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

Proceeding	92063353
Party	Plaintiff The Coca-Cola Company
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In The Matter of: Registration No. 4,205,598

Mark: THUMS UP

Issued: September 11, 2012

THE COCA-COLA COMPANY,

Petitioner,

v.

MEENAXI ENTERPRISE, INC.,

Registrant.

Cancellation No. 92063353

**PETITIONER'S MOTION FOR ONE-DAY EXTENSION
OF DISCOVERY DEADLINE AND MOTION TO COMPEL
RESPONSES TO PETITIONER'S WRITTEN DISCOVERY REQUESTS**

Pursuant to 37 C.F.R. § 2.120(a)(2)(iv) and Fed. R. Civ. P. 6(b), made applicable to Board proceedings by 37 C.F.R. § 2.116(a), Petitioner The Coca-Cola Company ("Petitioner") hereby moves, to the extent necessary, for a single-day extension of the discovery period for good cause. Pursuant to 37 C.F.R. 2.120(f) and Fed. R. Civ. P. 37, Petitioner concurrently moves the Board to compel Registrant Meenaxi Enterprise, Inc. ("Registrant") to respond to Petitioner's First Interrogatories and to produce documents responsive to Petitioner's First Requests for Production.

I. INTRODUCTION

Petitioner brings this Motion for Extension/Motion to Compel to address Registrant's attempts to circumvent its discovery obligations by refusing to respond to **any** of Petitioner's written discovery on the basis that it is untimely served by one day, and by unreasonably and arbitrarily asserting that Petitioner's twenty-six (26) Interrogatories and forty (40) Requests for Production can be expanded into enough subparts to exceed the seventy-five (75) request limit.

Registrant's wholesale refusal to respond to any of Petitioner's discovery is a clear attempt to evade its discovery obligations and circumvent this Board's goal of deciding adversarial disputes on the merits. Petitioner requests that the Board resolve the limited discovery issues that the Parties have been unable to resolve through their meet and confer: (1) the timeliness of Petitioner's written discovery requests; and (2) the breadth of Petitioner's discovery requests.¹

As to the first issue, the parties dispute the last date upon which to serve discovery in this proceedings under the January 14, 2017 changes to the Trademark Trial and Appeal Board Rules of Practice ("Amended Rules"). Under Petitioner's reading of the Amended Rules, given the Sunday, December 10, 2017 close of discovery in this proceeding, November 10, 2017 was the last date on which the parties could timely serve discovery in this action. Accordingly, Petitioner served Requests for Production ("Petitioner's RFPs") and Interrogatories ("Petitioner's Interrogatories") (collectively, "Petitioner's Written Discovery") on that date. Under Registrant's reading of the Amended Rules, November 9, 2017 was the last date to timely serve discovery, and on that basis, Registrant served Requests for Production, Interrogatories, and Requests for Admission ("Registrant's Written Discovery") on that date. Despite the fact that responses to both Parties' discovery would be due on Monday, December 11, 2017 under either Party's reading of the Amended Rules,² Registrant is refusing to respond to Petitioner's Written Discovery as

¹ Pursuant to 37 C.F.R. 2.120(f), Petitioner certifies that it has in good faith attempted to confer with Registrant regarding both the untimeliness and breadth of Registrant's Petitioner's discovery, but has been unable to resolve these limited issues, as detailed in Exhibit H attached hereto.

² The actual deadline to respond to Registrant's Written Discovery falls on Sunday, November 10, 2017. Pursuant to 37 C.F.R. § 2.196, the deadline is adjusted to fall on the next business day, Monday, December 11, 2017. Similarly, under Registrant's interpretation of the Board Rules,

untimely served. Petitioner therefore: (i) moves to compel Registrant to respond to Petitioner's Written Discovery if Petitioner's calculation is correct; or, alternatively, (ii) respectfully moves the Board for a one-day extension to the discovery period in the event that Registrant's calculation is correct, given that the Amended Rules went into effect during the pendency of this matter. *See Miscellaneous Changes to Trademark Trial and Appeal Board Rules of Practice*, 81 Fed. Reg. 19296, 19296 (April 4, 2016) ("any issues that may arise concerning the transition to the revised rules for cases pending as of the effective date of the rules would be addressed by the Board and the parties on a case-by-case basis, allowing for flexibility to respond to the unique needs in each case, particularly with respect to scheduling matters.").

