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

Proceeding	92055404
Party	Defendant Black Point Marine, LLC
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Attachments	2013-01-21 Registrant's Motion to Compel.pdf (43 pages)(640929 bytes)

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

In the Matter of Registration No.: 3,821,920
For the Mark: BLACKFIN & Design
Date of Registration: 07/20/2010

Black Fin Yacht Corporation

Petitioner,

v.

Black Point Marine, LLC

Registrant

Cancellation No. 92055404

**REGISTRANT'S COMBINED MOTION TO COMPEL
AND MOTION TO EXTEND DISCOVERY AND TRIAL DATES**

Pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Registrant Black Point Marine, LLC ("Registrant") respectfully moves the Board for an order compelling Petitioner Black Fin Yacht Corporation ("Petitioner") to respond to Registrant's First Set of Interrogatories and Registrant's First Requests for the Production of Documents Nos. 1-100 without objections.

In addition, Registrant requests an extension of the discovery period for the limited purpose of allowing Registrant (and not Petitioner) time to review Petitioner's discovery responses as ordered by the Board, and to pursue followup discovery if necessary. Registrant also requests that the testimony period be pre-set to follow close of discovery.

Such an order is appropriate because Petitioner has failed entirely to respond to Registrant's Interrogatories and Document Requests. Counsel for Registrant has made repeated good faith efforts to resolve the issues with Petitioner but, to date, such efforts have been unsuccessful.

I. BACKGROUND

On March 29, 2012, Petitioner filed a Petition for Cancellation of Registration No. 3,821,920 for Registrant's mark BLACKFIN & Design for "boats and yachts." Registrant asserts, among other things, that it owns the marks shown in pending application Serial No. 77746747 and Registration No. 1287835 (expired in February 2005) for boats and yachts. As grounds for opposition, Registrant alleges priority of use and likelihood of confusion under Section 2(d) of the Trademark Act, Abandonment under Trademark Act §14, and fraud. (Not. of Opp. ¶¶ 1-25). On March 29, 2012 this Board notified Petitioner that its service of process was defective, directed Petitioner to serve the owner of record of the subject Registration, and entered a case Scheduling Order. On May 8, 2012 Registrant waived Petitioner's defective service of process and timely filed its Answer to the Petition for Cancellation.

On October 30, 2012, Petitioner inquired whether Registrant would agree to a joint motion to extend all remaining deadlines. Petitioner agreed to a 90 day extension. With no motion for an extension having been filed by Petitioner as of November 16, 2012, Registrant filed the Motion to Extend which was granted on the same date.

On November 26, 2012, Registrant served the Petitioner with Registrant's First Set of Interrogatories to Petitioner and Registrant's First Request for Production of Documents Nos. 1-100. (Copies of these Interrogatories and Requests are attached as

Exhibits A and B, respectively.) Responses to Registrant's discovery requests were due December 26, 2012.

By December 30, 2012, having received no response to the above-described discovery requests from Petitioner, Registrant contacted Petitioner via email to inquire as to Petitioner's intentions. Petitioner responded on December 31, 2012 and asked for a two week extension. Registrant agreed to an extension of time to respond until and including January 11, 2013.

By January 21, 2013, having received no response to the above-described discovery requests from Petitioner, nor any request for a second extension of time to serve said response, and with the Discovery Period scheduled to end on March 4, 2013, Registrant was compelled to file this motion.

II. MOTION TO COMPEL

A. Registrant Has Made a Good Faith Effort to Work With Petitioner

In accordance with Trademark Rule 2.120(e), Registrant submits that it has made a good faith effort to resolve with Petitioner the issues presented in the motion. Specifically, Registrant has given Petitioner ample extensions of time to respond to the Requests. As detailed above, Petitioner has not responded at all to Registrant's discovery requests nor sought any further extensions of the January 11, 2013 deadline. Petitioner is simply ignoring its obligation to respond altogether.

B. Petitioner Forfeited its Right to Object

The Trademark Trial and Appeal Board Manual of Procedure ("TBMP") provides that a party which fails to respond to discovery interrogatories or document requests during the time allowed therefor, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the

propounding party, to have forfeited its right to object to discovery on the merits. See TBMP §§ 403.03 and 407.01, *citing Bison Corp. v. Perfecta Chemie B.V.*, 4 U.S.P.Q.2d 1718 (TTAB 1987); *Luehrmann v. Kwik Kopy Corp.*, 2 U.S.P.Q.2d 1303 (TTAB 1987).

Petitioner's discovery responses were due, on or before December 26, 2012. Accordingly, Registrant respectfully requests that the Board order Petitioner to fully respond to Registrant's First Set of Interrogatories and First Requests for the Production of Documents *without objections* within twenty days from the mailing date of the Board's order on this motion.

III. MOTION TO EXTEND

In accordance with Fed. R. Civ. P. 6(b), Registrant hereby moves the Board for a sixty (60) day extension of the discovery period for the limited purpose of allowing Registrant (and not Petitioner) time to review Petitioner's discovery responses as ordered by the Board, and to pursue follow-up discovery if necessary, including depositions. Registrant also requests an extension of the testimony periods.

Registrant has been diligent during the discovery period and has served responses to Petitioner's First Set of Interrogatories, First Request for Admissions and First Request for Production of Documents. Petitioner has provided no discovery responses whatsoever and is unfairly compromising Registrant's ability to defend the instant proceeding. Registrant also made a good faith effort to resolve this matter before filing a motion to compel. Petitioner, on the other hand, has had eight weeks in which to respond to discovery, but has done nothing.

Registrant does not seek an extension of time for purposes of delay. It is requested that the limited sixty (60) day extension run from the date of service of Petitioner's discovery responses as ordered by the Board, and that the discovery period

be otherwise closed. Registrant also requests an extension of the testimony period to follow the re-set discovery period.

IV. CONCLUSION

For the reasons stated above, Registrant respectfully requests that the Board grant Registrant's motion to compel and order Petitioner to respond to Registrant's First Set of Interrogatories and Registrant's First Requests for the Production of Documents *without objections* within twenty (20) days from the mailing date of the Board's ruling on the motion. Registrant also respectfully requests that the Board grant Registrant's motion for an extension of the discovery period from March 4, 2013 until May 3, 2013 for the limited purpose of allowing Registrant (and not Petitioner) time to review Petitioner's discovery responses as ordered by the Board, and to pursue follow-up discovery if necessary. Registrant requests that the testimony period be re-set to follow close of discovery.

Dated: January 21, 2013

Respectfully submitted,

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CERTIFICATE OF SERVICE

I hereby certify that on **January 21, 2013**, a true and exact copy of the foregoing REGISTRANT'S COMBINED MOTION TO COMPEL AND MOTION TO EXTEND DISCOVERY AND TRIAL DATES has been furnished, pursuant to agreement of the parties, by email on the same date to the following:

Claudio Rivera, Esq. Claudio Rivera, P.A. P.O. Box 166018 Miami, Florida 33116 (305) 271-2703 (Ph) (305) 271-2706 (Fx) Email: cr@criveralaw.com Attorney for Petitioner

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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Registrant

Cancellation No. 92055404

REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER

COMES NOW, Black Point Marine, LLC (hereinafter "Registrant"), by and through its undersigned counsel and pursuant to Rule 2.120 of the Rules of Practice in Trademark Cases as set out in Title 37 of the Code of Federal Regulations ("CFR"), the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), and the applicable Federal Rules of Civil Procedure ("FRCP"), including but not limited to Rules 26, 33 and 34, and serves the following First Set of Interrogatories on Petitioner Black Fin Yacht Corporation ("Petitioner"), and asks that that these Interrogatories be answered separately and completely in writing, under oath, within the time permitted.

