

ESTTA Tracking number: **ESTTA272372**

Filing date: **03/16/2009**

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

Proceeding	92048423
Party	Defendant Wrangler Apparel Corp.
Correspondence Address	Jason M. Sneed Alston & Bird LLP 101 S. Tryon Street, Suite 400 Charlotte, NC 28280 UNITED STATES jason.sneed@alston.com
Submission	Motion to Compel Discovery
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Signature	/Noelle Valentine/
Date	03/16/2009
Attachments	Motion to Compel and Continue.pdf (41 pages)(1181689 bytes)

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

In the Matter of Registration Nos. 1,119,681 and 1,511,720
Registrant: Wrangler Apparel Corp.

BABYTOWN, INC.)

)
)
Petitioner,)

v.)

) Cancellation No. 92048423

)
)
WRANGLER APPAREL CORP.)

)
)
Registrant.)

**MOTION TO COMPEL PETITIONER'S DISCOVERY RESPONSES AND TO
CONTINUE THE CLOSE OF DISCOVERY AND THE TESTIMONY PERIODS**

Pursuant to Rules 26, 33, 34 and 37 of the Federal Rules of Civil Procedure, 37 C.F.R. § 2.120(e)(1) and TBMP § 523, Registrant Wrangler Apparel Corp. ("Wrangler") moves for an order: (i) compelling Petitioner Babytown, Inc. ("Babytown") to respond completely to the interrogatories and requests for production propounded in *Registrant's First Set of Interrogatories to Petitioner* and *Registrant's First Set of Requests for Production of Documents and Things*; and (ii) continuing the close of discovery and the testimony periods by sixty (60) days following the resolution of this motion. In support of its motion, Wrangler submits the following argument.

I. OPPOSER'S FAILURE TO RESPOND TO DISCOVERY REQUESTS

Attached hereto at Tab 1 is a copy of *Registrant's First Set of Interrogatories to Petitioner* and *Registrant's First Set of Requests for Production of Documents and Things*, which discovery requests were served, as reflected in the Certificate of Service incorporated therein, by

mail on May 29, 2008. On July 2, 2008, Petitioner filed a *Motion to Extend* the time within which it could respond to the discovery requests to August 2, 2008. On July 9, 2008, Petitioner filed a *Motion For Extension of Time* to extend the close of discovery and testimony periods by sixty (60) days. Both motions were granted by the Trademark Trial and Appeal Board on August 9, 2008.

On August 2, 2008, the date on which discovery was due, Petitioner contacted Registrant and requested an additional two weeks in which to respond to discovery. Based on the circumstances presented by Counsel for Petitioner, Registrant in good faith agreed to grant Petitioner an extension by which to respond to discovery, up to and including August 11, 2008. In lieu of providing discovery responses, on August 11, 2008, Petitioner filed a Motion to Suspend the proceedings so that settlement negotiations could ensue, which was granted by the Trademark Trial and Appeal Board on September 12, 2008. The parties did not reach a settlement agreement, and Petitioner still has not responded to Registrant's discovery requests.

The suspension lifted on March 11, 2009. On that same day, Registrant requested responses to its first set of discovery requests by Friday, March 13, 2009. Registrant also requested Petitioner's consent to extend the close of discovery and testimony periods, and to accept service of deposition notices for Babytown, Inc., and its officer, Eily Khallouf. To date, Registrant has not received responses to discovery or any other communication from Petitioner.

Discovery in this case is set to close on March 17, 2009. Given Petitioner's failure to provide any responses to the discovery requests that were served more than nine months ago, an extension of the discovery period is critical to enable Registrant to compel discovery responses, review them, and determine whether depositions or other follow-up discovery is necessary.

II. CERTIFICATE OF CONFERENCE

The undersigned counsel for Petitioner Wrangler hereby certifies that, as reflected in the letter attached hereto at Tab 2, which was sent via facsimile and first class mail on March 11, 2009, I made a good faith effort to resolve with counsel for Petitioner, Babytown, the issues presented in this motion. However, Petitioner's counsel has not responded to that communication, and I have not been able to reach an agreement with Petitioner's counsel.



