

Exhibits

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

IN THE MATTER OF TRADEMARK REGISTRATION NO. 2,382,866
Registered September 5, 2000

BOYDS COLLECTION, LTD.)	
Petitioner,)	
)	
v.)	
)	<u>Cancellation No.: 32,282</u>
HERRINGTON & COMPANY, INC.)	
Registrant.)	
)	

PETITIONER'S MOTION TO COMPEL

Petitioner, Boyds Collection, Ltd. (hereafter "Boyds" or "Petitioner") hereby moves pursuant to 37 C.F.R. § 2.120(e), for an order compelling Registrant, Herrington & Company, Inc. (hereafter "Herrington" or "Registrant") to: (1) serve amended responses to Petitioner's First Set of Interrogatories; (2) produce documents in response to Petitioner's First Request for Production of Documents; and (3) reset the testimony period for both parties. In support of its motion, Petitioner states as follows:

SUMMARY OF FACTS

On March 5, 2002, Petitioner served by United States First Class Mail, Petitioner's First Set of Interrogatories and First Request for Production of Documents. See Exhibits 1 and 2, respectively, attached hereto.

On April 9, 2002, Registrant served by United States First Class Mail, Registrant's Response to Petitioner's First Set of Interrogatories and First Request for Production of Documents. *See* Exhibits 3 and 4, respectively, attached hereto.

Registrant's Response to Petitioner's First Request for Production of Documents cited categorical objections to most of Petitioner's requests, including that the terms "refer", "regarding", "relating to" and "represent" were vague and ambiguous. Registrant also objected that "Registrant's Marks" was not defined and was "unclear and unintelligible" even though Petitioner's Definitions stated:

The term "Registrant's Mark" and all similar terms shall mean or refer to "TBC HERRINGTON'S TEDDY BEAR CLUB" & design." (Emphasis added.)

Although Registrant stated it would produce responsive documents to 10 requests, not a single document was produced by Registrant in response to Petitioner's first discovery requests.

On May 12, 2002, Petitioner sent Registrant a letter (attached hereto as Exhibit 5) via United States First Class Mail attempting to address all of Registrant's objections and request that all responsive documents be produced. Petitioner offered to enter into a protective order with Registrant to expedite discovery. Petitioner did not receive a response.

On May 22, 2002, undersigned counsel telephoned Registrant's office to inquire about Petitioner's May 12, 2002 letter and requested a response by May 24, 2002. Petitioner did not receive a response.

On May 28, 2002, Petitioner again sent Registrant a letter via United States First Class Mail to inquire about the discovery requests. *See* Letter from Lawrence M. Haws to Elizabeth Moreno McArthur dated May 28, 2002, attached hereto as Exhibit 6. Petitioner did not receive a

response.

On May 30, 2002, Petitioner wrote a facsimile letter to Registrant indicating that unless Petitioner received some indication of its intentions by 5 P.M. (CST) that day, Petitioner would be left with no alternative but to file a Motion to Compel Discovery with the TTAB. *See* Letter from Lawrence M. Haws to Elizabeth Moreno McArthur dated May 30, 2002, attached hereto as Exhibit 7. Petitioner did not receive a response.

On June 3, 2002, Petitioner filed this Motion to Compel Written Discovery. (It should be noted that all but one of Petitioner's First Set of Interrogatories were answered by Registrant.)

Registrant did not submit any discovery requests of its own to Petitioner in this matter.

ARGUMENT

Inasmuch as Registrant has not responded to Petitioner's discovery requests, Petitioner has been denied an opportunity to collect and submit evidence on its behalf by the close of the testimony period set in this matter.

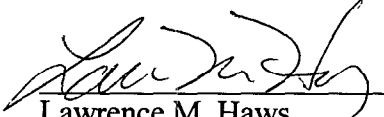
Counsel for Petitioner has attached a written statement, pursuant to 37 C.F.R. § 2.120(e), that he has made a good faith effort to resolve the issues presented in this motion with counsel for Registrant and has been unable to reach an agreement. *See* Written Statement attached hereto as Exhibit 8.

WHEREFORE, Petitioner respectfully requests that the Trademark Trial and Appeal Board order Registrant to: (1) amend its answers to Petitioner's First Set of Interrogatories; and (2) produce the documents requested in Petitioner's First Request for Production of Documents, in their entirety and by a certain date. Furthermore, the Petitioner respectfully requests that the Board reset the testimony period for both parties.

Dated: June 3, 2002

Respectfully Submitted,

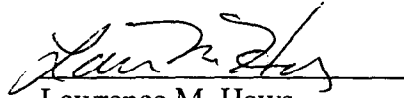
EAZYPOWER CORPORATION

By: 
Lawrence M. Haws
CHERSKOV & FLAYNIK
20 N. Wacker Drive, Suite 1447
Chicago, IL 60606
O: (312) 621-1330
Attorney for Petitioner

CERTIFICATE OF SERVICE:

I hereby certify that a true and correct copy of the within PETITIONER'S MOTION TO COMPEL was served upon Elizabeth Moreno McArthur, of Squire, Sanders & Dempsey L.L.P., located at 801 South Figuerora Street, 14th Floor, Los Angeles, CA 90017 via United States First Class Mail on this 3rd day of June 2002.

By:



Lawrence M. Haws
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20 N. Wacker Drive
Suite 1447
Chicago, IL 60606
(312) 621-1330
Attorney for Petitioner

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U.S. Patent & TMO/TM Mail Rcpt Dt. #11

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

Registrant: Herrington & Company, Inc.)
)
 Mark: TCB HERRINGTON'S TEDDY)
 BEAR CLUB & Design)
)
 Reg. No.: 2,382,866)
)
 Reg. Date: September 5, 2000)
)
)
 BOYDS COLLECTION, LTD.)
 Petitioner,)
 v.)
)
 HERRINGTON & COMPANY, INC.,)
 Registrant)
)
)

TRADEMARK TRIAL AND APPEAL BOARD
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CERTIFICATE OF MAILING BY EXPRESS MAIL ET 768258993 US (Express Mailing Label No.)

I hereby certify that this correspondence is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" Service under 37 C.F.R. 1.10 on **June 3, 2002** and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia, 22202-3513.

Lawrence M. Haws
Name of Representative

Signature

June 3, 2002
Date of Signature

PETITIONER'S MOTION TO COMPEL

Petitioner Boyds Collection, LTD hereby submits its Motion to Compel Registrant to answer Petitioner's written discovery requests to the Trademark Trial and Appeal Board in the above-identified matter.