Take notice that these Interrogatories and Requests for Production shall be deemed continuing pursuant to Rule 26, and supplemental Responses should be provided as they arise. If any Interrogatory or Request for Production or portion thereof cannot be answered fully, it should be answered to the extent possible, and the reason for not fully answering included in the response.

DEFINITIONS

A. Unless specifically stated to the contrary, the term "**Petitioner**" shall refer to Black Fin Yacht Corporation, a Florida Corporation, (Doc. #P05000058101) and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting on behalf of it, and shall include any parent corporation, or wholly-owned or partially-owned subsidiary, predecessor, successor, or affiliate either within the United States or a foreign country.

B. The term "**Registrant**" shall refer to Black Point Marine, LLC and any present or former owner, officer, director, employee, servant, agent, attorney, or other representative acting on its behalf, and shall include any parent, corporation, or wholly-owned or partially-owned subsidiary, predecessor, successor, or affiliate either within the United States or a foreign country.

C. The terms "**you**" and "**your**" refer to Petitioner and include any agents, officers, employees, representatives, subsidiaries, parent companies, and affiliated companies.

D. The term "**document**" shall mean a writing, recording, photograph, or document as defined by Rule 1001 of the Federal Rules of Evidence, Rule 34 of the Federal Rules of Civil Procedure, and includes any document, originals and copies, in the possession, custody or control of Registrant or counsel, or known to Registrant or counsel and shall include all materials and tangible objects conveying or carrying spoken, visual or literal substance. By way of example and not by way of limitation said term includes, but is not limited to, the original and any non-identical copy, regardless of origin or location, correspondence, letters, diaries, memoranda, journals, notes, logs, calendars, appointment books, rolodex cards/address books, messages, message pads/books, minutes, books, published materials, periodicals, magazines, newspapers, booklets, brochures, instructions, invoices, purchase orders, records, bills, books of account, contracts, agreements, orders, receipts, price lists, studies, drawings or sketches, films, pictures photographs, electronic mail, tapes or discs capable of being mechanically read, advertising or promotional literature, operating manuals or instruction bulletins, cables or telegrams, telexes, teletype printouts, maps, charts, graphs, analyses, schedules, surveys, tables, test data, reports, tape or other recordings, HTML code, and Internet website pages, other communications (including, but not limited to, inter- and intra-office communications), notebooks, scrapbooks, data sheets, data processing cards, data processing machine or computer printouts and tapes or retrieval listings, photographs, photographic negatives, film, videotape, audiotape, drawings, forms, catalogs, manuals, blueprints, tracings, tabulations and any other matter of any kind, regardless of the manner in which produced which you have or had access to or possession or control of, or of which you have knowledge.

E. The term "**thing**" shall mean, without limitation, any tangible thing containing or exhibiting any information or communication or having the ability to convey or exhibit the same through any medium whatsoever and shall be construed in the most comprehensive sense permitted under Rule 34 of the Federal Rules of Civil Procedure.

F. The terms "**disclosing**" or "**referring to**" or "**relating to**" shall mean pertaining to, mentioning, commenting on, connected with, discussing, describing, analyzing, explaining, showing, reflecting, evidencing, dealing with, comprising of, consisting of, containing, constituting, resulting from, or recording a particular subject in whole or in part and either directly or indirectly.

G. The term "**and**" means "**or**" and vice versa, as necessary to bring within the scope of the discovery request any document, thing, or other information that might otherwise be construed to be outside the scope of such request.

H. The singular includes the plural and the plural includes the singular, as necessary to bring within the scope of the interrogatory any document, thing or outer information that might otherwise be construed to be outside the scope of such request.

I. The term "**communication(s)**" or "**representation(s)**" includes the disclosure, transfer, or exchange of information by any means, written, verbal, electronic, or otherwise--and should be construed in the broadest possible sense of the words.

J. The term "**contact**" means any communication (telephonic, face-to-face or otherwise), observation, business transaction, meeting, understanding, or agreement, and should be construed in the broadest possible sense of the word.

K. The term "**pertain**" or "**pertaining**" means commenting upon, comprising, consisting of, concerning, reflecting, relating to, referring to, describing, constituting, relevant to, or evidencing, and should be construed in the broadest possible sense of the word.

L. The term "**person**" shall include both natural persons and juridical persons, including business organizations in all forms, and the acts and knowledge of such person are defined to include the acts and knowledge of that other person's directors, officers, members, employees, representatives, agents and attorneys.

M. The term "**Identify**," "**identity**" or "**identification**," when used with respect to a document or documents, means to state the following for each document:

- (a) The title, nature, type and general subject matter of the document with sufficient particularity to enable it to be identified precisely;

- (b) The date or approximate date on which the document was prepared;
- (c) The identity of each person who wrote, authored, signed, initialed, dictated, or otherwise participated in the preparation of the document(s);
- (d) The identity of each person to whom the document was sent or addressed;
- (e) The identity of each person who now has custody of the document;
- (f) The identity of each person who maintained the original or a copy of the document; and
- (g) The identity of the person who provided the document for this response.

N. The term "**trademark**" or "**mark**" includes trademarks, service marks, collective marks, certification marks, and trade names as defined in 15 U.S.C. § 1127.

O. The term "**commerce**" means and refers to commerce between the U.S. states or any other type of commerce with the United States provided for under U.S. trademark law.

P. The "**relevant period**" shall be from 2000 to 2012.

Q. The term "**Petitioner's Marks**" shall mean the marks as alleged in U.S. Cancellation No. 92055404.

R. The term "**Petitioner's goods and services**" shall mean the goods and services as alleged in U.S. Cancellation No. 92055404.

S. The term "**Registrant's Mark**," shall mean the mark as depicted in Registration No. 3,821,920.

T. The term "**BLACKFIN**" shall mean "BLACKFIN" as well as "BLACK FIN."

GENERAL INSTRUCTIONS

1. For the convenience of counsel, the Trademark Trial and Appeal Board, and as suggested by TBMP §407.02, it is requested that each numbered interrogatory be answered by repeating the interrogatory in its entirety and then providing the corresponding response.

2. In multi-part Interrogatories, the separate parts of such Interrogatories are to be read in the context of the entire Interrogatory, but each part is to be answered separately.

3. If the answer to all or any part of the request is not presently known or available, include a statement to that effect, furnish the information known or available, and respond to the entire request by supplemental production within ten days from the time the entire document becomes known or available and in no event less than five days prior to trial.

4. All requests contained in the following Interrogatories to identify a person are to be answered by providing sufficient information to enable the undersigned to contact the person by telephone and mail and to serve legal documents on such person. If such a person is a natural person, state his or her:

- (a) full name;
- (b) current business and residence addresses, including telephone numbers; present employer, occupation, and position;
- (c) a brief description of the job responsibilities of such person; and
- (d) a brief description of the responsibilities of such person with the pertinent organization.