As to the second issue, Petitioner served twenty-six (26) discrete, enumerated interrogatories and forty (40) discrete, enumerated requests for production in this proceeding. Registrant claims that each set of discovery contains multiple, independent subparts such that each set contains more than the allowed seventy-five (75) interrogatories and requests for production in violation of 37 C.F.R. § 2.120(d)-(e). Petitioner respectfully disagrees and believe that each request is distinct and singular, as is evident through a review of the requests.

Petitioner accordingly moves the Board to compel Registrant to respond substantively to Petitioner's First Interrogatories and to produce documents and things responsive to Registrant's Requests for Production of Documents, should the Board agree either that Petitioner's calculation of the last day to serve discovery was correct, or to extend the discovery deadline in this case by

Registrant's responses to Petitioner's Written Discovery would be due thirty-one days after November 10, 2017 (not including the date of service), which falls on Monday, December 11, 2017.

one day in the event that the Board determines that Petitioner's calculation was incorrect but nevertheless grants Petitioner's request for a one-day extension of the discovery period.

II. BACKGROUND

The last consent motion for an extension filed in this proceeding extended the close of discovery to December 10, 2017, a Sunday (10 TTABVUE). In view of that deadline, Registrant served interrogatories, requests for production of documents, and requests for admission on Thursday, November 9, 2017. Petitioner's responses and objections to these discovery requests are due on Monday, December 11, 2017, the first business day after the Sunday, December 10, 2017 close of discovery. 37 C.F.R. §§ 2.120(a)(3), 2.196.

Believing that November 10, 2017 was the last day to serve discovery in this proceeding, Petitioner's prior counsel served interrogatories and requests for production of documents upon Registrant on that date.³ *See* Declaration of T. Lockett, attached hereto as Exhibit C. Under Petitioner's reading of the Amended Rules, Registrant's deadline to respond is also Monday, December 11, 2017, the first business day after the December 10, 2017 close of discovery, and the same date that Petitioner's responses to Registrant's discovery are due. Petitioner also timely noticed depositions of Registrant's 30(b)(6) representative, as well as Mr. Kaushik Gandhi, Ms. Malathi Sundarraaj, and Ms. Meenaxi Gandhi, who are all employees of Registrant, in their individual capacities, on November 17, 2017, seeking to conduct these depositions in early December 2017.

³ Copies of Petitioner's First Interrogatories are attached hereto as Exhibit A, and Petitioner's First Requests for Production of Documents as Exhibit B.

On November 20, 2017, Alston & Bird LLP was substituted as counsel of record for Petitioner. New counsel reached out to counsel for Registrant, Mr. DeFrancesco, by phone and by e-mail to inform him of the change of counsel and discuss possible dates and times for the noticed depositions.⁴ More than one week later, on November 28, 2017, Mr. DeFrancesco responded via e-mail, in which he noted that Registrant objected to Petitioner's Written Discovery as untimely and overbroad and to Petitioner's noticed depositions because they "are unduly burdensome, untimely, seek privileged material and overall constitute harassment."⁵ Mr. DeFrancesco also refused to accept service of the Notice of Deposition of Ms. Sundarraj, as she is not an officer or director of Registrant, and stated that Ms. Sundarraj is expecting with an imminent due date.

Petitioner's counsel responded to Mr. DeFrancesco's e-mail the next day, November 29, 2017, requesting that Registrant withdraw its objections as to the timeliness and breadth of Petitioner's Written Discovery and offered to work with Registrant to schedule the 30(b)(6) deposition and the three, short depositions of the individuals noticed by Petitioner at a location convenient to Registrant. *See Exhibit E.* Petitioner's counsel also requested a time Registrant would be available to meet and confer on these issues if Registrant maintained its objections as to the depositions and Written Discovery. *See id.*

The parties held a telephonic meet and confer on December 4, 2017. During that call, the parties reached a resolution as to their disagreement regarding the noticed depositions. Specifically, the parties agreed: (i) that Petitioner will depose Mr. Kaushik Gandhi and Ms.

⁴ A true and correct copy of this e-mail is attached hereto as Exhibit D.

⁵ A true and correct copy of the e-mail exchanges between Mr. DeFrancesco and the undersigned from November 28 through November 30 is attached hereto as Exhibit E. Registrant's objections to Petitioner's written discovery requests is attached hereto as Exhibit F.

