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Filing date: **10/16/2014**

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

Proceeding	92058262
Party	Plaintiff Fitness Labs Nutrition Corporation
Correspondence Address	JAYE G HEYBL KOPPEL PATRICK HEYBL & PHILPOTT 2815 TOWNSGATE ROAD , SUITE 215 WESTLAKE VILLAGE, CA 91361 UNITED STATES generalmail@koppelpatent.com, jheybl@koppelpatent.com, cdonald-son@koppelpatent.com, jjirkovsky@koppelpatent.com
Submission	Motion to Compel Discovery
Filer's Name	JAYE G. HEYBL
Filer's e-mail	generalmail@koppelpatent.com, jheybl@koppelpatent.com, cdonald-son@koppelpatent.com, jjirkovsky@koppelpatent.com
Signature	/jgh/
Date	10/16/2014
Attachments	531-77-009 Petitioner's Motion to Compel Discovery Disclosures 10-16-2014.pdf(962169 bytes)

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

In the Matter of Trademark Registration No. 3,446,095

Mark: FITLAB NATURALS

Owner: DXB, Inc., a Florida Corporation

Fitness Labs Nutrition Corp., a California Corporation,)	
)	Cancellation No. 92058262
Petitioner)	
)	
v.)	
)	
DXB, Inc., a Florida Corporation)	
)	
)	
Registrant)	

PETITIONER'S MOTION TO COMPEL DISCOVERY DISCLOSURES

Pursuant to 37 C.F.R. § 2.120, Fitness Labs Nutrition Corp. ("Petitioner"), through its counsel, hereby requests an order compelling Registrant's Initial Disclosures as required by 37 C.F.R. §§ 2.120(a)(2) and 2.120(a)(3), and Fed. R. Civ. P. 26(a)(1).

1. Under the order issued by the Board on January 7, 2014, initial disclosures of both parties were due to be served on the opposing party by April 8, 2014.
2. On April 8, 2014, counsel for Petitioner served its initial disclosures upon Registrant. Petitioner did not receive any disclosures from Registrant.
3. On April 22, 2014, counsel for Petitioner emailed counsel for Registrant inquiring as to the status of Registrant's initial disclosures. A copy of this email can be seen in Exhibit A.
4. On May 15, 2014, having not received a response to its April 22 email, counsel for Petitioner again emailed counsel for Registrant inquiring as to the status of Registrant's initial disclosures. A copy of this email can be seen in Exhibit A.
5. On May 16, 2014, counsel for Registrant responded that counsel for Petitioner would receive a communication from Registrant during the week of May 18 to May 24. A copy of this email can be seen in Exhibit A.
6. On May 30, 2014, counsel for Petitioner sent a draft copy of a Motion to Compel to counsel for Registrant, stating that the motion would be filed on or after June 6, 2014 should initial disclosures not be received before that date. A copy of this email can be seen in Exhibit A.
7. On June 5, 2014, counsel for Respondent stated that he would provide initial disclosures by June 12, 2014. Counsel for Petitioner responded by stating that should disclosures not be received by June 12, a motion to compel would be filed. Counsel for Petitioner further stated that "(g)iven our leniency with deadlines thus far, we do want to let you know that we don't plan to allow extensions on any further deadlines unless there are truly extenuating circumstances beyond those you have mentioned." A copy of this email can be seen in Exhibit A.

8. On June 12, 2014, counsel for Respondent called counsel for Petitioner requesting an extension to June 13, 2014. Counsel for Petitioner agreed to accept initial disclosures on the morning of June 13.
9. On June 13, 2014, counsel for Respondent served its initial disclosures upon Petitioner.
10. On August 13, 2014, counsel for Petitioner served Interrogatories and Requests for Production to counsel for Respondent. Copies of these emails can be seen in Exhibits B and C, respectively.
11. As of 30 days after service, on September 12, 2014, Respondent had not answered any of Petitioner's discovery requests.
12. On September 24, 2014, counsel for Petitioner emailed counsel for Respondent requesting answers to Petitioner's discovery requests. A copy of this email can be seen in Exhibit D.
13. On October 7, 2014, having not received an answer to its email of September 24, 2014, counsel for Petitioner again emailed counsel for Respondent requesting answers to Petitioner's discovery requests. Counsel for Petitioner requested that counsel for Respondent "(p)lease advise, as otherwise we plan to begin drafting a Motion to Compel for filing with the TTAB." A copy of this email can be seen in Exhibit D.
14. As of the filing of this Motion, no responses to Petitioner's discovery requests served on August 13, 2014 have been served on Petitioner.
15. Petitioner respectfully requests that the Board issue an order compelling Registrant to immediately respond to Petitioner's discovery requests.

WHEREFORE, Petitioner respectfully requests that the Board issue an order which requires Registrant to provide full and complete responses to Petitioner's discovery requests.