Noelle Valentine

III. SPECIFIC REMEDY SOUGHT

Based on the foregoing, Registrant Wrangler requests that the Board grant this motion and, in doing so:

- (1) Order Petitioner Babytown to serve its written responses to *Registrant's First Set of Interrogatories to Petitioner* fully and completely and without objection within fourteen (14) days of the Board's order;
- (2) Order Petitioner Babytown to serve its written responses to *Registrant's First Set of Requests for the Production of Documents and Things* fully and completely and without objection within fourteen (14) days of the Board's order, and to produce all responsive documents contemporaneously with its service of such responses or; upon the election of Registrant, Wrangler, on a date and time and at a place mutually acceptable to the parties and their counsel;

- (3) Order that the close of discovery and the testimony periods be extended by sixty (60) day following the resolution of this motion, and testimony periods to be reset accordingly.
- (4) Order that Petitioner Babytown designate a person to attend the deposition to address those topics outlined in Registrant's Rule 30(b)(6) Notice of Deposition, attached hereto at Tab 3, on the date and time outlined in said Notice of Deposition, or on an alternate date and time and at a place mutually acceptable to the parties and their counsel.



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(704) 444-1000

Attorneys for Registrant, Wrangler Apparel, Inc.

Certificate of Filing

The undersigned hereby certifies that on this 16th day of March 2009, the *Motion to Compel Petitioner's Discovery Responses and to Continue the Close of Discovery and the Testimony Periods* was filed with the Board by electronic means through the Board's ESTTA system.



An Attorney for Registrant
Date of Execution: March 16, 2009

CERTIFICATE OF SERVICE

It is hereby certified that the foregoing *Motion to Compel Petitioner's Discovery Responses and to Continue the Close of Discovery and the Testimony Periods* has been served upon counsel for Petitioner by first class mail, postage prepaid, this 16th day of March, 2009, addressed as follows:

Michael A. Grow
Elizabeth H. Cohen
Alec Rosenberg
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036

A handwritten signature in black ink, appearing to read "Anne Valentino". The signature is written in a cursive style and is positioned above a horizontal line.

Attorney for Registrant

TAB 1

B. These discovery requests seek responses as of the date hereof, but shall be deemed to be continuing so that any additional responsive information or material relating in any way to these discovery requests which Petitioner acquires or which becomes known to Petitioner at any time during this proceeding shall be furnished to Registrant promptly after such information or material is acquired or becomes known, as required by Rule 26(e) of the Federal Rules of Civil Procedure.

C. As used herein, the term "document" is used in its customary broad sense consistent with Rule 26, Fed.R.Civ.P., and includes any record of information, regardless of the medium upon which it is recorded, without being limited to the following items, whether printed, or recorded, or filmed, or reproduced by any other process, or written or produced by hand or other means, and whether or not claimed to be privileged against discovery on any ground, and including all originals, masters, and copies, namely: agreements, contracts, and memoranda of understanding; assignments, licenses, correspondence and communications, including intra-company correspondence and communications, reports, notes and memoranda; summaries, minutes and records of telephone conversations, meetings and conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations and interviews; books, manuals, publications, and diaries; technical, laboratory and engineering reports, data sheets and notebooks; charts; plans, sketches and drawings; photographs, motion pictures, audio and video tapes and disks; models and mockups; reports and/or summaries of investigations; opinions and reports of experts and consultants; registrations of trademarks and applications for such registrations; sales records, including purchase orders, order acknowledgements and invoices; books of

account; statements, bills, checks and vouchers; reports and summaries of negotiations; brochures; pamphlets; catalogs and catalog sheets, sales literature and sales promotion materials, advertisements; displays; circulars, trade letters, notices and announcements; press, publicity, trade and product releases; drafts of originals of, or preliminary notes on, and marginal comments appearing on, any document; other reports and records; and any other information-containing paper or writing as well as any packaging, hang tag, wrapper, product, labels, signage or physical thing.

D. As used herein, “identify,” “to identify” or “to give the identity of” or any variation of the word “identify” or “identity” means:

- (1) in the case of a person, to state
 - (a) name;
 - (b) last known resident address;
 - (c) employer or business affiliation; and
 - (d) occupation and business position held and responsibilities thereof and dates thereof;
- (2) in the case of a company, to state
 - (a) name;
 - (b) place of incorporation;
 - (c) address and principal place of business; and
 - (d) “identity” of officers or other persons having knowledge of the matter with respect to which the company is named;
- (3) in the case of “document,” to state

- (a) "identity" of the person originating and preparing it and the sender;
 - (b) its general type (e.g., letter, memo, report, invoice, etc.), title, identifying number and the general nature of its subject matter;
 - (c) the "identity" of the addressees and distributees, if any;
 - (d) its dates of preparation;
 - (e) its dates and manner of transmission, distribution and publication, if any;
 - (f) location of each copy (including title, index number and location of the file in which it is kept or from which it was removed) and "identity" of the present custodian or person responsible for its filing or other disposition;
 - (g) "identity" of persons who can authenticate or "identify" it; and,
 - (h) if privilege against production is claimed, the specific basis therefor and a complete specification and description of every fact upon which the claim of privilege is based; and
- (4) production of any document as aforesaid (or a copy of such document) will be acceptable in lieu of identifying such document.

