The complete URL and date of access are not visible in the produced documents, leaving Opposer unable to identify either the website from which the purported screenshots were captured or the date on which such capture took place. Accordingly, Opposer is unable to meaningfully determine what these screenshots are intended to represent and, therefore, to what extent they are responsive.

Moreover, the screenshots themselves appear to be incomplete. For example, the source of the screenshots is not visible and the materials depicted appear to be cut off.

Additionally, despite indicating that he will produce documents responsive to all five subparts of Request No. 4, Applicant has failed to produce any documents that are clearly responsive to the following subparts of Request No. 4:

- (b) The geographic area(s) of use of each of Applicant's Marks;
- (e) The annual volume of sales, in dollars and units, of Applicant's Products/Services for each year from the date of first use to the present for each of Applicant's Marks
- (f) The annual volume of any other revenues, such as licensing or sponsorship revenues, for each year from the date of first use to the present for each of Applicant's Marks.

Please provide a supplemental production that includes documents showing all responsive information requested by Request No. 4 (and, to the extent website screenshots are produced, provides the complete URL and date of access for each such screenshot).

Requests Nos. 12, 16-17 and 19-20

In response to each of Requests Nos. 12, 16-17 and 19-20,¹ Applicant has failed to produce any responsive documents despite stating that "Applicant will produce any relevant, non-privileged documents responsive to" each of the above-listed Requests² "that are within its custody or control." Among the documents that Applicant has promised, yet thus far failed, to produce are:

- documents sufficient to show the amount of sales of Applicant's CLEVELAND SPIDERS Marks in connection with Applicant's Products/Services in each and every year between August 1, 1990 and the present date (Req. No. 12)
- documents showing every one of Applicant's posts on any of Applicant's Websites or third party websites or social media concerning the Cleveland Guardians formerly known as the Cleveland Indians and/or the terms CLEVELAND SPIDERS (Reg. No. 16)

¹ Unless otherwise noted herein, all defined terms are given the meanings ascribed to them in Opposer's First Set of Interrogatories and Requests for Production of Documents and Things.

² Certain of these Requests are summarized in this letter in partial form for the sake of brevity. Opposer asks that Applicant refer to the full text of each of these Requests when searching for additional responsive documents and/or making any supplemental production.

- documents concerning the Cleveland Guardians formally known as the Cleveland Indians and/or Opposer’s Marks (Req. No. 17)
- documents concerning any objection to the use or attempted registration of any of Applicant’s Marks, such as cease-and-desist letters, claims, complaints and/or notices of opposition (Req. No. 19)
- any other documents identified in or otherwise referred to by Applicant in answering Opposer’s First Set of Interrogatories (Req. No. 20).

If documents responsive to some or all of these Requests do not exist, then Applicant should amend its responses to indicate that this is so. Otherwise, Applicant should, as soon as possible, make a supplemental production of documents responsive to the above Requests. In light of the operative deadlines in this proceeding, Opposer requests that Applicant confirm, by March 25, 2023, that he will produce Bates stamped copies of all responsive documents within his possession, custody or control by no later than March 29, 2023.

Request Nos. 2, 5, 6, 10 and 13

Despite undertaking to “produce any relevant, non-privileged documents responsive to this request that are within [Applicant’s] custody or control,” in response to each of Request Nos. 2, 5, 6, 10 and 13—and despite purporting to produce one or more documents allegedly responsive to each of the foregoing—it appears that Applicant has not made a complete production in response to these Requests.

In response to Request No. 2, which seeks “documents concerning Applicant’s adoption of each of Applicant’s Marks,” Applicant has produced partial screenshots that appear to be dated September 10, 2022. These incomplete documents could not show the initial *adoption* of Applicant’s Marks, two of which claim first use dates in 1990 and one of which was filed on June 4, 2021. Please produce documents that are responsive to this Request as posed. If no responsive documents exist, please supplement the written response to this Request.

In response to Requests Nos. 5 and 6, which seek, respectively, “[d]ocuments sufficient to show Applicant’s annual expenditures on advertising and/or promoting each of Applicant’s Marks and/or Applicant’s Products/Services” and “documents concerning the advertising and/or promotion of each of Applicant’s Marks and/or Applicant’s Products/Services,” Applicant produced images appearing to consist of screenshots taken from a smartphone. Certain of the screenshots appear to be taken from an unknown smartphone application, certain of them appear to show an excerpt of an email, and certain of them appear to show excerpt of search engine results pages. These documents are facially incomprehensible because they fail to display key information. Please supplement the responses to these Requests with additional documents and/or information sufficient for Opposer to identify:

- the nature of the screenshot shown in Req. No. 5, including without limitation, the smartphone application from which it was captured and the date on which it was captured;

- the complete email thread shown in Req. No. 5, including, without limitation: i) any and all other emails on the thread; and ii) information or metadata sufficient to show and identify all senders, recipients and copyees on the email thread; and
- the nature of the screenshots shown in Req. No. 6, including, without limitation: i) whether these screenshots show a search engine results page; ii) the query that was searched to produce said search results; and iii) the date on which the search was conducted and when the screenshots were captured.