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

In the Matter of Trademark Registration No. 3,446,095

Mark: FITLAB NATURALS

Owner: DXB, Inc., a Florida Corporation

Fitness Labs Nutrition Corp., a California Corporation,)	Cancellation No. 92058262
)	
Petitioner)	
)	
v.)	
)	
DXB, Inc., a Florida Corporation)	
)	
)	
Registrant)	

**DECLARATION OF COREY A. DONALDSON IN SUPPORT OF
MOTION TO COMPEL AND MOTION FOR SANCTIONS**

I, Corey A. Donaldson, declare as follows:


1. I am an attorney working for Koppel, Patrick, Heybl & Philpott, the attorneys of record
Petitioner Fitness Labs, Inc.
2. Copies of the Interrogatories and Requests for Production served upon Respondent
DXB, Inc. are attached hereto as Exhibits E and F.
3. I have made a good faith effort, through communications to Kenneth Schaefer, attorney
of record for Respondent, to resolve the issues presented in the accompanying Motion
to Compel Discovery Disclosures.

4. Mr. Schaefer has been unresponsive to my attempts to resolve these issues.

Respectfully submitted,
KOPPEL PATRICK HEYBL & PHILPOTT

October 16, 2014

By:


COREY A. DONALDSON
Attorney for Petitioner

KOPPEL PATRICK HEYBL & PHILPOTT
2815 Townsgate Rd., Ste. 215
Westlake Village, CA 91361
805-373-0060

EXHIBIT A

Corey Donaldson

From: Corey Donaldson
Sent: Thursday, June 05, 2014 2:13 PM
To: kenneth schaefer
Cc: Jaye G. Heybl; Jennifer Jirkovsky
Subject: RE: Cancellation No. 92058262; Our Docket No. 531-77-009

Hi Ken,

Thanks for getting in touch. We look forward to receiving your disclosures by June 12, and will file a Motion to Compel on June 13 if none are received. Given our leniency with deadlines thus far, we do want to let you know that we don't plan to allow extensions on any further deadlines unless there are truly extenuating circumstances beyond those you have mentioned.

Best,

Corey A. Donaldson
Associate Attorney
KOPPEL PATRICK HEYBL & PHILPOTT

From: kenneth schaefer [mailto:kenschaefer@msn.com]
Sent: Thursday, June 05, 2014 1:25 PM
To: Corey Donaldson
Subject: RE: Cancellation No. 92058262; Our Docket No. 531-77-009

My client is out of the country for extended periods, making it difficult for me to be certain of timing. I will go to an alternate source for information tomorrow and expect to be able to respond with Initial Disclosures by next Thursday, June 12. I apologize for the holdup but getting back to New Jersey and setting up shop have taken longer than I expected.

Microsoft's cutting off of support for XP hasn't helped. Please hold off on filing your Motion to Compel. Thanks in advance.

KEN SCHAEFER

From: CDonaldson@koppelpatent.com
To: kenschaefer@msn.com
CC: JHeybl@koppelpatent.com; jjirkovsky@koppelpatent.com
Subject: RE: Cancellation No. 92058262; Our Docket No. 531-77-009
Date: Fri, 30 May 2014 16:59:48 +0000

Hi Ken,

I hope all's well on the east coast. Unfortunately, we're still waiting on your initial disclosures. I've attached a Motion to Compel that we plan to file next Friday, June 6, if we haven't heard anything. Please keep us updated. Thanks -

Best,

Corey A. Donaldson
Associate Attorney
KOPPEL PATRICK HEYBL & PHILPOTT

From: kenneth schaefer [<mailto:kenschaefer@msn.com>]
Sent: Friday, May 16, 2014 2:10 PM
To: Corey Donaldson
Subject: RE: Cancellation No. 92058262; Our Docket No. 531-77-009

Corey:
Will get back to you next week. I am on the road this week returning to New Jersey.

KEN SCHAEFER

From: CDonaldson@koppelpatent.com
To: kenschaefer@msn.com
CC: JHeybl@koppelpatent.com; jjirkovsky@koppelpatent.com
Subject: RE: Cancellation No. 92058262; Our Docket No. 531-77-009
Date: Thu, 15 May 2014 23:52:26 +0000
Hi Ken – any word on when we should expect your disclosures? Thanks -

Best,

Corey A. Donaldson
Associate Attorney
KOPPEL PATRICK HEYBL & PHILPOTT

From: Corey Donaldson
Sent: Wednesday, April 23, 2014 10:48 AM
To: kenschaefer@msn.com
Cc: Jaye G. Heybl; Jennifer Jirkovsky
Subject: RE: Cancellation No. 92058262; Our Docket No. 531-77-009

Hi Ken,

I'm just following up as I don't believe we've received your initial disclosures. Can you please advise as to when we should expect them?