E. The term "Petitioner" refers to the nominal Petitioner, its officers, employees, attorneys, agents and representatives, its predecessor, successor, parent and

subsidiary and affiliate entities, components, and divisions either United States or foreign; and, its franchisees and licensees.

F. The term “person” refers both to natural persons and to corporate and other business entities, whether or not in the employ of the Petitioner, and the acts and knowledge of a person are defined to include the acts and knowledge of that person’s directors, officers, members, employees, representatives, agents and attorneys.

G. The term “Registrant’s Marks” refers to Registrant’s marks as set out in U.S. Trademark Registration No.1,119,681, which issued on June 5, 1979, and U.S. Trademark Registration NO. 1,511,720, which issued on November 8, 1988, and/or colorable variant thereof which includes the term “GITANO” and which has been used at any time by Registrant.

H. The term “Petitioner’s Marks” refers to Petitioner’s marks as set out in U.S. Trademark Application Nos. 78/785,882 and 78/977,233 and/or any colorable variant thereof which includes the term “GITANO” and/or “GIANO” and which has been used at any time by Petitioner with respect to the goods and services covered by said applications and/or with respect to retail services featuring the goods covered by said applications.

I. The term “Petition to Cancel Registrant’s Mark” refers to Petition to Cancel filed by Petitioner on November 9, 2007.

INTERROGATORIES

INTERROGATORY NO. 1:

If, in answering any of the following Interrogatories, the person signing the Answers thereto consulted others regarding the same or has relied on information supplied to him by others, identify each such person who supplied information for any particular Interrogatory and specify each Interrogatory response to which each such person contributed.

INTERROGATORY NO. 2:

Identify each person who has knowledge of facts supporting Petitioner's assertion in Paragraph 3 of the Petition to Cancel Registrant's Mark that Registrant's Marks had "been abandoned by Registrant Wrangler Apparel Corp. or its predecessors."

INTERROGATORY NO. 3:

Identify each specific fact upon which Petitioner relies in making the assertion in Paragraph 3 of the Petition to Cancel Registrant's Mark that Registrant's Marks had "been abandoned by Registrant Wrangler Apparel Corp. or its predecessors" and identify all documents related thereto.

INTERROGATORY NO. 4:

Identify each person who has knowledge of facts supporting Petitioner's assertion in Paragraph 12 of the Petition to Cancel Registrant's Mark that Registrant ". . .

discontinued all use and abandoned [Registrant's Marks] through non-use more than three years ago. . . .”

INTERROGATORY NO. 5:

Identify each specific fact upon which Petitioner relies in making the assertion in Paragraph 12 of the Petition to Cancel Registrant's Mark that Registrant “. . . discontinued all use and abandoned [Registrant's Marks] through non-use more than three years ago. . . .” and identify all documents related thereto.

INTERROGATORY NO. 6:

(a) Identify each person (including, without limitation, both employees of Petitioner and persons who are not employees of Petitioner) responsible for, or involved in the decision by or for Petitioner to adopt the trade name, trademark and/or service mark GITANO.

(b) For each person identified in response to Interrogatory No. 6(a), state with particularity that person's role and extent of involvement in the decision to adopt the trade name, trademark and/or service mark GITANO.

INTERROGATORY NO. 7:

(c) Identify each person (including, without limitation, both employees of Petitioner and persons who are not employees of Petitioner) responsible for, or involved in the decision by or for Petitioner to adopt the trade name, trademark and/or service mark GIANO.

(d) For each person identified in response to Interrogatory No. 7(a), state with particularity that person's role and extent of involvement in the decision to adopt the trade name, trademark and/or service mark GIANO.

INTERROGATORY NO. 8:

(a) State when Petitioner first became aware of: (i) Registrant, and (ii) Registrant's Marks.

(b) Describe with particularity each instance in which Petitioner, or any of its agents or other persons involved in the consideration or decision to adopt GITANO and GIANO as trade names, trademarks or service marks, considered the existence of, or possible conflict with, Petitioner or Petitioner's Marks.

INTERROGATORY NO. 9:

Identify each person who will testify or is expected to be called as an expert witness on Petitioner's behalf in this proceeding, and state: (a) the subject matter upon which each such witness is expected to testify; (b) the substance of the facts and opinions as to which the expert is expected to testify; and (c) a summary of the grounds for each opinion.

INTERROGATORY NO. 10:

State all ways in which Petitioner and its licensees and other persons and entities authorized by Petitioner to use the Petitioner's Marks, have used the Petitioner's Marks,

including an identification of all materials on which Petitioner's Marks have been used, and when each such use or association began.