If such a person is other than a natural person, state:

- (a) its full name or designation;
- (b) the legal classification of the entity (e.g., corporation, partnership, etc.), giving the state of organization where appropriate;
- (c) the principal place of business;
- (d) the current or last known address and telephone number of the organization; and
- (e) any other information reasonably necessary to permit efficient contact with the organization.

5. If you elect to assert the attorney-client privilege, work-product immunity, or any other claim of privilege or immunity as to any document or thing or any oral communication for which identification or production is called for herein, you shall properly identify each such document or oral communication by stating or identifying, where appropriate:

- (a) The specific basis of the privilege or immunity being asserted;
- (b) The nature of the document, i.e., whether the document is, for example, a letter or a memorandum;
- (c) The title of the document and any identifying code or file number or name of such document;

- (d) The date appearing on the document or, if none, the answer so shall state and shall state the approximate date the document was prepared;
- (e) All persons who authored, signed, or otherwise prepared or sent the document;
- (f) All persons to whom the document was addressed or copied, or who appear on any circulation list associated with the document, or who otherwise received such document, or to whom it was displayed;
- (g) The present, original, and all intermediate files or locations of the document or thing and each copy thereof, and each person charged with the possession, custody, or control of the document and each copy thereof for each relevant time period;
- (h) The manner in which the oral communication was made, e.g., in person or by telephone;
- (i) The date the oral communication took place;
- (j) The location(s) where the oral communication took place
- (k) Each person who participated in the oral communication;
- (l) Each person who witnessed, overheard, or otherwise has personal knowledge of the oral communication;
- (m) Each person to whom the substance of such oral communication was subsequently communicated;
- (n) A brief but meaningful description of the general subject matter of the document or thing, or oral communication in sufficient detail to permit a determination as to production should Responding Party find it necessary to file a motion to compel under Rule 37 of the Federal Rules of Civil Procedure; and;
- (o) The number of pages of the document or approximate length of the oral communication.

You are not requested to provide privileged information or documents or things for which you claim privilege but only to identify such information, document, or thing.

5. Your obligation to respond to these Interrogatories is continuing, and the response to the following Interrogatories are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

INTERROGATORIES

INTERROGATORY NO. 1

(a) Identify Petitioner and all of Petitioner's parents, subsidiaries, affiliates, and divisions responsible for or involved in the adoption, acquisition, use, or registration of the designation BLACK FIN YACHT, or the manufacture, sale or distribution of goods or the rendering of services that are offered in connection with such mark.

(b) With respect to each entity identified in response to Interrogatory No. 1(a) above, identify each and every good or service that has been, currently is or is planned to be offered or rendered by each such entity under the mark, including the model name, model number, type and length of boat and yacht which Petitioner has sold, currently sells, or intends to sell.

(c) With respect to each boat model identified in response to Interrogatory No. 1(b) above, state the years during which it was produced and sold, and identify representative documents describing, depicting or otherwise evidencing the existence of each such model.

INTERROGATORY NO. 2

(a) Identify Petitioner and all of Petitioner's parents, subsidiaries, affiliates, and divisions responsible for or involved in the adoption, acquisition, use, or registration of the designation BLACK FIN, or the manufacture, sale or distribution of goods or the rendering of services that are offered in connection with such mark.

(b) With respect to each entity identified in response to Interrogatory No. 2(a) above, identify each and every good or service that has been, currently is or is planned to be offered or rendered by each

such entity under the mark, including the model name, model number, type and length of boat and yacht which Petitioner has sold, currently sells, or intends to sell.

(c) With respect to each boat model identified in response to Interrogatory No. 2(b) above, state the years during which it was produced and sold, and identify representative documents describing, depicting or otherwise evidencing the existence of each such model.

INTERROGATORY NO. 3

If Petitioner claims any trademark or service mark rights which may have been established by any predecessor in any mark consisting of or including the term "BLACK FIN YACHT" describe in detail how Petitioner obtained any such rights and identify:

- (a) the person from whom the mark was acquired (including legal name, type of organization, state of organization, and state document number for entity);
- (b) the date of the acquisition;
- (c) the dollar amount paid for the mark;
- (d) all assets transferred with the mark, including but not limited to, any goodwill and the dollar value thereof; all registrations and/or applications for registration of the mark; all other marks, registrations and/or applications for registration thereof, all patents, copyrights, trade secrets, customer lists and/or other intangible assets, and all boat and/or yacht molds, motors and/or equipment (together "related assets");
- (e) all documents evidencing that grantor owned and was actually using the acquired mark in commerce for the five year period preceding Petitioner's acquisition thereof;
- (f) all documents and data pertaining to negotiations for the acquisition of the mark and/or the related assets; and

- (g) all documents evidencing Petitioner's acquisition of the mark and/or the related assets, including any and all stock purchase agreements, asset purchase agreements, bills of sale, assignments or other asset transfer documents.

INTERROGATORY NO. 4

Describe in detail the chain of title supporting Petitioner's claim to ownership of the mark "BLACK FIN YACHT" in connection with Petitioner's goods and services since its dates of actual first commercial use in interstate and intrastate commerce through and including Petitioner's alleged acquisition thereof.

INTERROGATORY NO. 5

If Petitioner claims any trademark or service mark rights which may have been established by any predecessor in any mark consisting of or including the term "BLACK FIN" or any variation thereof, describe in detail how Petitioner obtained any such rights and identify:

- (a) the grantor from whom the mark was acquired (including legal name, type of organization, state of organization, and state document number for entity);
- (b) the date of the acquisition;
- (c) the dollar amount paid for the mark;
- (d) all assets transferred with the mark, including but not limited to, any goodwill and the dollar value thereof; all registrations and/or applications for registration of the mark; all other marks, registrations and/or applications for registration thereof, all patents, copyrights, trade secrets, customer lists and/or other intangible assets, and all boat and/or yacht molds, motors and/or equipment (together "related assets");
- (e) all documents evidencing that grantor owned and was actually using the acquired mark in commerce for the five year period preceding Petitioner's acquisition thereof;
- (f) all documents and data pertaining to negotiations for the acquisition of the mark and/or the related assets; and

- (g) all documents evidencing Petitioner's acquisition of the mark and/or the related assets, including any and all stock purchase agreements, asset purchase agreements, bills of sale, assignments or other asset transfer documents.

INTERROGATORY NO. 6

Describe in detail the chain of title supporting Petitioner's claim to ownership of the mark "BLACK FIN" in connection with Petitioner's goods and services since its dates of actual first commercial use in interstate and intrastate commerce through and including Petitioner's alleged acquisition thereof.

INTERROGATORY NO. 7

If Petitioner authorized or permitted any third party to use any of Petitioner's Marks, or any similar mark, through license, consent, other authorization, or by failure to assert its trademark or service mark rights against any third party, identify each such third party, each such incident, the term during which the third party was, is or will be able to use Petitioner's mark or similar mark, the geographic area in which the third party was, is or will be able to use Petitioner's Mark or similar mark and all documents pertaining to the negotiation for and granting of such license, consent or other authorization.

INTERROGATORY NO. 8

With regard to each good and service identified in response to Interrogatory No. 1(b) and 2(b) above, separately identify the amount of sales, in units and dollars, by entity, for each good and service sold or promoted under each of Petitioner's Marks, for each of the years 2000 to date.

INTERROGATORY NO. 9

(a) State the dates of actual first commercial use in interstate and intrastate commerce by Petitioner (not its predecessors) of each of Petitioner's Marks in connection with each of Petitioner's good and services.