Best,

Corey A. Donaldson
Associate Attorney
KOPPEL PATRICK HEYBL & PHILPOTT

From: Jennifer Jirkovsky
Sent: Tuesday, April 08, 2014 2:19 PM
To: kenschaefer@msn.com
Cc: Jaye G. Heybl; Corey Donaldson
Subject: Cancellation No. 92058262; Our Docket No. 531-77-009

Via First Class Mail & E-Mail

Dear Mr. Schaefer,

Please see the attached Petitioner's Initial Disclosure for the above TTAB case.

Sincerely,

Jenny Jirkovsky for Jaye G. Heybl, Esq.

KOPPEL, PATRICK, HEYBL & PHILPOTT
A Professional Law Corporation
2815 Townsgate Road, Suite 215
Westlake Village, CA 91361-5827
www.koppelpatent.com

jjirkovsky@koppelpatent.com | +1 (805) 373-0060 (Ext. 228) | +1 (805) 373-0051 (Fax)

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EXHIBIT B

Corey Donaldson

From: Jennifer Jirkovsky
Sent: Wednesday, August 13, 2014 4:08 PM
To: kenschaefer@msn.com
Cc: Jaye G. Heybl; Corey Donaldson
Subject: Cancellation No. 92058262 FITNESS LABS NUTRITION CORP.'S FIRST SET OF INTERROGATORIES
Attachments: FITNESS LABS NUTRITION CORP.'S FIRST SET OF INTERROGATORIES 8-13-2014.PDF

Via First Class Mail & E-mail

Dear Mr. Schaefer,

Attached please find FITNESS LABS NUTRITION CORP.'S FIRST SET OF INTERROGATORIES for TTAB Cancellation No. 92058262 which were also mailed to you on August 13, 2014.

Best regards,
Jenny Jirkovsky for Jaye G. Heybl, Esq.

KOPPEL, PATRICK, HEYBL & PHILPOTT
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EXHIBIT C

Corey Donaldson

From: Jennifer Jirkovsky
Sent: Wednesday, August 13, 2014 4:09 PM
To: kenschaefer@msn.com
Cc: Jaye G. Heybl; Corey Donaldson
Subject: Cancellation No. 92058262 - FITNESS LABS NUTRITION CORP.'S FIRST SET OF REQUESTS FOR PRODUCTION
Attachments: FITNESS LABS NUTRITION CORP.'S FIRST SET OF REQUESTS FOR PRODUCTION 8-13-2014.PDF

Via First Class Mail & E-mail

Dear Mr. Schaefer,

Attached please find FITNESS LABS NUTRITION CORP.'S FIRST SET OF REQUESTS FOR PRODUCTION for TTAB Cancellation No. 92058262 which were also mailed to you on August 13, 2014.

Best regards,
Jenny Jirkovsky for Jaye G. Heybl, Esq.

KOPPEL, PATRICK, HEYBL & PHILPOTT
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EXHIBIT D

Corey Donaldson

From: Corey Donaldson
Sent: Tuesday, October 07, 2014 10:51 AM
To: 'kenschaefer@msn.com'
Cc: Jaye G. Heybl; Jennifer Jirkovsky
Subject: RE: Cancellation No. 92058262 - FITNESS LABS NUTRITION CORP.'S FIRST SET OF REQUESTS FOR PRODUCTION (KPHP ref. 531-77-009)

Ken – any update on this? Please advise, as otherwise we plan to begin drafting a Motion to Compel for filing with the TTAB.

Best,

Corey A. Donaldson
Associate Attorney
KOPPEL PATRICK HEYBL & PHILPOTT

From: Corey Donaldson
Sent: Wednesday, September 24, 2014 10:03 AM
To: kenschaefer@msn.com
Cc: Jaye G. Heybl; Jennifer Jirkovsky
Subject: RE: Cancellation No. 92058262 - FITNESS LABS NUTRITION CORP.'S FIRST SET OF REQUESTS FOR PRODUCTION (KPHP ref. 531-77-009)

Ken,

Can you please advise when we should expect responses to our interrogatories and requests for production sent on August 13? These are past due, and as you're aware, we were already very lenient with regard to the date you provided your initial disclosures and made clear that continued extensions would not be available. Please advise.

Best,

Corey A. Donaldson
Associate Attorney
KOPPEL PATRICK HEYBL & PHILPOTT

From: Jennifer Jirkovsky
Sent: Wednesday, August 13, 2014 4:09 PM
To: kenschaefer@msn.com
Cc: Jaye G. Heybl; Corey Donaldson
Subject: Cancellation No. 92058262 - FITNESS LABS NUTRITION CORP.'S FIRST SET OF REQUESTS FOR PRODUCTION

Via First Class Mail & E-mail

Dear Mr. Schaefer,

Attached please find FITNESS LABS NUTRITION CORP.'S FIRST SET OF REQUESTS FOR PRODUCTION for TTAB Cancellation No. 92058262 which were also mailed to you on August 13, 2014.