Sundarraaj as 30(b)(6) representatives of Meenaxi Enterprise Inc. and Ms. Meenaxi Gandhi as an individual (30(b)(1)) deponent; (ii) that such depositions may be taken in March 2018 given Ms. Sundarraaj's pregnancy and the witnesses' travel schedules; and (iii) that the parties will subsequently move the Board to extend all further deadlines in the proceeding (not including the discovery deadline, other than for the purpose to take the aforementioned depositions).

During the meet and confer, the parties were unable to come to an agreement regarding Petitioner's Written Discovery. As to the timeliness of the requests, Registrant's counsel reiterated his belief that Petitioner's discovery was untimely. Regarding the scope of the requests, Registrant's counsel reiterated its position that the discovery requests exceed the 75-request limit laid out in 37 C.F.R. § 2.120(d)-(e). Counsel for the Petitioner requested that Registrant walk through the interrogatories with the undersigned so that the undersigned could get a better understanding of the nature of Registrant's objection. Registrant's counsel stated that this exercise would be fruitless, because the overbreadth of the requests was "so obvious" but eventually stated its belief that Interrogatory No. 1 contained three separate requests. Counsel for Registrant provided no further explanation as to how Registrant had determined that Petitioner had exceeded its limit of seventy-five (75) interrogatories and requests for production through its service of twenty-six (26) interrogatories and forty (40) requests for production.

Upon the conclusion of the meet and confer, Petitioner recognized the parties' dispute as to how prior counsel and Registrant calculated the last day upon which to serve discovery. Petitioner then requested, via e-mail, a one-day extension of the discovery period to allow sufficient time for Registrant to respond to Petitioner's discovery requests (in the event an extension was necessary), stating that Petitioner planned to move the Board for the requested extension in the event that Registrant would not agree. Registrant refused this request, stating that

it would seek sanctions against Petitioner if it moved the Board, and that it would no longer agree to the noticed depositions in the event that Petitioner filed its motion.⁶

III. PETITIONER HAS MADE A GOOD FAITH EFFORT TO RESOLVE THE ISSUES IN THIS MOTION.

Pursuant to 37 C.F.R. 2.120(f), Petitioner states that it has made a good faith effort, by conference and correspondence, to resolve with Registrant the issues presented in this motion.

IV. ARGUMENT AND CITATION OF AUTHORITIES

A. A One-Day Extension Allows for a Merits-Based Resolution and Does Not Prejudice Registrant.

In the event that Petitioner's calculation of the last day to serve discovery was incorrect, Petitioner respectfully moves the Board for a single-day extension of the close of discovery up to and including Monday, December 11, 2017 to allow Registrant the full period in which to respond to Petitioner's discovery requests. Not providing a one-day extension due to excusable error on the part of prior counsel would significantly hamstring Petitioner's case, as it would be unable to rely upon any written responses or documents produced by Registrant. Evidence of certain facts that is only within the possession, custody and control of Registrant (such as, *e.g.*, any evidence of Registrant's knowledge of Petitioner's rights in the THUMS UP mark outside the United States) would be forever lost to Petitioner because of a potential miscalculation of a single day.

This matter has been pending since March 8, 2016 (TTABVUE 1). The Amended Rules went into effect on January 14, 2017, nine months after this proceeding was instituted. Based on the Board's own interpretation of the Amended Rules, it is Petitioner's understanding that the

⁶ A true and correct copy of this e-mail exchange is attached hereto as Exhibit G.

Board will be flexible in applying the Amended Rules to proceedings already pending prior to January 14, 2017, such as the instant proceeding. This is especially true with respect to scheduling matters, such as this dispute. *See* 81 Fed. Reg. 19296, Notice of Rulemaking.

