

ESTTA Tracking number: **ESTTA1287550**

Filing date: **05/25/2023**

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

Proceeding no.	91281208
Party	Defendant Florex USA, Inc.
Correspondence address	CARLOS BURGOS BURGOS & ASSOCIATES LAW GROUP 150 S PINE ISLAND RD, SUITE 300 PLANTATION, FL 33324 UNITED STATES Primary email: cburgos@burgoslawgroup.com Secondary email(s): evanbrowne@burgoslawgroup.com 305-921-9326
Submission	Other Motions/Submissions
Filer's name	Rick Ruz, Esq.
Filer's email	rickruz@ruzlaw.com, cburgos@burgoslawgroup.com, evanbrowne@burgoslawgroup.com
Signature	/Rick Ruz/
Date	05/25/2023
Attachments	Response to Motion to Amend Florex USA and Exhibits.pdf(714204 bytes )

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

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FOLEXPOR, INC.,

Opposer,

v.

Opposition No. 91281208

FLOREX USA, INC.,

Applicant.

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**APPLICANT’S OPPOSITION TO OPPOSER’S  
MOTION FOR LEAVE TO AMEND NOTICE OF OPPOSITION**

Applicant, FLOREX USA, INC. (hereafter “Applicant”) hereby opposes FOLEXPOR, INC.’s (hereafter “Opposer”) Motion for Leave to Amend Notice of Opposition (the “Motion to Amend”).

**I. INTRODUCTION**

Justice does not require that Opposer be permitted to belatedly amend its Notice of Opposition. All of the facts, including the three prior Registrations which Opposer putatively intends to amend, were well known to Opposer since the commencement of the proceedings. Furthermore, rather than move the present opposition along in diligent adherence to the Board’s Scheduling Order, Opposer willfully chose to abandon and ignore this proceeding for more than 5 months, disregarding the undersigns communications and even failing to schedule the Discovery Conference. Opposer made a calculated decision to wait until more than five months following Applicant’s answer to take any action in furtherance of this proceedings and has failed to provide any reasonable explanation. Accordingly, for the reasons stated below, the Board should deny Opposer’s Motion to Amend because the facts and registrations it now wishes to add to its proposed Amended Notice of Opposition were well known to it

since the commencement of this proceeding, and are clearly made in bad faith, dilatory, and unduly prejudicial to Applicant.

## II. FACTUAL AND PROCEDURAL HISTORY

On October 14, 2022, Opposer filed its Notice of Opposition against Applicant's section 1(b) application (Serial No. 9,0616,308) for the FLOREX stylized trademark. 1 TTABVUE. On October 14, 2022, the Board issued its Scheduling Order in this proceeding ("Scheduling Order"). 2 TTABVUE. In its Scheduling Order, the Board set the deadline for the parties to complete the Discovery Conference as December 23, 2022. The Board further set the deadline for the parties to submit their initial disclosures as January 22, 2023.

On November 21, 2022, the Applicant filed its Answer and Affirmative Defenses in this proceeding. 4 TTABVUE. On the same day, the undersigned sent Opposer's counsel an email requesting that Opposer's counsel provide his availability to conduct the Discovery Conference related to this proceeding. See Exhibit A. This email was ignored, and Opposer's counsel made no further efforts to coordinate the Discovery Conference related to this matter. Moreover, Opposer's counsel took no further action with regards to this proceeding until over five months later, when on April 27, 2023, Opposer's counsel Kerianne Strachan, emailed the undersigned stating in relevant part:

“[W]e intend to proceed with serving discovery requests, including initial disclosures, in Proceeding No. 91281208. As the deadline for initial disclosures expired in January, we would like to file before the Trademark Trial and Appeal Board a consented Motion to reopen (sic) time to file initial disclosures and extend trial dates.” See Exhibit B.

On April 28, 2023, the undersigned responded to Opposer's April 27, 2023, email stating in part that Applicant could not agree to Opposer's proposed Motion to Reopen the time for the parties to file their initial disclosures as Opposer had:

“voluntarily chosen to ignore and abandon this TTAB matter for months. Furthermore, your client has ignored the undersigned’s requests to schedule the discovery conference in this case.” See Exhibit C.

On April 28, 2023, the Opposer’s counsel responded to the undersigned’s April 28, 2023, email acknowledging receipt of the undersigned’s November 21, 2022, email in which the undersigned attempted to schedule the Discovery Conference in this proceeding. See Exhibit D.