Best regards,
Jenny Jirkovsky for Jaye G. Heybl, Esq.

KOPPEL, PATRICK, HEYBL & PHILPOTT
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EXHIBIT E

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

In the Matter of Trademark Registration No. 3,446,095

Mark: FITLAB NATURALS

Owner: DXB, Inc., a Florida Corporation

Fitness Labs Nutrition Corp., a California Corporation,)	Cancellation No. 92058262
)	
Petitioner)	
)	
v.)	
)	
DXB, Inc., a Florida Corporation)	
)	
)	
Registrant)	

FITNESS LABS NUTRITION CORP.'S FIRST SET OF INTERROGATORIES

Fitness Labs Nutrition Corp. (Fitness Labs) submits its First Set of Interrogatories pursuant to Rule 33 of the Federal Rules of Civil Procedure as follows:

Instructions and Definitions

For purposes of these interrogatories, unless otherwise indicated or unless the context otherwise requires:

1. The term "person," in the case of an individual, shall be construed to include all executive, supervisory, managerial, commercial, sales, technical and scientific personnel, but not to include clerical and manual labor personnel.

2. The term "organization" means any for profit, non-profit or charitable domestic or foreign public or private corporation, partnership or proprietorship, as well as any other business organization, association, company, firm, trustee or legal entity.
3. As used herein, the term "Registrant" refers to DXB, Inc. ("DXB") and the individual Nabil David ("David").
4. The terms "and", "or" and "and/or" shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.
5. The term "each" shall be construed to include the word "every" and "every" shall be construed to include the word "each" as necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.
6. The term "any" shall be construed to include the word "all" and "all" shall be construed to include the word "any" as necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.
7. The term "between" shall be construed to include the word "among" and "among" shall be construed to include the word "between" as necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.
8. The term "identify" when referring to an individual shall mean to state the person's name, present business address, present employer and position held and, if the person is not an employee of Registrant, the person's relationship to Registrant, home address, home telephone number and business telephone number.
9. The term "identify" when referring to a corporation or other organization shall mean to state the organization's name and present business address.

10. The term "identify" when referring to a document shall mean to state the date, type of document, author (with title and designation), recipients(s) (with title and designation), recipients(s) of copies, and custodian and/or location of the document.
11. As used herein, the term "communication" means any oral, written or electronic notation, or statement of any nature whatsoever, by or to whomsoever made, including but not limited to, correspondence, conversations, dialogues, interviews, consultations, agreements, and other understandings, among two or more persons.
12. As used herein, the term "date" or any word relating to a date shall mean the exact day, month and year, if ascertainable, or if not, the best available approximation, including a relationship to other events.
13. The term "document" shall mean a copy of the original and each non-identical copy (whether different from the original because of notes made on the copy or otherwise) or draft of each writing of every kind and description (together with all worksheets, supporting documents, and other relevant material), whether inscribed by hand or mechanical, electronic, microfilm, photographic, or other means (such as recording, film, tape, audiotape, videotape, disc, diskette or other means including data processing files and other computer readable records or programs and all other data compilations from which information can be obtained, transcribed and translated), and including, but not limited to, correspondence, letters, emails, telegrams, messages, TWX's, telephone logs, diaries, teletype messages, memoranda, notes, reports, printouts, records of meetings, conferences or telephone or other conversations or communications, appointment calendars, voice mail messages, studies, statistical analyses, technical analyses, test reports, tabulations, drawings, plans, blueprints, specifications, graphs, books, magazines, newspapers, publications, articles, booklets, pamphlets, circulars, bulletins, brochures, advertising copy, contract bids, contracts, contract addenda, amendments, changes and modifications.
14. The term "goods or services" means any product, item, publication, chattel, commodity, material, assistance, education, advice, aid or labor provided by a person, entity or organization to others.

15. As used herein, the terms "Registrant," "you," and "your" means Registrant and any of its employees, agents, representatives and affiliates.
16. As used herein, the term "Opposer" means Fitness Labs and any of its officers, employees, agents and representatives.
17. As used herein, the term "Registration" refers to DXB's USPTO Registration No. 3,446,095.
18. As used herein, the term "Mark" refers to the term "Fitlab Naturals" as used by Registrant.
19. As used herein, the term "Goods" refers to the goods listed in the Registration, including "Nutritional supplements; Vitamin and mineral supplements."
20. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.
21. A plural noun shall be construed as a singular noun, and a singular noun shall be construed as a plural noun, wherever necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.
22. Definitions provided herein apply to any grammatical variant of the term or phrase defined.

Interrogatories

INTERROGATORY NO. 1

Identify DXB's principal place of business, state of incorporation, and date and circumstances of DXB's prior and current incorporation, and identify all documents that support these facts.