- (b) Identify all documents evidencing the dates identified in response to Interrogatory No. 9(a).

(c) With respect to the first occasions on which each of Petitioner's Marks were used by Petitioner in both interstate and intrastate commerce, identify the manner in which Petitioner's Marks were first used on or in connection with Petitioner's goods and services, including, without limitation, how each mark was affixed and its location on the advertising, labeling, packaging or product.

(d) For each of Petitioner's goods and services, state whether each of Petitioner's Marks have been used continuously in connection with such goods and services and, if not, state the dates of non-use and the reasons and circumstances therefor.

INTERROGATORY NO. 10

Identify the channels of trade and classes of customers to which Petitioner has offered, currently offers and plans to offer each of Petitioner's goods and services.

INTERROGATORY NO. 11

Identify the name, date and location of all trade shows at which Petitioner's goods and services identified have been or, within the next two years, are planned to be, displayed or otherwise advertised and identify all persons who attended or are expected to attend such trade shows on behalf of Petitioner.

INTERROGATORY NO. 12

Identify those persons presently or previously employed by or associated with Petitioner during the relevant time period who are, or were at any time, principally responsible for the creation and development of Petitioner's Marks and the offering, marketing, promotion or advertising of goods and services under Petitioner's Marks, indicating specific periods during which each person was responsible and the precise bounds of his or her responsibilities.

INTERROGATORY NO. 13

For each of Petitioner's Marks, identify the geographical areas in which Petitioner:

- (a) offers, has offered or plans to offer each of Petitioner's goods and services; and
- (b) advertises, has advertised or plans to advertise each of Petitioner's goods and services.

INTERROGATORY NO. 14

Identify each location and manner of sale by which each of Petitioner's goods and services has been, is or is planned to be offered or sold under Petitioner's Marks.

INTERROGATORY NO. 15

(a) Identify each advertising or promotional activity proposed, considered or undertaken by Petitioner with respect to each of Petitioner's goods and services.

(b) Identify each advertisement or item of promotional material bearing any of Petitioner's Marks that has been, is currently, or is planned to be used by Petitioner to advertise or promote Petitioner's goods and services.

(c) State separately by year, as well as by location (city and/or county), Petitioner's annual advertising and promotion expenditures and expenditures of other corporate resources since Jan. 1, 2000, which are attributable to the advertising or promotion of Petitioner's goods and services, separately itemizing these costs for each good and service and by each form of media (e.g., radio, television, newspapers, magazines, trade journals).

INTERROGATORY NO. 16

If Petitioner conducted, or caused to be conducted, a search, investigation, inquiry or review regarding Petitioner's Mark or any mark similar thereto, identify:

(a) Each such search, investigation, inquiry or review by the type of search, investigation, inquiry or review and the date each search, investigation, inquiry or review was conducted and by whom each was performed;

(b) The persons who requested each search, investigation, inquiry or review;

(c) The results of each search, investigation, inquiry or review with regard to marks uncovered which were identical with or contained elements similar to Petitioner's Mark; and

(d) Each and every person who received or reviewed the results of each search, investigation, inquiry or review.

INTERROGATORY NO. 17

Identify all articles published in any media which refer to Petitioner's use of Petitioner's mark from 2000 to the present.

INTERROGATORY NO. 18

Identify any controversy or proceeding, other than the present proceeding between the parties, in which Petitioner has been or is currently involved regarding Petitioner's use or proposed use of any of Petitioner's Marks including, without limitation, proceedings alleging that the use of marks by third parties are confusingly similar to any of Petitioner's Marks, as well as any other proceedings before the T.T.A.B., the Bureau of Customs, the FTC, or any court, and identify all documents and data relating to or involved in such controversy or proceeding.

INTERROGATORY NO. 19

State how and when Petitioner first became aware of Registrant's use or proposed use of Registrant's Mark in connection with goods or services offered by Registrant.

INTERROGATORY NO. 20

Identify any and all communications between Petitioner and Registrant or Petitioner and third parties regarding Petitioner's and/or Registrant's application, use, proposed use or registration of any of Petitioner's Marks and Registrant's Mark, respectively.

INTERROGATORY NO. 21

If Petitioner is aware of or is in possession of any evidence of actual confusion or mistaken belief as to origin, endorsement, approval or sponsorship (i) in the trade or (ii) among the public between Registrant's Mark and any of Petitioner's Marks or the source of the goods or services associated with said marks, describe with particularity each instance of confusion, including the identity of the person who was

confused, the nature and substance of any inquiry, conversation or communication made by each such person, the substance of Petitioner's response, if any, and all documentation reflecting, relating to or referring to each such instance of confusion.

INTERROGATORY NO. 22

Describe the nature and basis of any objection Petitioner has ever received to its use or registration of any of any of Petitioner's Marks and identify, for each objection, from whom it was received, when it was received and the disposition of the matter.

INTERROGATORY NO. 23

Identify each objection Petitioner has made to the use by others of any trademark or service mark believed by Petitioner to be confusingly similar to any of Petitioner's Marks, describe the present status or outcome of such objections and identify all documents relating thereto.

INTERROGATORY NO. 24

Identify each officer, director, managing agent or employee of Petitioner who has knowledge of the facts alleged or presented by Petitioner in this cancellation proceeding, and identify the facts about which the officer, director, managing agent or employee has knowledge.

INTERROGATORY NO. 25

Identify Rolando Maiquez or any person who's name is similar thereto, describe the nature of his relationship with Petitioner, state whether said individual has knowledge of the facts alleged or presented by Petitioner in this cancellation proceeding, and identify the facts about which said individual has knowledge.

INTERROGATORY NO. 26

Identify the agency to which any application for a state or federal trademark or service mark registration for any of Petitioner's Marks was made by Petitioner, the identification number and the date of

filing of each such application, and describe the present status or outcome of each application, date of last action on the application and the present status of any registration.

INTERROGATORY NO. 27

Identify each expert witness whose testimony Petitioner expects to offer in this proceeding and provide a complete statement of all opinions to be expressed and the bases and reasons therefore; the information, data and documents considered by the expert in forming these opinions; the expert's area of expertise; the qualifications of the expert, including a list of all publications authored by the expert within the preceding ten years; the compensation to be paid the expert, and a listing of other cases or proceedings in which the expert has testified as an expert at trial or by deposition within the preceding five years.

INTERROGATORY NO. 28

State Petitioner's policy, or describe its practice, regarding the retention of documents and things.

INTERROGATORY NO. 29

Identify each person who supplied information that was considered or used in the preparation of any of the answers to the foregoing interrogatories, and identify the answers for which each such person supplied information.

Dated: November 26, 2012

MASSINGER LAW OFFICES

/s/Douglas Wm. Massinger
Douglas Wm. Massinger
USPTO Reg. No. 35,942
MASSINGER LAW OFFICES
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massinger@earthlink.net
Attorney for Registrant
Black Point Marine, LLC

CERTIFICATE OF SERVICE

I hereby certify that on **November 26, 2012**, a true and exact copy of the foregoing REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER has been furnished, pursuant to agreement of the parties, by email on the same date to the following:

Claudio Rivera, Esq.
Claudio Rivera, P.A.
P.O. Box 166018
Miami, Florida 33116
(305) 271-2703 (Ph)
(305) 271-2706 (Fx)
Email: cr@criveralaw.com
Attorney for Petitioner

/s/Douglas Wm. Massinger
Douglas Wm. Massinger
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Attorney for Registrant
Black Point Marine, LLC

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

In the Matter of Registration No.: 3,821,920
For the Mark: BLACKFIN & Design
Date of Registration: 07/20/2010

Black Fin Yacht Corporation

Petitioner,

v.