On May 11, 2023, Opposer filed its Motion to Amend the Pleadings, in which Opposer’s counsel knowingly and falsely misrepresents to this Board that the “parties have completed their initial discovery conference.” 5 TTABVUE.

### **III. ARGUMENT**

“Pleadings in an opposition proceeding against an application filed under section 1 or 44 of the Act may be amended in the same manner and to the same extent as in a civil action in a United States district court....” 37 C.F.R. § 2.107. Although it is often cited that leave to amend should “be freely given when justice so requires,” Fed.R.Civ.P. 15(a), permission to amend may be withheld if the plaintiff does not have at least colorable grounds for relief, is guilty of undue delay, bad faith, dilatory motive, or if permission to amend would unduly prejudice the opposing party. Foman v. Davis, 371 U.S. 178 (1962).

In determining whether the other party would be prejudiced by allowance of the proposed amendment, the timing of the motion for leave to amend is a major factor. Black & Decker Corp. v. Emerson Electric Co., 84 U.S.P.Q.2d 1482, 1486 (TTAB 2007)(motion to amend denied where opposer unduly delayed in filing motion for leave to amend during testimony period). See also TBMP § 507.02 (2d ed. rev. 2004) (stating that the timing of the motion for leave to amend

is a major factor in determining whether respondent would be prejudiced by allowance of the proposed amendment).

“A motion for leave to amend should be filed as soon as any ground for such amendment, e.g., newly discovered evidence, becomes apparent. A long delay in filing a motion for leave to amend may render the amendment untimely.” Media Online Inc. v. El Clasificado, Inc., 88 U.S.P.Q.2d 1285 (2008) (citing International Finance Company v. Bravo Co., 64 USPQ2d 1597, 1604 (TTAB 2002). “Any party who delays filing a motion for leave to amend its pleading and, in so delaying, causes prejudice to its adversary, is acting contrary to the spirit of Rule 15(a) and risks denial of that motion.” Id. See also WRIGHT, MILLER AND KANE, FEDERAL PRACTICE AND PROCEDURE: Civil 2d, Section 1488 (1990); CHAPMAN, TIPS FROM THE TTAB: AMENDING PLEADINGS: THE RIGHT STUFF, 81 Trademark Reporter 302, 307 (1991).

Thus, where the party seeking amendment knows or should have known of the facts upon which the proposed amendment is based but fails to include them in the original complaint, the motion to amend is subject to denial. See Capital Speakers Inc. v. Capital Speakers Club of Wash D.C., Inc., 41 U.S.P.Q.2d 1030 (TTAB 1996); see also, Media Online Inc. v. El Clasificado Inc., 88 U.S.P.Q.2d 1285, 1286 (TTAB 2008) (motion for leave to amend denied where proposed new claims were based on facts within petitioner's knowledge at the time petition to cancel was filed).

In the present case, Opposer states that it wishes to amend its Notice of Opposition because “Opposer intends to add three current Registrations for its FOLEX mark relating to goods similar to all purpose cleaners and cleaning preparations.” 5 TTABVUE, \* 1. However, Opposer’s reasoning is insufficient, as the three additional registrations which it now seeks to add to its proposed Amended Notice of Opposition were well known to Opposer at the time that

it initially filed its Notice of Opposition on October 14, 2023. Specifically, Registration No. 2,112,477 has been registered since November 11, 1997, Registration No. 4,655,774 has been registered since December 16, 2014, and Registration No. 5,370,323 has been registered since January 2, 2018. Accordingly, as each of these three registrations were registered in Opposer's name at the time of the commencement of this proceeding, Opposer clearly would have had knowledge of them and therefore do not serve as a valid reason to amend the Opposition at this time due to Opposer's undue delay and would cause undue prejudice to Applicant due to Opposer's unjustifiable delay. See Media Online Inc. v. El Clasificado Inc., 88 U.S.P.Q.2d 1285, 1286 (TTAB 2008) (motion for leave to amend denied where proposed new claims were based on facts within petitioner's knowledge at the time petition to cancel was filed).