INTERROGATORY NO. 2

Identify any parent, subsidiary, and affiliated company of DXB.

INTERROGATORY NO. 3

Identify any companies with which David is affiliated, including but not limited to companies of which David is a partial or whole owner, board member, officer, or employee.

INTERROGATORY NO. 4

Identify all persons knowledgeable about the selection, adoption, registration, or use by Registrant of Registrant's trademarks in the United States and abroad.

INTERROGATORY NO. 5

Identify the date and circumstances upon which the Mark was selected and first used.

INTERROGATORY NO. 6

For the dates and circumstances listed in the answer for Interrogatory No. 5, identify all documents that support these dates.

INTERROGATORY NO. 7

Identify each and every person knowledgeable about the facts surrounding the Registration, and the person most knowledgeable about such facts.

INTERROGATORY NO. 8

State with particularity your contention that DXB has the exclusive right to the Mark and identify each and every person with knowledge of DXB's alleged rights to the Mark.

INTERROGATORY NO. 9

Identify each and every person with knowledge or information regarding the alleged uninterrupted and continuous use of the Mark by Registrant since the date of first use listed in the Registration, and identify all documents that form the basis for each such person's knowledge and information.

INTERROGATORY NO. 9

Identify each and every person with knowledge or information regarding the alleged first use of the Mark by Registrant, and identify all documents that form the basis for each such person's knowledge and information.

INTERROGATORY NO. 10

Identify each and every document relating to the alleged first use of the Mark.

INTERROGATORY NO. 11

Identify each and every person with knowledge or information regarding any alleged association of the Mark exclusively with Registrant since Registrant's date of first use, and identify all documents that form the basis for each such person's knowledge.

INTERROGATORY NO. 12

If Registrant or anyone acting on its behalf has ever applied to register any trademark for the Goods or similar goods or services, identify all trademarks and each and every person involved in obtaining each trademark and identify each and every document relating to the application(s) and/or registration(s).

INTERROGATORY NO. 13

Identify each and every person with knowledge or information about the marketing, advertising, or promotion with respect to any goods or services offered by Registrant relating to the Mark.

INTERROGATORY NO. 14

Identify all goods and services Registrant currently provides, sells, or markets; intends to provide, sell, or market; or has previously provided, sold, or marketed in connection with the Mark or any similar variations thereof.

Identify each and every instance that Registrant has enforced the Mark and/or the Registration, the person and/or organization against which enforcement was sought, and the circumstances behind the attempted enforcement, including but not limited to the term or terms against which enforcement was sought.

INTERROGATORY NO. 21

State the names, addresses, and the area of expertise of all expert witnesses and all lay witnesses that have knowledge of relevant facts in this case and state briefly what facts and qualifications they possess.

INTERROGATORY NO. 22

List all documents/demonstrative aids you intent to introduce at trial in this matter.

INTERROGATORY NO. 23

Identify all persons who prepared, assisted in the preparation of, or provided information or documents for the responses to foregoing interrogatories or Petitioner's First Request for Production of Documents, indicating for each such person, each separate interrogatory, or request for which he or she assisted in the preparation of response or provision of documents.

Respectfully,
KOPPEL PATRICK HEYBL & PHILPOTT

August 13, 2014

By:


JAYEG. HEYBL
Attorney for Petitioner

KOPPEL PATRICK HEYBL & PHILPOTT
2815 Townsgate Rd., Ste. 215
Westlake Village, CA 91361
805-373-0060

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF VENTURA

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the within action. My business address is 2815 Townsgate Road, Suite 215, Westlake Village, CA 91361.

On August 13, 2014, I caused to be served the following document: FITNESS LABS NUTRITION CORP'S FIRST SET OF INTERROGATORIES on the above action by placing a true copy thereof enclosed in a sealed envelope addressed as follows.

(1) KENNETH R SCHAEFER
104 BAY POINT HARBOUR
POINT PLEASANT, NJ 08742
UNITED STATES
kenschaefer@msn.com

☒ **BY MAIL** I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Westlake Village, California.

☐ **BY FAX** I caused the attached document to be transmitted by facsimile transmission to the offices of the addressee at _____.

☐ **BY FEDERAL EXPRESS** I caused such envelope to be deposited in a mailbox, substation, mail chute or other like facility regularly maintained by Federal Express for receipt of Federal Express packages, in a sealed envelope fully prepaid.

☐ **BY PERSONAL SERVICE** I caused such envelope to be delivered by hand.

☐ **FEDERAL** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

☒ **E-MAIL** I caused the attached document to be transmitted by e-mail to the following e-mail address.

I declare under penalty of perjury, under the laws of the State of California and the United States of America, that the foregoing is true and correct, and that this proof of service was executed on August 13, 2014, at Westlake Village, California.