Black Point Marine, LLC

Registrant

Cancellation No. 92055404

**REGISTRANT'S FIRST REQUEST FOR
PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-100**

Pursuant to the Rules of Practice in Trademark Cases as set out in Title 37 of the Code of Federal Regulations ("CFR"), the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), and the applicable Federal Rules of Civil Procedure ("FRCP"), Petitioner Black Fin Yacht Corporation (hereinafter referred to as "Petitioner") is hereby required to produce the following documents and things for inspection and copying at Massinger Law Offices, 887 NE 100th Street, Ocala, Florida 34479 or such other place as may be agreed between the parties, within thirty (30) days of service hereof. Alternatively, Petitioner may fulfill its obligation to produce the requested documents by attaching complete and legible copies of the original documents to their written responses to Registrant's First Set of Requests for Production ("Document Requests" or "Requests for Production") prior to the service of the same upon Registrant. Petitioner may be requested to supplement its responses from time to time as appropriate in accordance with FRCP 26(e).

DEFINITIONS

A. Unless specifically stated otherwise, the term "**Petitioner**" shall refer to Black Fin Yacht Corporation, a Florida Corporation, (Doc. #P05000058101) and any present or former owner, officer, director, employee, servant, agent, attorney or other representative acting on behalf of it, and shall include any parent corporation, or wholly-owned or partially-owned subsidiary, predecessor, successor, or affiliate either within the United States or a foreign country.

B. The term "**Registrant**" shall refer to Black Point Marine, LLC and any present or former owner, officer, director, employee, servant, agent, attorney, or other representative acting on its behalf, and shall include any parent corporation, or wholly-owned or partially-owned subsidiary, predecessor, successor, or affiliate either within the United States or a foreign country.

C. The terms "**you**" and "**your**" refer to Petitioner and include any agents, officers, employees, representatives, subsidiaries, parent companies, and affiliated companies.

D. The term "**document**" shall mean a writing, recording, photograph, or document as defined by Rule 1001 of the Federal Rules of Evidence, Rule 34 of the Federal Rules of Civil Procedure, and includes any document, originals and copies, in the possession, custody or control of Registrant or counsel, or known to Registrant or counsel and shall include all materials and tangible objects conveying or carrying spoken, visual or literal substance. By way of example and not by way of limitation said term includes, but is not limited to, the original and any non-identical copy, regardless of origin or location, correspondence, letters, diaries, memoranda, journals, notes, logs, calendars, appointment books, rolodex cards/address books, messages, message pads/books, minutes, books, published materials, periodicals, magazines, newspapers, booklets, brochures, instructions, invoices, purchase orders, records, bills, books of account, contracts, agreements, orders, receipts, price lists, studies, drawings or sketches, films, pictures photographs, electronic mail, tapes or discs capable of being mechanically read, advertising or promotional literature, operating manuals or instruction bulletins, cables or telegrams, telexes, teletype printouts, maps, charts, graphs, analyses, schedules, surveys, tables, test data, reports, tape or other recordings, HTML code, and Internet website pages, other communications (including, but not limited to, inter- and intra-office communications), notebooks, scrapbooks, data sheets, data processing cards, data processing machine or computer printouts and tapes or retrieval listings, photographs, photographic negatives, film, videotape, audiotape, drawings, forms, catalogs, manuals, blueprints, tracings, tabulations and any other matter of any kind, regardless of the manner in which produced which you have or had access to or possession or control of, or of which you have knowledge.

E. The term "**thing**" shall mean, without limitation, any tangible thing containing or exhibiting any information or communication or having the ability to convey or exhibit the same through any medium whatsoever and shall be construed in the most comprehensive sense permitted under Rule 34 of the Federal Rules of Civil Procedure.

F. The terms "**disclosing**" or "**referring to**" or "**relating to**" shall mean pertaining to, mentioning, commenting on, connected with, discussing, describing, analyzing, explaining, showing, reflecting, evidencing, dealing with, comprising of, consisting of, containing, constituting, resulting from, or recording a particular subject in whole or in part and either directly or indirectly.

G. The term "**and**" means "**or**" and vice versa, as necessary to bring within the scope of the discovery request any document, thing, or other information that might otherwise be construed to be outside the scope of such request.

H. References to the singular shall be construed to be plural and references to the plural shall be construed to be singular, as necessary, in order to bring within the scope of each request all responses which might otherwise be construed to be outside its scope.

I. The term "**communication(s)**" or "**representation(s)**" includes the disclosure, transfer, or exchange of information by any means, written, verbal, electronic, or otherwise--and should be construed in the broadest possible sense of the words.

J. The term "**contact**" means any communication (telephonic, face-to-face or otherwise), observation, business transaction, meeting, understanding, or agreement, and should be construed in the broadest possible sense of the word.

K. The term "**pertain**" or "**pertaining**" means commenting upon, comprising, consisting of, concerning, reflecting, relating to, referring to, describing, constituting, relevant to, or evidencing, and should be construed in the broadest possible sense of the word.

L. The term "**person**" shall include both natural persons and juridical persons, including business organizations in all forms, and the acts and knowledge of such person are defined to include the acts and knowledge of that other person's directors, officers, members, employees, representatives, agents and attorneys.

M. The term "**trademark**" or "**mark**" includes trademarks, service marks, collective marks, certification marks, and trade names as defined in 15 U.S.C. § 1127.

N. The term "**commerce**" means and refers to commerce between the U.S. states or any other type of commerce with the United States provided for under U.S. trademark law.

- O. The "**relevant time period**" shall be from 1998 to 2012, unless specified otherwise.
- P. The term "**Petitioner's Marks**" shall mean the marks as alleged in U.S. Cancellation No. 92055404.
- Q. The term "**Petitioner's goods and services**" shall mean the goods and services as alleged in U.S. Cancellation No. 92055404.
- R. The term "**Registrant's Mark**," shall mean the mark as depicted in Registration No. 3,821,920.
- S. The term "**BLACK FIN**" shall mean "**BLACK FIN**" as well as "**BLACKFIN.**"

GENERAL INSTRUCTIONS

1. If you claim that any documents or things requested are privileged, please produce all documents or things falling within the scope of the Request which are not privileged and identify with sufficient particularity for purposes of a Motion to Compel a Response or Production each document or thing, separately, with respect to which you claim a privilege, and state:

- a. the basis on which the privilege is claimed;
- b. the author or creator of the document or thing;
- c. each individual or other person to whom the document, copy thereof, or thing was sent or otherwise disclosed;
- d. the date of the document;
- e. the type of document (e.g., letter, memorandum, etc.); and
- f. the general subject matter of the document.

You are not requested to provide privileged documents or things for which you claim privilege but only to identify such documents or things.