As previously mentioned above, on November 21, 2022, the undersigned sent Opposer's counsel an email requesting that Opposer's counsel provide his availability to conduct the Discovery Conference related to this proceeding. See Exhibit A. This email was ignored. Again, Opposer never bothered to even attempt to communicate with the Applicant's counsel to schedule the Discovery Conference in this case, even though the Board's Scheduling Order clearly stated that the deadline was December 23, 2022. The fact that the scheduling conference never took place is not disputed by Opposer's counsel in her April 28, 2023, email to the undersigned where she acknowledges receipt of the undersigned's November 21, 2022, email wherein the undersigned attempted to schedule the Discovery Conference in this proceeding. See Exhibit D. However, Opposer's counsel, inexplicably, in its Motion to Amend, knowingly and falsely misrepresents to this Board that the "parties have completed their initial discovery conference." 5 TTABVUE \* 1. This willful misrepresentation to the Board is further evidence

of Opposer's undue delay as well as bad faith and should serve as additional grounds for denying Opposer's Motion to Amend in this proceeding.

Furthermore, Opposer never bothered to serve Applicant with its Initial Disclosures until after its filing of its Motion to Amend, although the Board's Scheduling Order clearly stated that the deadline was January 22, 2023. See Exhibit B (email from Opposer's counsel stating "As the deadline for initial disclosures expired in January, we would like to file before the Trademark Trial and Appeal Board a consented Motion to reopen (sic) time to file initial disclosures and extend trial dates."). It would seem that Opposer's only reason for serving its minimal Initial Disclosures to Applicant on May 12, 2023, were due to its desire to file its Motion for Summary Judgment which the Board has since denied. See Exhibit E; 37 C.F.R. § 2.127(e)(1) ("A party may not file a motion for summary judgment until the party has made its initial disclosures....")

Finally, in its Motion to Amend, Opposer states that "The Parties have ... not yet engaged in any significant written discovery or document productions for which the Discovery Period is presently open." 5 TTABVUE \* 1. This statement further misrepresents the facts to the Board as it implies that at least some written discovery has been made in the proceeding when in fact no attempt to conduct any discovery has been made whatsoever by Opposer, although the deadline to complete discovery is June 21, 2023 and as such is effectively expired as any discovery request would have to have been made so that their respective deadlines would fall within the close of discovery. See TBMP § 403.03 ("Responses to interrogatories, requests for production of documents and things, and requests for admission .... may not be due later than the close of discovery."). As such, allowing the Opposer to Amend its Pleadings at this time would clearly unduly prejudice the applicant as it would effectively allow the Opposers to wrongfully get a "second bite of the apple" in a proceeding which it willfully chose to ignore until now.





Rick Ruz, Esq.  
Florida Bar No. 42090

# EXHIBIT A

**rickruz@ruzlaw.com**

---

**From:** rickruz@ruzlaw.com  
**Sent:** Monday, November 21, 2022 1:09 PM  
**To:** trademark@fitcheven.com; jtnabo@fitcheven.com  
**Cc:** cburgos@burgoslawgroup.com; evanbrowne@burgoslawgroup.com  
**Subject:** FW: ESTTA Filing Receipt: Proceeding or Serial or Registration No. 91281208 Answer Filing Receipt for ESTTA Tracking No: ESTTA1249242  
**Attachments:** Answer to Notice of Opposition-Folexport.pdf

Mr. Nabor,

Attached please find our client's answer to your client's Notice of Opposition.

Please feel free to let me know when you are available to have the discovery conference in this case, following Thanksgiving.

Warm Regards,

Rick Ruz, Esquire  
Ruz & Ruz, PL  
Patents, Trademarks, Copyrights and Business Law  
255 Alhambra Cir.  
Suite 500  
Coral Gables, FL 33134  
305.921.9326 (Main Office Line)  
786.272.9266 (Direct Line)  
888.506.2833 (Facsimile)

[www.ruzlaw.com](http://www.ruzlaw.com)

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-----Original Message-----

From: Estta\_autoreply@uspto.gov <Estta\_autoreply@uspto.gov>  
Sent: Monday, November 21, 2022 1:02 PM  
To: rickruz@ruzlaw.com  
Subject: ESTTA Filing Receipt: Proceeding or Serial or Registration No. 91281208 Answer Filing Receipt for ESTTA Tracking No: ESTTA1249242

ESTTA Filing Receipt

This ESTTA Filing Receipt confirms receipt of your submission associated with the above-identified ESTTA Tracking Number.

Your submission may be viewed on TTABVUE at <https://ttabvue.uspto.gov/ttabvue/> . If you don't see your submission on TTABVUE a week after you file, or if you received an error message or experienced a technical issue while submitting your submission on ESTTA, please send an email to [estta@uspto.gov](mailto:estta@uspto.gov) and provide the ESTTA Tracking Number and the Serial, Registration or Proceeding Number identified above, and a brief description of the error message or technical issue you encountered.