Supervision of discovery rests firmly within the Board's discretion. *See* *Midwestern Pet Foods, Inc. v. Societe des Produits Nestle S.A.*, 684 F.3d 1046, 1051 (Fed. Cir. 2012); *Keebler Co. v. Murray Bakery Prods.*, 866 F.2d 1386, 1388 n.1 (Fed. Cir. 1989). Recently, when faced with a nearly identical situation, the Board reopened discovery and allowed the responding party an additional thirty days to respond to the serving party's discovery requests that were untimely by only one day. *See* *Estudi Moline Dissey S.L. v. BioUrn Inc.*, 123 U.S.P.Q. 2d 1268 (T.T.A.B. 2017). The strict enforcement of the discovery deadline in this instance would not serve the interests of justice, and the clear preference of this Board and the courts for adversarial disputes to be decided on the merits. *See, e.g., Apollo Grp. Inc. v. Int'l Found. for Ret. Educ.*, 2002 WL 448715, at *2 (T.T.A.B. Mar. 20, 2002) (allowing party to file its trial brief "only a matter of several days" late due to Board's preference to decide case on the merits); *Collagenex Pharms., Inc. v. Four Star Partners*, Opp. No. 91150890, 2003 WL 22273118 (T.T.A.B. Sept. 24, 2003); *Jourdan v. Jabe*, 951 F.2d 108, 110 (6th Cir. 1991); *Oberstar v. F.D.I.C.*, 987 F.2d 494, 504 (8th Cir. 1993); *Salahuddin v. Cuomo*, 861 F.2d 40, 42 (2d Cir. 1988); *Varnes v. Local 91, Glass Bottle Blowers Ass'n of U.S. & Can.*, 674 F.2d 1365, 1369 (11th Cir. 1982); *Medunic v. Lederer*, 533 F.2d 891, 893-94 (3d Cir. 1976).

Here, if prior counsel's calculation was incorrect, Registrant's responses to Petitioner's Written Discovery were due the next business day after the Sunday, December 11, 2017 close of discovery, which is the same day that Petitioner's responses to Registrant's discovery are due. Petitioner asserts that this one day delay was (i) minimal in duration, (ii) not prejudicial to

Registrant, (iii) not lengthy enough to impact the proceedings, and (iv) not the result of bad faith. Because the Board rules specify that a Party is not relieved of its discovery obligations, including its duty to cooperate, Petitioner asserts that Registrant should be compelled to provide full and complete responses to all outstanding discovery requests. *See* TBMP 408.01. A balance of the equities between the Parties herein warrants that the Motion to Compel be granted. Any other finding would amount to a “windfall” for Registrant.

B. Petitioner’s Written Discovery Does Not Exceed Seventy-Five Interrogatories and Requests for Production, and Registrant Should Be Compelled to Provide Substantive Responses.

The Trademark Rules of Procedure limit each party to seventy-five (75) interrogatories and seventy-five (75) requests for production. 37 C.F.R. § 2.120(d)-(e). In accordance with these rules, Petitioner’s Written Discovery is comprised of twenty-six (26) interrogatories and forty (40) requests for production. (*See Exs. A and B*). Registrant has taken the position that Petitioner’s Written Discovery, in fact, exceed the seventy-five (75) request limit, because each request contains multiple discrete and independent requests. (*See Exs. E, F and G*). Registrant’s reading of Petitioner’s Written Discovery is incorrect, and Registrant is attempting to circumvent its discovery obligations by providing a blanket refusal to respond to any of Petitioner’s Written Discovery. Petitioner should be compelled to respond to Registrant’s Written Discovery, which is discrete and in no way exceeds the Board’s limitations.

During the parties’ meet and confer, Registrant stated its view that Interrogatory No. 1 contains three separate information requests: (i) the identity of each person that has used the THUMS UP Mark; (ii) the goods that person used the mark on; and (iii) the services that person used the mark on. Petitioner believes this to be an unreasonable interpretation of the interrogatory, as the request is intended to identify third-party uses of the THUMS UP Mark of which Registrant

is aware. The goods and services those third parties used the THUMS UP Mark in connection with is information so integral and related to the identity of the third-party users that the interrogatory cannot reasonably be considered to contain three separate and discrete interrogatories.

For the Board's consideration, Petitioner reviews the remainder of its Interrogatories and Requests for Production below and sets forth why no reasonable count of those requests could approach the seventy-five (75) request limit Registrant complaints of. *See Emilio Pucci Int'l BV v. Sachdev*, Opp. No. 91215100 (T.T.A.B. Jan. 20, 2016).

(i) A Reasonable Interpretation of Petitioner's Twenty-Six (26) Enumerated Interrogatories Cannot Reach a Count of Seventy-Five Discrete and Separate Requests.

A plain reading of Petitioner's First Set of Interrogatories show that nearly every one of Petitioner's requests is either singular on its face or utilizes language intended to provide guidance and additional information to Registrant regarding the type of information sought by Petitioner in any given interrogatory. (*See Ex. A*).