INTERROGATORY NO. 11:

Identify the persons associated with Petitioner who are most knowledgeable concerning Petitioner's use of the Petitioner's Marks.

INTERROGATORY NO. 12:

Describe each different product or service ever offered or provided by Petitioner or any entity licensed or otherwise authorized by Petitioner to offer or provide, under Petitioner's Marks, and for each such product or service, state in detail:

(a) the date on which Petitioner or such entity licensed or otherwise authorized by Petitioner, commenced offering or providing each such product or service;

(b) the location(s) (e.g., city, county, and state) from which and to which each such product or service has been offered or provided;

(c) the dates during which Petitioner or such entity licensed or otherwise authorized by Petitioner, has offered or provided each such service or product in commerce from and to each location;

(d) the quantity and the dollar amount of the revenue received by Petitioner or such entity licensed or otherwise authorized by Petitioner, for each service or product offered or provided under Petitioner's Marks for each year since the first use thereof;

(e) the type(s) of customers who purchased each such service or product; and

(f) the manner in which Petitioner's Marks are used in connection with each product or service or its promotion (e.g., displayed on packaging, displayed on store signage, displayed on business cards and printed advertisements, etc.).

INTERROGATORY NO. 13:

As to each and every advertisement and promotional item by Petitioner using or containing the Petitioner's Marks from the date of first use and continuing to the present, including, without limitation, interior and exterior signage, advertisements in newspapers, magazines, handbills, promotional flyers, and advertisements on radio, TV and/or over the Internet and each circular, sales literature, brochure, bulletin, flyer, sign, display, poster, website, or other promotional material or advertisement using or containing the Petitioner's Marks:

(a) identify the location where the advertisements / promotional material were displayed and/or distributed;

(b) identify the particular goods or services to which the advertisements / promotional material related;

(c) state the dollar amount spent for the advertising / promotional items or efforts; and

(d) identify all persons or entities affiliated with Petitioner having knowledge of the use of the advertisement / promotional material (including each employee, person, company, or organization, including, but not limited to, any advertising agency, marketing or market research firm, or public relations concern).

INTERROGATORY NO. 14:

Identify each entity (including each person, company or organization, including, but not limited to, any advertising agency, marketing or market research firm, or public relations concern) that has designed, provided or supplied printers proofs, graphic designs, trade name, trademark or service mark candidates for consideration, promotional literature, website content, signage, or other materials or assistance in connection with the advertising, promotion, offer for sale or sale of goods or services under the Registrant's Marks, and for each such person, company or organization describe the nature of the material, product and/or service provided or supplied.

INTERROGATORY NO. 15:

If Petitioner has ever altered the appearance of its use of the Petitioner's Marks, describe the change and identify each person responsible for the decision to make such alteration in appearance or use.

INTERROGATORY NO. 16:

If Petitioner now has, or ever had, any agreement, either written or oral (including, but not limited to, licenses, buying / selling or agency agreements, distributorship arrangements, joint venture agreements, etc.), concerning any use or non-use of the Petitioner's Marks, then, for each such agreement or understanding, identify all parties to the agreement including all individuals participating in its creation, state in detail how control has been exercised as to quality of the services and/or products

marketed under the agreement, and identify the individuals responsible for insuring the such control of quality for all parties.

INTERROGATORY NO. 17:

Identify all uses made by any other person or entity of the Petitioner's Marks, and state any action or inaction by Petitioner with respect to each, including the sending or receiving of a cease and desist letter or participation in any proceeding or litigation.

INTERROGATORY NO. 18:

If Petitioner has ever received an opinion from any counsel concerning whether Petitioner's Marks may or may not be available for use or registration by Petitioner or any third party:

- (a) identify the attorney(s) or other person(s) who rendered the opinion;
- (b) each such person who received a written copy or was informed orally of the opinion; and
- (c) identify every document comprising or referring to such opinion, including, but not limited to, any search report, or other document relating in any way to the subject matter of such opinion.

INTERROGATORY NO. 19:

If Petitioner has ever caused a consumer survey or any other study or analysis to be made, on a formal or informal basis, concerning Petitioner's Marks or Registrant's Marks, including, but not limited to, a survey involving the likelihood of confusion

relating to the Petitioner's Marks or the Registrant's Marks, identify the individuals who were involved in such survey (e.g., planners, interviewers, supervisors, interviewees, survey agent, etc.).

INTERROGATORY NO. 20:

(a) Identify each person who has made or received any statement reflecting confusion, inquiry or comment (written or oral) concerning the relationship, or whether any such relationship exists, between Petitioner and/or its products or services, on the one hand, and Registrant and/or its products or services, on the other hand;

(b) For each person identified in response to Interrogatory No. 20(a), describe in detail the circumstances of the statement, inquiry or comment, including the identification of each person having any knowledge thereof.