For non-technical status or information inquiries, please contact the TTAB Assistance Center at [ttabinfo@uspto.gov](mailto:ttabinfo@uspto.gov) or 571-272-8500 Monday through Friday from 8:30 a.m. to 5:00 p.m. Eastern Time (ET).

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Tracking no.: ESTTA1249242

Filing date: 11/21/2022

Proceeding no.: 91281208

Filing party: Defendant

FLOREX USA, INC.

Filing party's correspondence address: CARLOS BURGOS  
BURGOS & ASSOCIATES LAW GROUP  
150 S PINE ISLAND RD, SUITE 300  
PLANTATION, FL 33324  
UNITED STATES

Primary email: [cburgos@burgoslawgroup.com](mailto:cburgos@burgoslawgroup.com)

Secondary email(s): [evanbrowne@burgoslawgroup.com](mailto:evanbrowne@burgoslawgroup.com)

954-655-4449

Submission: Answer

Filer's name: Rick Ruz, Esq.

Filer's email: [rickruz@ruzlaw.com](mailto:rickruz@ruzlaw.com)

Signature: /Rick Ruz/

Date: 11/21/2022

Attachments: Answer to Notice of Opposition-Folexport.pdf

# EXHIBIT B

**From:** Kerianne A. Strachan <KStrachan@fitcheven.com>  
**Sent:** Thursday, April 27, 2023 9:21 AM  
**To:** rickruz@ruzlaw.com  
**Subject:** Proceeding No. 91281208 - FLOREX

**Flag Status:** Flagged

Dear Mr. Ruz,

We hope this email finds you well. We write to inform you that we intend to proceed with serving discovery requests, including initial disclosures, in Proceeding No. 91281208. As the deadline for initial disclosures expired in January, we would like to file before the Trademark Trial and Appeal Board a consented motion to reopen time to file initial disclosures and extend trial dates. Please let us know if you consent to the filing of this motion. Upon receipt of your consent, we will provide a copy of the motion for your review.

To resolve this matter, please also advise whether settlement may be an option and whether Florex USA, Inc. will agree to cease use of the FLOREX mark or any other mark that is similar to FOLEX.

We are glad to set up a call to discuss the consented motion or possible settlement per our above comments. If you have any questions, please let us know.

Thank You,  
Kerianne

[Kerianne Strachan](#) | Associate

## FITCH EVEN

Fitch, Even, Tabin & Flannery LLP  
120 South LaSalle Street, Suite 2100 | Chicago, Illinois 60603  
P 312.629.7970 | F 312.577.7007  
[kstrachan@fitcheven.com](mailto:kstrachan@fitcheven.com) | [www.fitcheven.com](http://www.fitcheven.com)

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# EXHIBIT C

**From:** rickruz@ruzlaw.com  
**Sent:** Friday, April 28, 2023 1:42 PM  
**To:** 'Kerianne A. Strachan'  
**Cc:** cburgos@burgoslawgroup.com  
**Subject:** RE: Proceeding No. 91281208 - FLOREX  
**Attachments:** FW: ESTTA Filing Receipt: Proceeding or Serial or Registration No. 912812... (145 KB)

Kerianne,

We cannot agree to your proposed motion as your client has voluntarily chosen to ignore and abandon this TTAB matter for months. Furthermore, your client has ignored the undersigned's requests to schedule the discovery conference in this case. Attached please find an email I sent nearly six months ago attempting to schedule the discovery conference. Additionally, I have called your office several times late last year and left messages to speak to Mr. Nabor regarding this case, which were similarly ignored. To allow your client to restart this case in these late stages would greatly harm my client's interests.

Although my client also cannot agree to your proposal that he abandon its mark, my clients may be amenable to a settlement which would allow both parties to peacefully co-exist in the market in such a way that any potential of consumer confusion would be infinitesimal. If you client is open to a co-existence based settlement, please let me know, and I would be happy to discuss this with you.