2. If any document or thing which you would have produced in response to any Request for Production was, but is no longer, in your present possession or subject to your control or is no longer in existence, please state whether any such document or thing is:

- a. missing or lost;
- b. destroyed;
- c. transferred to others; or
- d. otherwise disposed of, and in such instance, set forth the surrounding circumstances and any authorization of such disposition and state the approximate

date of any such disposition, and the present location and custodian of such document or thing.

3. The documents produced pursuant to these Requests for Production shall be separately produced for each paragraph of the Request for Production or, in the alternative, shall be identified as complying with the particular paragraphs of the Requests for Production to which they are responsive.

4. Petitioner's obligation to respond to these Requests for Production is continuing, and the responses to the following Request for Production are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS**REQUEST FOR PRODUCTION NO.1:**

Representative documents sufficient to establish a clear chain of title to the mark "BLACK FIN YACHT" from its first owner through Petitioner's alleged acquisition of said mark.

REQUEST FOR PRODUCTION NO.2:

Representative documents sufficient to establish a clear chain of title to the mark "BLACK FIN" from its first owner through Petitioner's alleged acquisition of said mark.

REQUEST FOR PRODUCTION NO.3:

For each mark referenced by Petitioner in its Petition for Cancellation, all documents relating to the ownership of such mark, including but not limited to all assignment agreements, license agreements, security agreements, and recordation documents.

REQUEST FOR PRODUCTION NO.4:

All agreements, to which Petitioner is a party, relating to the use, by any party, of one or more of Petitioner's Marks.

REQUEST FOR PRODUCTION NO.5:

A copy of every agreement in which Petitioner has consented, agreed, or otherwise condoned the use by another party of any mark consisting of or including the term "BLACK FIN."

REQUEST FOR PRODUCTION NO.6:

All agreements, to which Petitioner is a party, relating to the application and/or registration, by any party, of Petitioner's Marks.

REQUEST FOR PRODUCTION NO.7:

Copies of all consent or co-existence agreements executed by or on behalf of Petitioner.

REQUEST FOR PRODUCTION NO.8:

Copies of all consent, concurrent use, and/or or co-existence agreements executed by or on behalf of Petitioner.

REQUEST FOR PRODUCTION NO.9:

All agreements to which Petitioner and Blackfin Boats, Inc. (FL Secretary of State Doc. ID# P11000107458; FEI/EIN No. 454084312) are parties.

REQUEST FOR PRODUCTION NO.10:

All agreements to which Petitioner and Defender Yacht Corp. (FL Secretary of State Doc. ID# 500020; FEI/EIN No. 591660522; Reg. Agent Martin Alvarez), are parties.

REQUEST FOR PRODUCTION NO.11:

All agreements to which Petitioner and Blackfin Marine International, Inc. (FL Secretary of State Doc. ID# P03000050211; FEI/EIN No. 562358289) are parties.

REQUEST FOR PRODUCTION NO.12:

All agreements to which Petitioner and RST Unlimited, Inc., Thomas Russell t/a Defender Yachts International, or Ruby Yachts, are parties.

REQUEST FOR PRODUCTION NO.13:

All agreements to which Petitioner and Black Fin Yacht Corporation (FL Secretary of State Doc. ID# FL J73432) are parties.

REQUEST FOR PRODUCTION NO.14:

All agreements to which Petitioner and Carl M. Herndon are parties.

REQUEST FOR PRODUCTION NO.15:

Copies of all documents pertaining to Petitioner's acquisition of the mark "BLACK FIN YACHT."

REQUEST FOR PRODUCTION NO.16:

All agreements to which Petitioner and Revenge Marine are parties.

REQUEST FOR PRODUCTION NO.17:

All agreements to which Petitioner and any of the following are parties:

1. HSPC Acquisition Corp.
2. Alvin Wright
3. Vincent Sedeno d/b/a Boat Cradles Unlimited Plus
4. Big Game Classics, Inc.
5. Defender Yacht Corp. (FL Secretary of State Doc. ID# P02000069829; FEI/EIN No. 270380844)
6. Salt Shaker Marine Custom Yachts, Inc.
7. HSPC/Salt Shaker LLC
8. 3333 Aventura Realty Corp
9. Salt Shaker Marine Fabrications, Inc..

REQUEST FOR PRODUCTION NO.18:

All agreements to which Petitioner and Caterpillar Financial Services Corporation are parties.

REQUEST FOR PRODUCTION NO.19:

All agreements concerning U.S. Trademark Registration No. 1,500,457 for the mark BLACKFIN & Design.

REQUEST FOR PRODUCTION NO.20:

All agreements concerning U.S. Trademark Application Serial No. 78/349,899 for the word mark BLACKFIN filed by Robert Nils Ackerbloom on January 9, 2004.

REQUEST FOR PRODUCTION NO.21:

All agreements to which Petitioner and Robert Nils Ackerbloom are parties.

REQUEST FOR PRODUCTION NO.22:

All agreements concerning U.S. Registration No. 1,287,835.

REQUEST FOR PRODUCTION NO.23:

All agreements concerning U.S. Trademark Application Serial No. 77/375,752 for the word mark BLACK FIN YACHT filed by Black Fin Yacht Corporation on January 18, 2008.

REQUEST FOR PRODUCTION NO.24:

All agreements concerning U.S. Trademark Application Serial No. 77/383,339 for the mark BLACK FIN YACHT filed by Martin Alvarez on May 15, 2009.

REQUEST FOR PRODUCTION NO.25:

All agreements to which Petitioner and Martin Alvarez are parties.

REQUEST FOR PRODUCTION NO.26:

Representative documents and things referring or relating to the creation, selection, or adoption of Petitioner's Marks, including but not limited to, those sufficient to identify each person who participated in the creation, selection, or adoption of Petitioner's Marks or any variation thereof.

REQUEST FOR PRODUCTION NO.27:

Representative documents and things referring or relating to the first use of the mark "BLACK FIN" by Petitioner (and not any of its alleged predecessors).

REQUEST FOR PRODUCTION NO.28:

Representative documents and things referring or relating to the first use in commerce of the mark "BLACK FIN" by Petitioner (and not any of its alleged predecessors).

REQUEST FOR PRODUCTION NO.29:

Representative documents and things referring or relating to the first use of the mark "BLACK FIN YACHT" by Petitioner (and not any of its alleged predecessors).

REQUEST FOR PRODUCTION NO.30:

Representative documents and things referring or relating to the first use in commerce of the mark "BLACK FIN YACHT" by Petitioner (and not any of its alleged predecessors).

REQUEST FOR PRODUCTION NO.31:

Representative documents and things referring or relating to Petitioner's continuous use in commerce of the mark "BLACK FIN" for each year beginning with 1974 to present.

REQUEST FOR PRODUCTION NO.32:

Representative documents and things referring or relating to Petitioner's continuous use in commerce of the mark "BLACK FIN YACHT" for each year beginning with 1998 to present.

REQUEST FOR PRODUCTION NO.33:

Representative documents and things referring or relating to any discontinuation of use by Petitioner or its alleged predecessors for a period of six months or more, and any resumption of use, of each of Petitioner's Marks during the period 1998 to the present.

REQUEST FOR PRODUCTION NO.34:

Representative specimens of use depicting use of the mark "BLACK FIN" directly on boats and yachts during each year beginning with 1974 to present.

REQUEST FOR PRODUCTION NO.35:

Representative specimens of use depicting use of the mark "BLACK FIN YACHT" directly on boats and yachts during each year beginning with 1998 to present.