INTERROGATORY NO. 21:

Identify each trade name, trademark, and service mark, other than "GITANO" and "GIANO" under which Petitioner has offered or provided its products or services to the public.

INTERROGATORY NO. 22 :

(a) Did the Petitioner, at any time, make or cause to be made an investigation of any records, such as, but not limited to, the trademark records of the United States Patent and Trademark Office, any trademark or trade publications, business directories, telephone directories, or the records of any trademark service organization, pertaining or relating to Petitioner's Marks, Registrant's Marks, or any variant thereof?

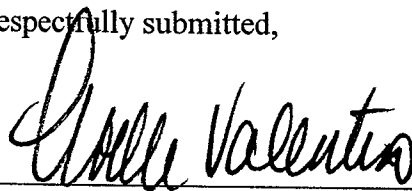
(b) If so, for each investigation state:

1. The date it was made.
2. The name, address, occupation, and qualifications of the person by whom it was made.
3. The name and location of each record investigated.
4. Each mark or name reported by the investigator, including:
 - i. The name and address of the owner;
 - ii. The goods or services identified by each mark and name; and
 - iii. The registration number / application number and jurisdiction.

5. The existence of any written report relating to the investigation, including:
- i. The date of the report;
 - ii. The author and addressee thereof; and
 - iii. The name and address of the person(s) having custody thereof.

Date: May 29th, 2008

Respectfully submitted,



Jason M. Sneed
Larry C. Jones
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*Attorneys for Registrant,
Wrangler Apparel Corp.*

Certificate of Filing

It is hereby certified that the foregoing *Registrant's First Set of Interrogatories to Petitioner* has been served upon counsel for Petitioner by first class mail, postage prepaid, this 29th of May, 2008, addressed as follows:

Michael A. Grow
Elizabeth H. Cohen
Alec Rosenberg
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036



Attorney for Registrant

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

In the Matter of Registration Nos. 1,119,681 and 1,511,720
Registrant: Wrangler Apparel Corp.

BABYTOWN, INC.)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92048423
)	
WRANGLER APPAREL CORP.)	
)	
Registrant.)	

**REGISTRANT'S FIRST REQUEST FOR PRODUCTION
OF DOCUMENTS AND THINGS**

In accordance with Rules 26 and 34, Fed.R.Civ.P., and the provisions of 37 C.F.R. § 2.120, Registrant, Wrangler Apparel Corp. (hereinafter referred to as "Registrant" or "Wrangler"), by its attorneys, requests that the Petitioner, Babytown, Inc., (hereinafter referred to as "Petitioner" or "Babytown"), produce documents and things listed herein for inspection and copying at the offices of Alston & Bird LLP, 101 South Tryon Street, Suite 4000, Charlotte, North Carolina 28280-4000, within thirty (30) days of the date of service of this Request (or at such other time and place as may be agreed upon by counsel).

The Introduction and Definitions included in Petitioner's First Set of Interrogatories to Registrant are incorporated herein by reference. These Requests are deemed to be continuing so as to require supplementation when and if Registrant shall obtain further information following its response hereto.

REQUEST FOR PRODUCTION

Request for Production No. 1:

All documents and things referred to or relied on in responding to Petitioner's First Set of Interrogatories to Registrant.

Request for Production No. 2:

Any and all documents supporting or relating to Petitioner's assertion in Paragraph 3 of the Petition to Cancel Registrant's Mark that Registrant's Marks had "been abandoned by Registrant Wrangler Apparel Corp. or its predecessors."

Request for Production No. 3:

Any and all documents supporting or relating to Petitioner's assertion in Paragraph 12 of the Petition to Cancel Registrant's Mark that Registrant "... discontinued all use and abandoned [Registrant's Marks] through non-use more than three years ago. . . ."

Request for Production No. 4:

Any and all documents and things reflecting or referring, in whole or in part, to the decision to adopt the trademark, trade name and/or service mark GITANO.

Request for Production No. 5:

Any and all documents and things reflecting or referring, in whole or in part, to the decision to adopt the trademark, trade name and/or service mark GIANO.

Request for Production No. 6:

Any and all documents and things reflecting or referring, in whole or in part, to either: (i) the consideration of alternative trademarks, trade names and/or service marks; or (ii) the development and/or implementation of a plan or program to actually adopt, use and/or promote GITANO and GIANO as a trademarks, trade names and/or service marks, including, without limitation, any and all documents and things pertaining, in whole or in part, to focus group studies or the services of any advertising, marketing, market research, or public relations firm.