In response to Request No. 10, which seeks “All documents concerning Applicant’s bona fide intention to use, prior to or as of June 4, 2021, Applicant’s C and Design Mark,” Applicant has produced only a partial screenshot from what appears to be an unknown user’s customink.com profile. Please produce complete documents that are responsive to this Request.

In response to Request No. 13, which seeks “[d]ocuments sufficient to identify Applicant’s current inventory of products bearing or offered in connection with each of Applicant’s Marks (collectively, “Applicant’s Inventory”),” Applicant has produced three incomplete screenshots. To begin, it is unclear where this list is located and whether it is associated with, let alone managed by, Applicant. Additionally, the list appears to be partially cut off in at least one of the screenshots, suggesting that the screenshots that have been produced are incomplete. Please produce complete documents that are responsive to this Request.

Requests Nos. 9 and 11

In response to Request Nos. 9 and 11, Applicant stated he “produce any relevant, non-privileged documents responsive to this request that are within its custody or control.” However, Applicant failed to produce any documents in response to either of these requests, and instead merely produced a series of URLs.

Please provide a supplementary production which provides actual documents responsive to the above Requests.

We look forward to receiving Applicant’s supplemental document production and/or supplemental responses to the above-referenced Requests and Interrogatories by no later than **March 29, 2023**. Absent full compliance, Opposer may need to move to compel given approaching deadlines.

Opposer reserves its right to further object to the sufficiency of Applicant’s document production once Opposer has received any additional documents.

Cowan, Liebowitz & Latman, P.C.

Todd Wengrovsky

March 22, 2023

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This letter is written without prejudice to any of Opposer's rights, remedies and/or defenses, all of which are expressly reserved.

Sincerely,

/Justin I. Karasick/

Justin I. Karasick

cc: Mary L. Kevlin
Dasha Chestukhin

EXHIBIT G

From: [Todd Wengrovsky](#)
To: [Karasick, Justin I.](#)
Cc: [Kevlin, Mary](#); [Chestukhin, Dasha](#)
Subject: RE: TTAB Opposition - CLEVELAND SPIDERS Marks (Opp. No. 91277995)
Date: Saturday, March 25, 2023 12:16:07 PM

Warning: External e-mail. Use caution when clicking links or opening attachments.

Justin-

I am consulting with my client regarding revised responses / supplemental production, and I expect to be back in touch with you during the week. Thank you-

Todd Wengrovsky

From: Karasick, Justin I. <JIK@cll.com>
Sent: Wednesday, March 22, 2023 6:08 PM
To: Todd Wengrovsky <contact@twlegal.com>
Cc: Kevlin, Mary <MLK@cll.com>; Chestukhin, Dasha <DXC@cll.com>
Subject: TTAB Opposition - CLEVELAND SPIDERS Marks (Opp. No. 91277995)

Dear Todd,

Please see attached letter.

Regards,
Justin

Justin I. Karasick
Associate Attorney
Cowan, Liebowitz & Latman, P.C.
114 West 47th Street
New York, NY 10036-1525
t: (212) 790-9272 | f: (212) 575-0671
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[Redacted]

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EXHIBIT H

From: [Karasick, Justin I.](#)
To: [Todd Wengrovsky](#)
Cc: [Kevin, Mary; Chestukhin, Dasha](#)
Subject: RE: TTAB Opposition - CLEVELAND SPIDERS Marks (Opp. No. 91277995)
Date: Tuesday, April 4, 2023 10:41:07 AM
Importance: High

Dear Todd,

We're following up on this matter, and our discovery deficiency letter of March 22, 2023.

Our letter requested your response by March 29, and in your email below you indicated that you would be responding by the end of last week (the week ending March 31), but we have not yet received anything further from you. **Please let us know as soon as possible if your client will be providing supplemental discovery, if so send it to us forthwith.**

Given the Board's trial schedule, if we do not receive your client's supplemental documents and responses by the end of this week (Friday April 7), we will have no choice but to file a motion to compel.

Regards,
Justin

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