JENNIFER JIRKOVSKY

EXHIBIT F

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

In the Matter of Trademark Registration No. 3,446,095

Mark: FITLAB NATURALS

Owner: DXB, Inc., a Florida Corporation

Fitness Labs Nutrition Corp., a California Corporation,)	Cancellation No. 92058262
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Petitioner)	
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v.)	
)	
DXB, Inc., a Florida Corporation)	
)	
Registrant)	
)	

FITNESS LABS NUTRITION CORP.'S
FIRST SET OF REQUESTS FOR PRODUCTION

Fitness Labs Nutrition Corp. (Fitness Labs) submits its First Set of Requests for Production pursuant to Rule 34 of the Federal Rules of Civil Procedure as follows:

Instructions and Definitions

Instructions

1. The documents and things specified herein are to be produced for inspection and copying at the offices of Koppel Patrick Heybl & Philpott, 2815 Townsgate Road, Suite 215, Westlake Village, CA 91361, or, if capable of electronic transmission, are to be emailed to Petitioner.

2. These requests require supplemental responses to the full extent required by the Federal Rules of Civil Procedure, and shall be deemed to be continuing requests for supplemental responses.
3. If it is claimed that any requested document is protect by the attorney-client privilege and/or the work product doctrine, such document shall be fully identified. For a document to be "fully identified," you must set forth: (a) the author or originator; (b) the addressee or addressees (if any); (c) the date indicated on the document as being the date thereof or the date (as exactly as possible) upon which the document was written or executed if no date is shown upon it; (d) a description of the type of document, (e.g., letter, handwritten notes, etc.); (e) the number of pages; (f) the title (if any); (g) any identification number; (h) the present location and custodian of the original thereof, or if unknown, the present custodian of any copy thereof and the last known address of each such custodian.
4. As used herein, the term "document" shall mean and include, without limitation, all writings of every kind, source, and authorship, both originals and non-identical copies thereof, in the possession, custody, or control of Registrant (as defined hereafter) or known by Registrant to exist, irrespective of whether the writing is one intended for or transmitted internally by you, or intended for or transmitted to any other person or entity, including, without limitation, any governmental agency, department, administrative or private entity, or person. The term shall also include handwritten, typewritten, printed, photocopies, photographic, or recorded matters. It shall include communications in words, symbols, pictures, sound recordings, film, tapes, videos and information stored in, or accessible through computer or other information storage or retrieval systems, together with codes, and/or programming instructions and other material necessary to understand and use such systems.

For purposes of illustration only, and not limitation, the term "document" shall include affidavits; agendas; agreements; analyses; announcements; bills, statements or other records of obligation and expenditure; books; brochures; bulletins; calendars, canceled checks; vouchers, receipts, and other records of payment; charts; drawings; check registers; checkbooks; circulars; collateral files and contents thereof; contracts; corporate by-laws; corporate charters; correspondence; credit files and contents thereof; deeds of trust; deposit slips; diaries; drafts; emails; files; guaranty agreements; instructions;

invoices; ledgers, journals, balance sheets, profit/loss statements and other sources of financial data; letters, logs, notes or memoranda of telephonic or face-to-face conversations; manuals; memoranda of all kinds to and from any persons, agency, or entity; minutes; minute books; notes; notices; parts lists; papers; press releases; printed matter (including published books, articles, speeches, newspaper clippings; purchase orders; records; records of administrative, technical or financial actions taken or recommended; reports; safety deposit boxes and the contents thereof and records of entry; schedules; security agreements; specifications; statement of bank accounts; statements; interviews; stock and transfer ledgers; technical and engineering reports; telegrams; teletypes and other communication center receipts; transcripts of testimony, U.C.C. instruments; work papers and all other writings, the contents which relate to, discuss, consider, or otherwise refer to the subject matter of the particular discovery requested).

5. Words used in the singular shall, where the context permits, be deemed to include the plural, and words used in the plural shall, where the context permits, be deemed to include the singular. The masculine gender shall, where the context permits, be deemed to include the feminine and neuter genders.
6. If any document requested herein has been discarded, destroyed or otherwise disposed of so as to remove it from the possession, custody or control of Registrant, identify such document as completely as possible by providing the following information:
 - a. each author of the document;
 - b. each person who participated in preparing the document;
 - c. each location of the document;
 - d. each person who received the document or a copy thereof;
 - e. the date of the document;
 - f. the subject matter and the number of pages of the document;
 - g. the form of the document (i.e., letter, memorandum, etc.);
 - h. the reason for non-production of the document;
 - i. each person who authorized destruction, discarding or disposal of the document;
and
 - j. each person who knew or was advised that the document had been destroyed, discarded or disposed of.

- k. When the document was discarded, destroyed or otherwise disposed of.
- 7. The words "and" and "or" shall not be construed to limit the scope of this request due to either their disjunctive or conjunctive form.
- 8. Unless otherwise specified, the following requests pertain to the time period from the earliest date of any activity in relation to the FITLAB NATURALS term.