Petitioner's Interrogatory Nos. 4, 10, 11, 13-15, 17, 18, 23, 25, and 26 are discrete and singular on their face. Petitioner fails to see how any reasonable reading of these interrogatories could identify multiple independent questions contained therein. As to Interrogatory Nos. 2, 5, 6, 9, 12, 16, and 20, each asks Registrant to "describe" or "identify" a person or set of facts. These interrogatories then ask that Registrant describe "including, without limitation" the specific types of information Petitioner seeks about a particular person or set of facts. Such language does not set forth discrete and independent topics but rather provides guidance as to the types of related information sought by the particular interrogatory.

Similarly, Interrogatory Nos. 3, 7, 21, and 24 request Registrant to identify a person or

thing and provide a specific type of information “for each such” person or thing to confirm that identification. For example, Interrogatory No. 3 requests Registrant “identify each person with knowledge of your creation of, approval of, selection of adoption of, development of, or plans to use the Subject Mark” and “for each such person, state the person’s role and responsibility and the time period during which each such person had such involvement.” (See Ex. A at 11). This language is intended to provide guidance as to what Petitioner means when it asks Registrant to “identify” a person. The mere name of an individual will not allow Petitioner to sufficiently identify that person. That individual’s position and active time period will also be needed in order to ensure Petitioner has identified the relevant individual.

In reviewing anew its First Set of Interrogatories, Petitioner believes that only Interrogatory Nos. 8 and 22 could reasonably be interpreted as two separate and discrete requests, although Petitioner finds the topics covered by each are so interrelated as to constitute a single request. Similarly, Interrogatory No. 19 could possibly be interpreted as containing three separate and discrete requests, though Petitioner maintains that these topics are so interrelated that they constitute a single request. However, even assuming that Interrogatory Nos. 8, 22 and 19 could result in a count of seven (7) separate requests, the total number of separate interrogatory requests still only reaches thirty (30), far short of the seventy-five (75) request limit contained in 37 C.F.R. § 2.120(d).

Because a reasonable interpretation of Petitioner’s twenty-six (26) enumerated interrogatories does not begin to approach the limit contained the Trademark Rules of Procedure, Registrant’s objection that Petitioner has exceeded that limit is unreasonable and unfounded. Petitioner thus respectfully requests that the Board compel Registrant to respond substantively to Petitioner’s First Set of Interrogatories (Ex. A).

(ii) A Reasonable Interpretation of Petitioner's Forty (40) Enumerated Document Requests Cannot Result in a Count of Seventy-Five Discrete and Separate Requests.

As with Petitioner's interrogatories, a review of Petitioner's First Set of Requests for Production of Documents show that the majority of Petitioner's requests are either singular on their face or utilize language intended to provide guidance and exemplar information to Registrant regarding the type of documents sought. (*See Ex. B*).

Petitioner's Request Nos. 1-8, 10-13, 16-20, 24, 25, 28-32, and 37-39 are discrete and singular on their face, and a reasonable reading of these requests cannot identify multiple independent requests contained therein. As to Request Nos. 21, 22, 26, 27, 35, and 36, each Request uses the term "including" to outline additional information regarding the types of documents intended to be covered by the request. For example, Request No. 21 requests the production of one specimen of "all advertising, marketing and promotional materials of any kind, in any medium, that include the Subject Mark, and all drafts thereof." (*Ex. B* at 8). By way of guidance, the request continues that such materials should be interpreted as "including, without limitation, a specimen of any media plan, marketing plan or media buy document for any of the Meenaxi Goods and Services." *Id.* The language following the phrase "including, without limitation," does not set forth discrete and independent document requests but rather provides guidance as to the types of related documents sought by that particular Request.

At most, Request Nos. 9, 14, 15, 23, 33, 34, and 40 could potentially be interpreted as containing two separate and discrete requests for documents, although Petitioner maintains that the topics covered by each are so interrelated as to constitute a single request. But even accounting for the possibility that Request Nos. 9, 14, 15, 23, 33, 34, and 40 could result in a count of fourteen (14) separate requests, the total number of document requests still only reaches fifty-seven (57),

far short of the seventy-five (75) request limit.