Request for Production No. 7:

With respect to each person whom you expect to provide expert witness testimony in this proceeding, a written report prepared and signed by the witness, the written report containing:

- (a) a complete statement of all opinions to be expressed and the basis and reason therefor;
- (b) the date or other information considered by the witness in forming the opinion;
- (c) any exhibits to be used as a summary of or support for the opinion;
- (d) the qualifications of the witness, including a list of all publications authored by the witness within the preceding ten years;
- (e) the compensation to be paid for the study and testimony; and
- (f) a listing of any other lawsuits or legal proceedings in which the witness has testified as an expert at trial or at deposition within the preceding five (5) years.

Request for Production No. 8:

Any and all documents and things depicting, relating or referring to the use (or proposed use) of Petitioner's Marks in conjunction with the promotion or provision of Petitioner's and/or other person's or entity's products and/or services, including, without limitation, promotional literature, printed advertisements, business cards, signage, radio and television commercials, and website content.

Request for Production No. 9:

Representative documents that identify each of Petitioner's related companies (e.g., parent companies, divisions, subsidiaries, affiliates, etc.), if any exist, and organizational charts for Petitioner and each related company.

Request for Production No. 10:

All documents and things referring or relating to the earliest use of the Petitioner's Marks by Petitioner and by other persons and entities licensed or otherwise authorized by Petitioner.

Request for Production No. 11:

All documents and things referring or relating to the application, issuance, use, licensing, enforcement or challenges to any state trademark registrations for Petitioner's Marks.

Request for Production No. 12:

All documents and things referring or relating to the acquisition of the right to use the Petitioner's Marks or any related mark from any other person or predecessor in interest.

Request for Production No. 13:

All documents and things referring or relating to the selection, searching for, or availability for use or registration of the Petitioner's Marks.

Request for Production No. 14:

All documents and things referring or relating to any use of the Petitioner's Marks by others on or in conjunction with any goods or services.

Request for Production No. 15:

All documents and things referring or relating to any applications by Petitioner to register the Petitioner's Marks or any variants thereof whether or not such applications were successful or matured into a registration, or were unsuccessful or did not mature into a registration.

Request for Production No. 16:

Profit and loss statements and all other documents and things referring or relating to the amount of revenues derived from products and business activities conducted under Petitioner's Marks by Petitioner and/or other persons or entities licensed or authorized by Petitioner to use Petitioner's Marks.

Request for Production No. 17:

All documents and things referring or relating to the annual (or other periodic) sums spent to advertise, market or otherwise promote products and services under Petitioner's Marks

by Petitioner and/or other persons or entities licensed or authorized by Petitioner to use Petitioner's Marks.

Request for Production No. 18:

All documents and things referring or relating to any communication with any advertising agency, marketing or market research firm, public relations firm, or other consultant or contractor relating to use of the Petitioner's Marks or Registrant's Marks or any variant thereof.

Request for Production No. 19:

All documents and things referring or relating to any consumer survey relating to Petitioner's Marks or Registrant's Marks, including, without limitation, any survey relating to any likelihood or possibility of confusion with any other mark.

Request for Production No. 20:

All documents and things referring or relating to or illustrating any changes or alteration of Petitioner's Marks since its first adoption by Petitioner.

Request for Production No. 21:

All documents and things referring or relating to, and including, any agreement, either written or oral, where Petitioner is a party or beneficiary, concerning any use of any trademark or service mark, including the Petitioner's Marks, including licenses, agency agreements, distributorship agreements, joint venture agreements, maintenance agreements, support agreements, etc.

Request for Production No. 22:

All documents and things referring or relating to any objection or complaint by any third party regarding Petitioner's use of the Petitioner's Marks or any variant thereof.

Request for Production No. 23:

All documents and things referring or relating to Petitioner's awareness of Registrant's Marks.

Request for Production No. 24:

Any and all documents and things relating or referring, in whole or in part, to confusion, mistake or deception arising from use of the Petitioner's Marks, including, without limitation: (i) each instance in which Petitioner or its agents explained to some third party that Petitioner or its products or services, or other person or entity licensed or authorized by Petitioner to use the Petitioner's Marks or products or services of such other person or entity, is not affiliated with, sponsored by, or otherwise connected with the Registrant or its products or services; and (ii) each instance in which a third party indicated that it thought Petitioner or its products or services, or other person or entity licensed or authorized by Petitioner to use the Petitioner's Marks or products or services of such other person or entity, is or might be affiliated with, sponsored by, or otherwise connected with the Registrant or its products and services.

Request for Production No. 25:

All documents and things referring or relating to any complaints or other statements by any third party about any goods or services offered by Petitioner, or any person or entity licensed

or authorized by Petitioner to use Petitioner's Marks, under Petitioner's Marks or any other mark calling into question the quality of such goods or services.