Definitions

For purposes of these interrogatories, unless otherwise indicated or unless the context otherwise requires:

- 9. The term "person," in the case of an individual, shall be construed to include all executive, supervisory, managerial, commercial, sales, technical and scientific personnel, but not to include clerical and manual labor personnel.
- 10. The term "organization" means any for profit, non-profit or charitable domestic or foreign public or private corporation, partnership or proprietorship, as well as any other business organization, association, company, firm, trustee or legal entity.
- 11. As used herein, the term "Registrant" refers to DXB, Inc. ("DXB") and the individual Nabil David ("David").
- 12. The terms "and", "or" and "and/or" shall be construed either disjunctively or conjunctively, as necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.
- 13. The term "each" shall be construed to include the word "every" and "every" shall be construed to include the word "each" as necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.

14. The term "any" shall be construed to include the word "all" and "all" shall be construed to include the word "any" as necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.
15. The term "between" shall be construed to include the word "among" and "among" shall be construed to include the word "between" as necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.
16. The term "identify" when referring to an individual shall mean to state the person's name, present business address, present employer and position held and, if the person is not an employee of Registrant, the person's relationship to Registrant, home address, home telephone number and business telephone number.
17. The term "identify" when referring to a corporation or other organization shall mean to state the organization's name and present business address.
18. The term "identify" when referring to a document shall mean to state the date, type of document, author (with title and designation), recipients(s) (with title and designation), recipients(s) of copies, and custodian and/or location of the document.
19. As used herein, the term "communication" means any oral, written or electronic notation, or statement of any nature whatsoever, by or to whomsoever made, including but not limited to, correspondence, conversations, dialogues, interviews, consultations, agreements, and other understandings, among two or more persons.
20. As used herein, the term "date" or any word relating to a date shall mean the exact day, month and year, if ascertainable, or if not, the best available approximation, including a relationship to other events.
21. The term "document" shall mean a copy of the original and each non-identical copy (whether different from the original because of notes made on the copy or otherwise) or draft of each writing of every kind and description (together with all worksheets, supporting documents, and other relevant material), whether inscribed by hand or

- mechanical, electronic, microfilm, photographic, or other means (such as recording, film, tape, audiotape, videotape, disc, diskette or other means including data processing files and other computer readable records or programs and all other data compilations from which information can be obtained, transcribed and translated), and including, but not limited to, correspondence, letters, emails, telegrams, messages, TWX's, telephone logs, diaries, teletype messages, memoranda, notes, reports, printouts, records of meetings, conferences or telephone or other conversations or communications, appointment calendars, voice mail messages, studies, statistical analyses, technical analyses, test reports, tabulations, drawings, plans, blueprints, specifications, graphs, books, magazines, newspapers, publications, articles, booklets, pamphlets, circulars, bulletins, brochures, advertising copy, contract bids, contracts, contract addenda, amendments, changes and modifications.
22. The term "goods or services" means any product, item, publication, chattel, commodity, material, assistance, education, advice, aid or labor provided by a person, entity or organization to others.
23. As used herein, the terms "Registrant," "you," and "your" means Registrant and any of its employees, agents, representatives and affiliates.
24. As used herein, the term "Opposer" means Fitness Labs and any of its officers, employees, agents and representatives.
25. As used herein, the term "Registration" refers to DXB's USPTO Registration No. 3,446,095.
26. As used herein, the term "Mark" refers to the term "Fitlab Naturals" as used by Registrant.
27. As used herein, the term "Goods" refers to the goods listed in the Registration, including "Nutritional supplements; Vitamin and mineral supplements."
28. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.

29. A plural noun shall be construed as a singular noun, and a singular noun shall be construed as a plural noun, wherever necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.
30. Definitions provided herein apply to any grammatical variant of the term or phrase defined.

Requests for Production

REQUEST FOR PRODUCTION NO. 1

All documents relating to the Registration, including but not limited to all documents sent to or received from the U.S. Patent and Trademark Office, and all communications by or between trademark counsel and Registrant.

REQUEST FOR PRODUCTION NO. 2

All documents concerning communications between Registrant and any infringer, potential infringer, or accused infringer of any alleged intellectual property rights relating to the Mark.

REQUEST FOR PRODUCTION NO. 3

All documents evidencing your contention that Registrant has exclusive rights to the Mark.

REQUEST FOR PRODUCTION NO. 4

All documents evidencing knowledge or information regarding the date and circumstances upon which the Mark was selected and first used.

REQUEST FOR PRODUCTION NO. 5

All documents evidencing any knowledge or information regarding any alleged uninterrupted and continuous use of the Mark by Registrant since the date of first use listed in the Registration.

REQUEST FOR PRODUCTION NO. 6

All documents evidencing any claims or lawsuits that have been or are currently being brought against Registrant concerning the Mark.