REQUEST FOR PRODUCTION NO.36:

Representative specimens of use, such as brochures, letters, signage, solicitations, and any other documents and things, which illustrate how Petitioner has displayed the mark "BLACK FIN" in connection with Petitioner's goods and services during each year beginning with 1974 to present.

REQUEST FOR PRODUCTION NO.37:

Representative specimens of use, such as brochures, letters, signage, solicitations, and any other documents and things, which illustrate how Petitioner (and not its alleged predecessors) has used the mark "BLACK FIN YACHT" in connection with Petitioner's goods and services during each year beginning with 2005 to present.

REQUEST FOR PRODUCTION NO.38:

Representative specimens of use, such as brochures, letters, signage, solicitations, and any other documents and things, which illustrate how Petitioner is currently using the mark "BLACK FIN" in connection with Petitioner's goods and services.

REQUEST FOR PRODUCTION NO.39:

Representative specimens of use, such as brochures, letters, signage, solicitations, and any other documents and things, which illustrate how Petitioner is currently using the mark "BLACK FIN YACHT" in connection with Petitioner's goods and services.

REQUEST FOR PRODUCTION NO.40:

Representative documents and things sufficient to identify each publication by name through which Petitioner has advertised, advertises or intends to advertise goods or services branded with any of Petitioner's Marks.

REQUEST FOR PRODUCTION NO.41:

Representative documents and things sufficient to identify Petitioner's channels of distribution to ultimate consumers, including but not limited to, those sufficient to identify each of the channels of distribution through which Petitioner sells, advertises, or promotes Petitioner's goods and services sold under each of Petitioner's Marks during the relevant time period.

REQUEST FOR PRODUCTION NO.42:

Representative documents and things sufficient to identify each boat show that Petitioner or its representative has attended as a vendor of Petitioner's "BLACK FIN" boats or yachts during the relevant time period.

REQUEST FOR PRODUCTION NO.43:

Representative documents and things sufficient to identify each boat show that Petitioner or its representative has attended as a vendor of Petitioner's "BLACK FIN YACHT" boats or yachts during the relevant time period.

REQUEST FOR PRODUCTION NO.44:

All documents indicating the identity, the dates of employment, and job responsibilities of Petitioner's employees or agents who have had, or will have, any responsibility for advertising goods and services sold under each of Petitioner's Marks.

REQUEST FOR PRODUCTION NO.45:

Representative documents and things to demonstrate the specific geographic regions (e.g. each city and/or state) in which Petitioner (and not its alleged predecessors) has advertised Petitioner's goods and services under the mark "BLACK FIN."

REQUEST FOR PRODUCTION NO.46:

Representative documents and things to demonstrate the specific geographic regions (e.g. each city and/or state) in which Petitioner's predecessors have advertised goods and services under the mark "BLACK FIN."

REQUEST FOR PRODUCTION NO.47:

Representative documents and things to demonstrate the specific geographic regions (e.g. each city and/or state) in which Petitioner (and not its alleged predecessors) has advertised Petitioner's goods and services under the mark "BLACK FIN YACHT."

REQUEST FOR PRODUCTION NO.48:

Representative documents and things to demonstrate the specific geographic regions (e.g. each city and/or state) in which Petitioner's predecessors have advertised goods and services under the mark "BLACK FIN YACHT."

REQUEST FOR PRODUCTION NO.49:

Representative documents and things to demonstrate the specific geographic regions (e.g. each city and/or state) in which Petitioner (and not its alleged predecessors) has sold Petitioner's goods and services under the mark "BLACK FIN."

REQUEST FOR PRODUCTION NO.50:

Representative documents and things to demonstrate the specific geographic regions (e.g. each city and/or state) in which Petitioner's predecessors have sold goods and services under the mark "BLACK FIN."

REQUEST FOR PRODUCTION NO.51:

Representative documents and things to demonstrate the specific geographic regions (e.g. each city and/or state) in which Petitioner (and not its alleged predecessors) has sold Petitioner's goods and services under the mark "BLACK FIN YACHT."

REQUEST FOR PRODUCTION NO.52:

Representative documents and things to demonstrate the specific geographic regions (e.g. each city and/or state) in which Petitioner's predecessors have sold goods and services under the mark "BLACK FIN YACHT."

REQUEST FOR PRODUCTION NO.53:

Representative documents and things showing Petitioner's annual sales, in both units and dollars, for Petitioner's goods and services sold under the mark "BLACK FIN" since its first use by Petitioner.

REQUEST FOR PRODUCTION NO.54:

Representative documents and things showing Petitioner's annual sales, in both units and dollars, for Petitioner's goods and services sold under the mark "BLACK FIN YACHT" since its first use by Petitioner.

REQUEST FOR PRODUCTION NO.55:

All sales receipts for goods sold under Petitioner's Marks.

REQUEST FOR PRODUCTION NO.56:

All of Petitioner's federal income tax returns, and all schedules and other attachments thereto, filed during the years 2005 through 2012.

REQUEST FOR PRODUCTION NO.57:

Any and all documents filed by Petitioner with the U.S. Coast Guard in connection with Petitioner's sale of boats or yachts under the mark "BLACK FIN."

REQUEST FOR PRODUCTION NO.58:

Any and all documents filed by Petitioner with the U.S. Coast Guard in connection with Petitioner's sale of boats or yachts under the mark "BLACK FIN YACHT."

REQUEST FOR PRODUCTION NO.59:

Representative documents and things showing Petitioner's annual licensing revenues for Petitioner's goods and services sold under the mark "BLACK FIN" since its first use by Petitioner.

REQUEST FOR PRODUCTION NO.60:

Representative documents and things showing Petitioner's annual licensing revenues for Petitioner's goods and services sold under the mark "BLACK FIN YACHT" since its first use by Petitioner.

REQUEST FOR PRODUCTION NO.61:

Representative documents and things showing Petitioner's annual advertising expenditures for Petitioner's goods and services sold under the mark "BLACK FIN" since its first use by Petitioner.

REQUEST FOR PRODUCTION NO.62:

Representative documents and things showing Petitioner's annual advertising expenditures for Petitioner's goods and services sold under the mark "BLACK FIN YACHT" since its first use by Petitioner.

REQUEST FOR PRODUCTION NO.63:

All trademark search reports that disclose a mark consisting of or including the term "BLACK FIN."

REQUEST FOR PRODUCTION NO.64:

All reports regarding any searching or investigation conducted by or on behalf of Petitioner concerning any mark consisting of or including the term "BLACK FIN."

REQUEST FOR PRODUCTION NO.65:

Representative documents and things showing Petitioner's awareness of any use by any other person of a mark consisting of or including the term "BLACK FIN."

REQUEST FOR PRODUCTION NO.66:

Representative documents and things showing Petitioner's awareness of applications and/or registrations owned by any other person of any mark consisting of or including the term "BLACK FIN."

REQUEST FOR PRODUCTION NO.67:

Representative documents sufficient to identify all marks used by third-parties consisting of or including the term "BLACK FIN" of which Petitioner has become aware.

REQUEST FOR PRODUCTION NO.68:

Representative documents sufficient to show goods and/or services offered by an entity other than Petitioner under a trade name, service mark, and/or any mark consisting of or including the term "BLACK FIN."

REQUEST FOR PRODUCTION NO.69:

For each mark referenced by Petitioner in its Petition for Cancellation, all studies, surveys, research and/or other information indicating the consumer recognition of such mark.