Request for Production No. 26:

All documents and things comparing use of the Petitioner's Marks by Petitioner or any person or entity licensed or authorized by Petitioner to use Petitioner's Marks, to Registrant's use of the Registrant's Marks.

Request for Production No. 27:

All documents and things that refer or relate to the types or classes of clients or customers of products or services offered under Petitioner's Marks by Petitioner or any person or entity licensed or authorized by Petitioner to use Petitioner's Marks.

Request for Production No. 28:

All documents and things that refer or relate to the channels of trade for products or services offered by Registrant, or by Petitioner or other persons or entities authorized by Petitioner to use Petitioner's Marks.

Request for Production No. 29:

(a) Documents sufficient to identify each client, customer or other person who has received products or services under Petitioner's Marks from Registrant or other persons or entities authorized by Petitioner to use Petitioner's Marks.

(b) Documents sufficient to identify each additional prospective client or customer who has contacted Petitioner or other persons or entities authorized by Petitioner to use Petitioner's Marks, or who has been directly contacted by Petitioner or other persons or entities authorized by Petitioner to use Petitioner's Marks, concerning the offering of products or services under Petitioner's Marks.

Request for Production No. 30:

An organizational chart and other documents identifying each of Petitioner's principals, including each officer, director, and managing agent, and their respective responsibilities.

Request for Production No. 31:

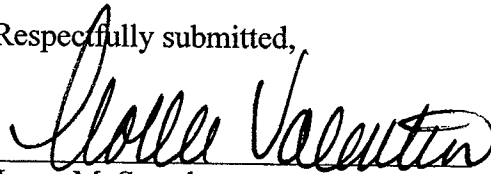
An organizational chart and other documents identifying each of Petitioners's related companies (e.g., parent companies, divisions, subsidiaries, affiliates, etc.) as well as each predecessor or successor in interest, including acquired or acquiring companies.

Request for Production No. 32:

All documents and things identifying all locations of facilities of Petitioner and of each of Petitioner's related companies (e.g., parent companies, divisions, subsidiaries, affiliates, etc.) from which Petitioner's or Petitioner's related companies' business is conducted, and identifying the manager(s) for each such location.

Date: May 29th, 2008

Respectfully submitted,



Jason M. Sneed

Larry C. Jones

Noelle T. Valentine

Alston & Bird LLP

101 S. Tryon Street, Suite 4000

Charlotte, NC 28280-4000

Tel.: (704) 444-1000

Fax: (704) 444-1111

Email: Jason.Sneed@Alston.com;

Larry.Jones@Alston.com;


Noelle.Valentine@alston.com

*Attorneys for Registrant,
Wrangler Apparel Corp.*

Certificate of Filing

It is hereby certified that the foregoing *Registrant's First Request for the Production of Documents and Things* has been served upon counsel for Petitioner by first class mail, postage prepaid, this 29th of May, 2008, addressed as follows:

Michael A. Grow
Elizabeth H. Cohen
Alec Rosenberg
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036



Attorney for Registrant

TAB 2

ALSTON & BIRD LLP

Bank of America Plaza
101 South Tryon Street, Suite 4000
Charlotte, NC 28280-4000

704-444-1000
Fax: 704-444-1111
www.alston.com

Noelle T. Valentine

Direct Dial: 704-444-1014

E-mail: noelle.valentine@alston.com

March 11, 2009

VIA FACSIMILE 202-857-6395 & FIRST CLASS MAIL

Ms. Elizabeth Cohen
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036

Re: *Babytown, Inc. v. Wrangler Apparel Corp., Cancellation No. 92048423*

Dear Ms. Cohen:

According to our records, the suspension of the above referenced cancellation proceeding lifts on Wednesday, March 12, 2009.

To date, we have not received Babytown's responses to our discovery requests, which were served on May 29, 2008. Please provide these responses by Friday, March 13, 2009.

Our records also indicate that discovery is set to close in this matter on March 17, 2009. Given that we have not yet received discovery Babytown's responses, we ask for your consent to extend the close of discovery and the testimony periods by forty-five (45) days, as follows:

Discovery closes	May 1, 2009
Petitioner's pretrial disclosures	June 15, 2009
Petitioner's testimony period to close (opening 30 days thereto)	July 30, 2009
Registrant's pretrial disclosures	August 14, 2009
Registrant's testimony period to close (opening 30 days thereto)	September 28, 2009
Petitioner's rebuttal disclosures	October 13, 2009

Ms. Elizabeth Cohen
March 11, 2009
Page 2

Petitioner's rebuttal testimony period to close
(opening 15 days prior thereto) November 12, 2009

Lastly, enclosed please find a *Notice of Rule 30(b)(6) Deposition of Babytown, Inc. and Wrangler Apparel Corp.'s Notice of Deposition of Eily Khallouf*. We have noticed the depositions for Wednesday, March 25, 2009. Please advise if you will accept service for Mr. Khallouf and agree to produce him without the necessity of a subpoena.