Warm Regards,

Rick Ruz, Esquire  
Ruz & Ruz, PL  
Patents, Trademarks, Copyrights and Business Law  
255 Alhambra Cir.  
Suite 500  
Coral Gables, FL 33134  
305.921.9326 (Main Office Line)  
786.272.9266 (Direct Line)  
888.506.2833 (Facsimile)

[www.ruzlaw.com](http://www.ruzlaw.com)

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---

**From:** Kerianne A. Strachan <KStrachan@fitcheven.com>  
**Sent:** Thursday, April 27, 2023 9:21 AM



**To:** rickruz@ruzlaw.com

**Subject:** Proceeding No. 91281208 - FLOREX

Dear Mr. Ruz,

We hope this email finds you well. We write to inform you that we intend to proceed with serving discovery requests, including initial disclosures, in Proceeding No. 91281208. As the deadline for initial disclosures expired in January, we would like to file before the Trademark Trial and Appeal Board a consented motion to reopen time to file initial disclosures and extend trial dates. Please let us know if you consent to the filing of this motion. Upon receipt of your consent, we will provide a copy of the motion for your review.

To resolve this matter, please also advise whether settlement may be an option and whether Florex USA, Inc. will agree to cease use of the FLOREX mark or any other mark that is similar to FOLEX.

We are glad to set up a call to discuss the consented motion or possible settlement per our above comments. If you have any questions, please let us know.

Thank You,  
Kerianne

Kerianne Strachan | Associate

## FITCH EVEN

Fitch, Even, Tabin & Flannery LLP

120 South LaSalle Street, Suite 2100 | Chicago, Illinois 60603

P 312.629.7970 | F 312.577.7007

[kstrachan@fitcheven.com](mailto:kstrachan@fitcheven.com) | [www.fitcheven.com](http://www.fitcheven.com)

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# EXHIBIT D

**rickruz@ruzlaw.com**

---

**From:** Kerianne A. Strachan <KStrachan@fitcheven.com>  
**Sent:** Friday, April 28, 2023 10:17 PM  
**To:** rickruz@ruzlaw.com  
**Cc:** cburgos@burgoslawgroup.com; Joseph Nabor  
**Subject:** RE: Proceeding No. 91281208 - FLOREX

Dear Mr. Ruz,

Thank you for your email. Contrary to your claims, our client has not voluntarily chosen to ignore or abandon this matter. Although we confirm receipt of your November email, we note that we have not received any other messages or calls from you regarding this matter. We also previously discussed settlement with the attorney of record and asserted our position regarding Florex USA, Inc. ceasing its use of the FLOREX mark or any other mark that is similar to FOLEX. To further clarify this issue, Mr. Nabor did reach out to you earlier today to discuss any prior communications, or unintentional lack thereof, and left a voicemail.

We further note that the TTAB record currently reflects Carlos Burgos of Burgos & Associates Law Group as Florex USA's attorney. To date, we have not received notice of any change in Florex USA's legal representation. We think this apparent inaccuracy reflected in the TTAB record may have contributed, in part, to any miscommunications that have occurred between the parties as we have Mr. Burgos's contact information on file.

Our client maintains that it is not interested in coexistence. If Florex USA is willing to resolve this matter amicably by ceasing its use of the mark, as mentioned above, we are open to discussing settlement based on such terms. Please let us know if you would like to set up a call to discuss.

Kind regards,  
Kerianne

[Kerianne Strachan](#) | Associate

## FITCH EVEN

Fitch, Even, Tabin & Flannery LLP  
120 South LaSalle Street, Suite 2100 | Chicago, Illinois 60603  
P 312.629.7970 | F 312.577.7007  
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**From:** rickruz@ruzlaw.com <rickruz@ruzlaw.com>  
**Sent:** Friday, April 28, 2023 12:42 PM  
**To:** Kerianne A. Strachan <KStrachan@fitcheven.com>  
**Cc:** cburgos@burgoslawgroup.com  
**Subject:** RE: Proceeding No. 91281208 - FLOREX

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Although my client also cannot agree to your proposal that he abandon its mark, my clients may be amenable to a settlement which would allow both parties to peacefully co-exist in the market in such a way that any potential of consumer confusion would be infinitesimal. If you client is open to a co-existence based settlement, please let me know, and I would be happy to discuss this with you.

Warm Regards,

Rick Ruz, Esquire  
Ruz & Ruz, PL  
Patents, Trademarks, Copyrights and Business Law  
255 Alhambra Cir.  
Suite 500  
Coral Gables, FL 33134  
305.921.9326 (Main Office Line)  
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---

**From:** Kerianne A. Strachan <[KStrachan@fitcheven.com](mailto:KStrachan@fitcheven.com)>

**Sent:** Thursday, April 27, 2023 9:21 AM

**To:** [rickruz@ruzlaw.com](mailto:rickruz@ruzlaw.com)

**Subject:** Proceeding No. 91281208 - FLOREX

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To resolve this matter, please also advise whether settlement may be an option and whether Florex USA, Inc. will agree to cease use of the FLOREX mark or any other mark that is similar to FOLEX.