REQUEST FOR PRODUCTION NO.70:

Representative documents and things sufficient to show all instances in which a third-party has objected to Petitioner's use of a mark consisting of or including the term "BLACK FIN."

REQUEST FOR PRODUCTION NO.71:

Representative documents sufficient to identify all disputes in which Petitioner has been involved concerning any mark consisting of or including the term "BLACK FIN."

REQUEST FOR PRODUCTION NO.72:

Representative documents sufficient to identify all instances in which the Petitioner's ownership of any of Petitioner's Marks has been challenged.

REQUEST FOR PRODUCTION NO.73:

Representative documents sufficient to identify all instances in which the Petitioner's right to use any mark consisting of or including the term "BLACK FIN" has ever been challenged.

REQUEST FOR PRODUCTION NO.74:

Representative documents and things to show all other litigation, inter partes proceedings and/or controversies in which Petitioner has been involved concerning a mark consisting of or including the term "BLACK FIN" including all resulting agreements, decisions, judgments, orders, and opinions.

REQUEST FOR PRODUCTION NO.75:

A copy of all correspondence sent by or on behalf of Petitioner in which Petitioner's alleged rights in a mark consisting of or including the term "BLACK FIN" are discussed, including, but not limited to all demand letters and cease-and-desist letters, as well as responses to demand letters and cease-and-desist letters.

REQUEST FOR PRODUCTION NO.76:

A copy of all letter(s) of protest filed by or on behalf of Petitioner in connection with any mark consisting of or including the term "BLACK FIN."

REQUEST FOR PRODUCTION NO.77:

Representative documents and things showing Petitioner's awareness of Registrant's application for, registration of, and/or use of any mark consisting of or including the term "BLACK FIN."

REQUEST FOR PRODUCTION NO.78:

A copy of all correspondence prepared and/or sent by Petitioner to Registrant.

REQUEST FOR PRODUCTION NO.79:

All documents and things relating to any instance of actual confusion due to Registrant's use of Registrant's Mark of which Petitioner is aware.

REQUEST FOR PRODUCTION NO.80:

Representative documents and things sufficient to show any communication received by Petitioner which was intended for Registrant.

REQUEST FOR PRODUCTION NO.81:

Representative documents sufficient to evidence the exercise of quality control over goods and services produced and or sold by Petitioner's licensee(s) under Petitioner's Marks.

REQUEST FOR PRODUCTION NO.82:

Representative documents sufficient to explain Petitioner's document retention policy and/or practice.

REQUEST FOR PRODUCTION NO.83:

For any witnesses from whom Petitioner intends to solicit expert testimony, produce representative documents and things sufficient to include:

- (a) a complete statement of all opinions the witness will express and the basis and reasons for them;
- (b) the data or other information considered by the witness in forming them;
- (c) any exhibits that will be used to summarize or support them;
- (d) the witness' qualifications, including a list of all publications authored in the previous 10 years;
- (e) a list of all other cases in which, during the previous 4 years, the witness testified as an expert at trial or by deposition; and
- (f) a statement of the compensation to be paid for the study and testimony in this case.

REQUEST FOR PRODUCTION NO.84:

Representative documents and things sufficient to identify each class of purchasers of Petitioner's goods or services branded with any of Petitioner's Marks.

REQUEST FOR PRODUCTION NO.85:

Representative documents and things sufficient to identify each class of users (i.e., the ultimate consumers of such goods or services) of Petitioner's goods or services branded with each of Petitioner's Marks.

REQUEST FOR PRODUCTION NO.86:

Representative documents and things sufficient to identify each and every model of boat and yacht which Petitioner has sold, currently sells, or intends to sell under each of Petitioner's Marks.

REQUEST FOR PRODUCTION NO.87:

Representative documents and things sufficient to identify any plans by Petitioner to expand the number or type of products or services under which any of Petitioner's Marks is used, to alter the present channels of distribution, or to sell to persons other than Petitioner's present customers.

REQUEST FOR PRODUCTION NO.88:

Representative documents and things that support Petitioner's contention in Petitioner's Petition for Cancellation that "Registrant Black Point Marine LLC has not sold or promoted any of its products before or after the application for "Blackfin" was filed."

REQUEST FOR PRODUCTION NO.89:

Representative documents and things that support Petitioner's contention in Petitioner's Petition for Cancellation that "Black Point Marine LLC has not in the past, and is not currently offering boats or yachts under the "Blackfin" trademark."

REQUEST FOR PRODUCTION NO.90:

Representative documents and things that support Petitioner's contention in Petitioner's Petition for Cancellation that "Black Point Marine intends not to resume bona fide use of the "Blackfin" mark in the ordinary course of trade."

REQUEST FOR PRODUCTION NO.91:

Representative documents and things that support Petitioner's contention in Petitioner's Petition for Cancellation that "Black Point Marine LLC has abandoned the "Blackfin" mark."

REQUEST FOR PRODUCTION NO.92:

Representative documents and things that support Petitioner's contention in Petitioner's Petition for Cancellation that "as part of its specimen of use, Black Point Marine in support of its application attached a specimen of a boat that had already been discontinued years before the application and had never been sold by Black Point Marine"

REQUEST FOR PRODUCTION NO.93:

Representative documents and things that support Petitioner's contention in Petitioner's Petition for Cancellation that "Black Point Marine has not sold any boats or yachts with the mark "Blackfin" affixed to it."

REQUEST FOR PRODUCTION NO.94:

Representative documents and things that support Petitioner's contention in Petitioner's Petition for Cancellation that "as of July 20, 2010, Black Point Marine had not used the "Blackfin" trademark in commerce for more than five years prior to the date of registration."

REQUEST FOR PRODUCTION NO.95:

Representative documents and things that support Petitioner's contention in Petitioner's Petition for Cancellation that "as of July 20, 2010, Black Point Marine had not used the "Blackfin" trademark in commerce since the date of registration."

REQUEST FOR PRODUCTION NO.96:

Representative documents and things that support Petitioner's contention in Petitioner's Petition for Cancellation that "Black Point Marine new that its statements regarding use of the "Blackfin" trademark were false at the time such statements were made on its behalf."

REQUEST FOR PRODUCTION NO.97:

Representative documents and things that support Petitioner's contention in Petitioner's Petition for Cancellation that "Black Point Marine knew that the specimen submitted with its trademark application was not a current specimen showing Black Point Marine's current use of the "Blackfin" trademark at that time."

REQUEST FOR PRODUCTION NO.98:

All documents and things identified in Petitioner's Initial Disclosures.

REQUEST FOR PRODUCTION NO.99:

All documents and things identified in response to Registrant's First Set of Interrogatories to Petitioner.

DOCUMENT REQUEST NO.100:

All documents and things identified in, reviewed for, referring to, relating to, or concerning Registrant's responses to Petitioner's requests for Admissions.

Dated: November 26, 2012

MASSINGER LAW OFFICES

/s/Douglas Wm. Massinger
Douglas Wm. Massinger
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Black Point Marine, LLC

CERTIFICATE OF SERVICE

I hereby certify that on **November 26, 2012**, a true and exact copy of the foregoing REGISTRANT'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS AND THINGS NOS. 1-100 has been furnished, pursuant to agreement of the parties, by email on the same date to the following:

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