We look forward to hearing from you.

Sincerely,



Noelle T. Valentine

cc: Jason M. Sneed, Esq.
enclosures

LEGAL02/31187985v1

TAB 3

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

In the Matter of Registration Nos. 1,119,681 and 1,511,720
Registrant: Wrangler Apparel Corp.

BABYTOWN, INC.)

Petitioner,)

v.)

) Cancellation No. 92048423

WRANGLER APPAREL CORP.)

Registrant.)

NOTICE OF 30(b)(6) DEPOSITION OF BABYTOWN, INC.

PLEASE TAKE NOTICE that Registrant, Wrangler Apparel Corp. ["Wrangler"], will take the testimony upon oral examination of the Petitioner, Babytown, Inc. ["Babytown"], regarding the subject matter listed hereinafter pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure and the provisions of 37 C.F.R. 2.120.

Babytown, is directed, pursuant to Rule 30(b)(6), to designate one or more officers, directors, managing agents, or other persons who consent and are knowledgeable to testify on Babytown's behalf as to matters known or reasonably available to Babytown with regard to each of the topics identified on the List of Topics, below. It is understood that Babytown, in response to this Notice, may have to identify and produce several different deponents to respond to the subject matters set forth below.

The deposition will take place at the offices of Alston & Bird LLP, 90 Park Avenue, New York, NY 10016, at 9:00 a.m. on Wednesday, March 25, 2009, or at such other time and place as

may be agreed in advance by counsel for the parties. This deposition shall be taken by video, sound and/or stenographic means and shall continue from day to day until completed.

List of Deposition Topics

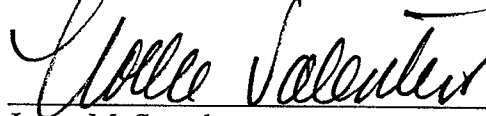
1. The corporate structure and organization, products, and services of Babytown, Inc., and its related companies (collectively referred to hereinafter as "Babytown").
2. Babytown's adoption and use of the trademarks GITANO and GIANO and any variants or derivations thereof.
3. Babytown's awareness of the use of the mark GITANO by Registrant, Wrangler Apparel Corp., or any related company prior to Babytown's first use of the trademarks GITANO and GIANO.
4. Babytown's allegations that Registrant, Wrangler Apparel Corp., abandoned its registered marks, GITANO and GITANO SPORT & Design.
5. The marketing, promotion, advertising and sales of products by Babytown under the marks GITANO and GIANO.
6. The channels of trade by which Babytown has sold, sells, and/or intends to sell its products under the marks GITANO and GIANO.
8. Those facts, if any, known to Babytown regarding each company and/or other person (i.e., other than the parties to this proceeding and their related companies) known or believed by Babytown to have used or to be using in the United States the designations GITANO, GIANO, or any similar mark or designation.
9. The content and factual bases of Babytown's responses to Registrant's interrogatories, and the creation, meaning and use of those documents produced in response to

Registrant's requests for production.

10. The communications and dealings between Petitioner and Registrant and their respective agents, employees and representatives.

Date: March 11th, 2009

Respectfully submitted,



Jason M. Sneed

Larry C. Jones

Noelle T. Valentine

Alston & Bird LLP

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Charlotte, NC 28280-4000

Tel.: (704) 444-1000

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Email: Jason.Sneed@Alston.com;

Larry.Jones@Alston.com;

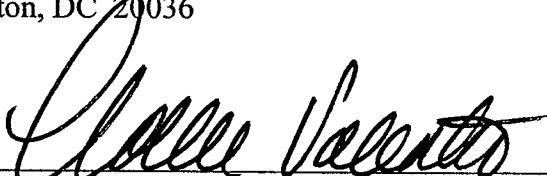
Noelle.Valentine@alston.com

*Attorneys for Registrant,
Wrangler Apparel Corp.*

Certificate of Filing

It is hereby certified that the foregoing *Notice of 30(b)(6) Deposition of Babytown, Inc.*, has been served upon counsel for Petitioner by first class mail, postage prepaid, this 11th of March, 2009, addressed as follows:

Elizabeth H. Cohen
Arent Fox LLP
1050 Connecticut Avenue, NW
Washington, DC 20036



Attorney for Registrant