REQUEST FOR PRODUCTION NO. 7

All documents evidencing any applications by Registrant to register any trademark for the Goods or any related goods or services.

REQUEST FOR PRODUCTION NO. 8

All documents relating to the marketing, advertising, or promotion with respect to the Mark or any variations thereof, including but not limited to any and all documents relating to any advertisements, advertising campaigns, promotional materials, and slogans relating to the Mark, Registration, and Goods.

REQUEST FOR PRODUCTION NO. 9

All documents relating to products Registrant currently provides, sells, or markets, intends to provide, sell, or market, or has previously provided, sold, or marketed in connection with the Mark or any similar variation thereof.

REQUEST FOR PRODUCTION NO. 10

All documents relating to any packaging, materials, or literature included with products labeled with the Mark.

REQUEST FOR PRODUCTION NO. 11

All documents evidencing use of the Mark and/or the Registration in interstate commerce in relation to the Goods.

REQUEST FOR PRODUCTION NO. 12

All documents relating to any intellectual property rights Registrant holds related to the Mark, including patents, trademarks, copyrights, trade secrets, and all documents related to applications by Registrant for such rights.

REQUEST FOR PRODUCTION NO. 13

All documents evidencing any contention that Registrant has not abandoned the mark.

Registration No. 3,446,095
Cancellation No. 92058262


REQUEST FOR PRODUCTION NO. 13

All documents and/or demonstrative aids you intend to introduce at trial in this matter.

Respectfully,
KOPPEL PATRICK HEYBL & PHILPOTT

August 13, 2014

By:


JAYE G. HEYBL
Attorney for Petitioner

KOPPEL PATRICK HEYBL & PHILPOTT
2815 Townsgate Rd., Ste. 215
Westlake Village, CA 91361
805-373-0060

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF VENTURA

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the within action. My business address is 2815 Townsgate Road, Suite 215, Westlake Village, CA 91361.

On August 13, 2014, I caused to be served the following document: FITNESS LABS NUTRITION CORP.'S FIRST SET OF REQUESTS FOR PRODUCTION on the above action by placing a true copy thereof enclosed in a sealed envelope addressed as follows.

(1) KENNETH R SCHAEFER
104 BAY POINT HARBOUR
POINT PLEASANT, NJ 08742
UNITED STATES
kenschaefer@msn.com

☒ **BY MAIL** I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Westlake Village, California.

☐ **BY FAX** I caused the attached document to be transmitted by facsimile transmission to the offices of the addressee at _____.

☐ **BY FEDERAL EXPRESS** I caused such envelope to be deposited in a mailbox, substation, mail chute or other like facility regularly maintained by Federal Express for receipt of Federal Express packages, in a sealed envelope fully prepaid.

☐ **BY PERSONAL SERVICE** I caused such envelope to be delivered by hand.

☐ **FEDERAL** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

☒ **E-MAIL** I caused the attached document to be transmitted by e-mail to the following e-mail address.

I declare under penalty of perjury, under the laws of the State of California and the United States of America, that the foregoing is true and correct, and that this proof of service was executed on August 13, 2014, at Westlake Village, California.


JENNIFER JIRKOVSKY

PROOF OF SERVICE

STATE OF CALIFORNIA

COUNTY OF VENTURA

I am employed in the County of Ventura, State of California. I am over the age of 18 years and not a party to the within action. My business address is 2815 Townsgate Road, Suite 215, Westlake Village, CA 91361.

On October 16, 2014, I caused to be served the following document: PETITIONER'S MOTION TO COMPEL DISCOVERY DISCLOSURES on the above action by placing a true copy thereof enclosed in a sealed envelope addressed as follows.

KENNETH R SCHAEFER
104 BAY POINT HARBOUR
POINT PLEASANT, NJ 08742
UNITED STATES
kenschaefer@msn.com

☒ **BY MAIL** I caused such envelope with postage thereon fully prepaid to be placed in the United States mail at Westlake Village, California.

☐ **BY FAX** I caused the attached document to be transmitted by facsimile transmission to the offices of the addressee at _____.

☐ **BY FEDERAL EXPRESS** I caused such envelope to be deposited in a mailbox, substation, mail chute or other like facility regularly maintained by Federal Express for receipt of Federal Express packages, in a sealed envelope fully prepaid.

☐ **BY PERSONAL SERVICE** I caused such envelope to be delivered by hand.

☐ **FEDERAL** I declare that I am employed in the office of a member of the bar of this Court at whose direction the service was made.

☒ **E-MAIL** I caused the attached document to be transmitted by e-mail to the following e-mail address.

I declare under penalty of perjury, under the laws of the State of California and the United States of America, that the foregoing is true and correct, and that this proof of service was executed on October 16, 2014, at Westlake Village, California.


JENNIFER JIRKOVSKY