We are glad to set up a call to discuss the consented motion or possible settlement per our above comments. If you have any questions, please let us know.

Thank You,  
Kerianne

Kerianne Strachan | Associate

## FITCH EVEN

Fitch, Even, Tabin & Flannery LLP

120 South LaSalle Street, Suite 2100 | Chicago, Illinois 60603


P 312.629.7970 | F 312.577.7007

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# EXHIBIT E

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

Folexport, Inc.		)	
	Opposer,	)	
v.		)	
Florex USA, Inc.		)	Opposition No. 91281208
	Applicant.	)	
<hr/>			
Serial No.	90616308	)	
Filed:	March 31, 2021	)	
Mark:	<b>FLOREX Stylized</b> 	)	
Published:	August 16, 2022	)	

OPPOSER’S INITIAL DISCLOSURES UNDER RULE 26(a)(1)

Opposer, Folexport, Inc. (hereinafter, “Opposer”), provides the following disclosures pursuant to 37 C.F.R. §2.120 and Fed.R.Civ.P. 26(a)(1). Opposer’s investigation is ongoing, and Opposer reserves the right to amend, modify, or otherwise supplement these disclosures as new information becomes available throughout the course of this cancellation proceeding, including without limitation disclosure of Applicant’s contentions and Applicant’s responses to discovery requests. By making these disclosures, Opposer does not represent that it is identifying every document or witness that supports its claims or defenses.

Opposer makes the following disclosures without in any way waiving: (1) the right to object to the use of any such information on evidentiary grounds in any subsequent proceeding in this or any other action; and (2) the right to object on any and all grounds at any time to any other discovery request or proceeding involving or relating to the subject matter of these disclosures.

**A. INDIVIDUALS (Fed.R.Civ.P. 26(a)(1)(A))**

The following individual(s) is believed to have knowledge of the facts in regard to the instant opposition proceeding and may be called by Opposer to provide testimony during the relevant testimony periods. Opposer reserves the right to identify additional potential witnesses as discovery progresses. Unless otherwise stated, the following individual(s) is an employee or agent of Opposer and may only be contacted through Opposer's counsel, Fitch, Even, Tabin & Flannery LLP.

1. Mr. Barrett P. Lash  
Folexport, Inc.  
10870 SW Tualatin Sherwood Rd.  
Tualatin, Oregon 97062  
folex@folex.net

Mr. Barrett P. Lash has knowledge concerning the following: the creation, consideration, selection, adoption and proposed use of Opposer's FOLEX trademark; the products and/or services in which the mark and other trademarks are or will be used; competitive products and/or services in the markets relevant to those products and/or services; the advertising and promotion of Opposer's products and/or services; the general nature of Opposer's markets and geographical territories in which its products and/or services are offered; Opposer's relevant marketing channels.

2. Expert witnesses as Opposer deems necessary or appropriate.
3. Rebuttal witnesses identified during the course of this action.

**B. DOCUMENTS (Fed.R.Civ.P. 26(a)(1)(B))**

Opposer is presently aware of the following documents, data compilations, and tangible things, described by category, in the possession, custody or control of Opposer that may be used to support its claims or defenses.

1. Business Records



Documents relating to corporate records and communications kept in the regular course of business of Opposer are located at:

1. Folexport, Inc.  
10870 SW Tualatin Sherwood Rd.  
Tualatin, Oregon 97062  
folex@folex.net

and, in some instances, at:

Fitch, Even, Tabin & Flannery LLP  
120 South LaSalle Street, Suite 2100  
Chicago, IL 60603

2. Trademark Documents

Documents relating to the MIJA trademark are located at:

Folexport, Inc.  
10870 SW Tualatin Sherwood Rd.  
Tualatin, Oregon 97062  
folex@folex.net

and, in some instances, at:

Fitch, Even, Tabin & Flannery LLP  
120 South LaSalle Street, Suite 2100  
Chicago, IL 60603

**C. COMPUTATION OF DAMAGES (Fed.R.Civ.P. 26(a)(1)(C))**

Not applicable.

**D. INSURANCE AGREEMENT (Fed.R.Civ.P. 26(a)(1)(D))**

Not applicable.

Respectfully submitted,

Dated: May 12, 2023

/Joseph T. Nabor/  
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