Thus, because a reasonable interpretation of Petitioner's forty (40) enumerated document requests does not begin to approach the limit contained the Trademark Rules of Procedure, Registrant's objection that Petitioner has exceeded that limit is unreasonable and unfounded. Petitioner thus respectfully moves the Board to compel Registrant to produce documents and things responsive to Petitioner's First Set of Requests for Production of Documents (Ex. B).

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Board: (i) if necessary, extend the close of discovery by a single day to Monday, December 11, 2017; and (ii) compel Registrant to respond substantively to Petitioner's Interrogatories and Requests for Production of Documents.

Dated this 11th day of December, 2017.

Respectfully submitted,

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THE COCA-COLA COMPANY,

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Cancellation No. 92063353

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the above and foregoing document has been served by e-mail on December 11, 2017, to counsel of record for the Registrant as listed below:

Jason DeFrancesco
BAKER AND RANNELLS, PA
92 E. Main Street, Ste. 302
Somerville, NJ 08876.

/Holly Hawkins Saporito/

Holly Hawkins Saporito
Alston & Bird LLP

EXHIBIT A

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

In The Matter Of: Registration No. 4,205,598
Mark: THUMS UP
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THE COCA-COLA COMPANY,

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MEENAXI ENTERPRISE, INC.,

Registrant.

Cancellation No. 92063353

**PETITIONER THE COCA-COLA COMPANY'S FIRST SET OF
INTERROGATORIES TO REGISTRANT MEENAXI ENTERPRISE, INC.**

Pursuant to Section 2.120 of the Rules of Practice in Trademark Cases, 37 Code of Federal Regulations Part 2, and Rule 33 of the Federal Rules of Civil Procedure, Petitioner THE COCA-COLA COMPANY ("Petitioner") requests that Registrant MEENAXI ENTERPRISE, INC. ("Registrant" or "Meenaxi") answer separately and completely in writing under oath within thirty (30) days of service hereof each of the Interrogatories set forth below in accordance with the following Definitions and Instructions:

I. SUPPLEMENTATION

Pursuant to Rule 26(e) of the Federal Rules Civil Procedure, you are under a duty to amend your responses to these Interrogatories if you obtain or discovery information upon the basis of which you know that a prior response was incorrect when made, or know that the response, though correct when made, is no longer true, complete or comprehensive, or the circumstances are such that a failure to amend the response is in substance a knowing concealment.

II. INSTRUCTIONS AND DEFINITIONS

DEFINITIONS

1. "You" and "your" refer to Registrant and each of its officers, directors, employees, consultants, members, managers, representatives, partners, corporate partners, subsidiaries, divisions, successors in interest, predecessors in interest, associates, affiliates, attorneys, accountants and agents.

2. "Document" or "documents" will have their customary broad meanings, and is defined to be synonymous in meaning and equal in scope to the definition in Federal Rule of Civil Procedure 34, and shall further include, without limitation, all originals, copies and drafts of all written, typewritten, recorded, transcribed, printed, taped, photographic, electronic, digital or graphic matter, however produced or reproduced, whether sent or received, or neither, including but not limited to, all books, pamphlets, articles, newspapers, press releases,

magazines, booklets, circulars, handbooks, manuals, periodicals, letter, memoranda, files, envelopes, notices, instructions, reports, financial reports, records, studies, transcripts, diaries (formal or informal) audited and unaudited financial statements, bills of lading, checks (cancelled or otherwise), check stubs, receipts, working papers, questionnaires, notes, quotations, charts, lists, comparisons, telegrams, electronic mailings, facsimiles, cables, telex messages, communications (including intracorporate communications, reports, notes, notations and memoranda of, or relating to, telephone conversations and conferences, whether in electronic form or hard copy), minutes, transcripts, correspondence, agreements, graphs, tabulations, analyses, evaluations, projections, opinions or reports of consultants, statements, summaries, desk calendars, appointments books, telephone logs, telephone bills, surveys, indices, tapes, computer inputs or outputs, computer files, computer memory, computer disks, tapes or hard drives, microfilm, magnetic tapes and photographs. Different versions of the same documents, including but not limited to, drafts or documents with handwritten notations or marks not found in the original or on other copies are different documents.

3. To “identify” or “describe” or state the “identity of” means:

- (i.) as to a document, to provide the title or other means of identification of the document, the date of the document, the

author of the document, the recipient or recipients of the document, the subject matter of the document, the present location of any and all copies of the document in your possession, custody or control; and the names and current addresses of any and all persons who have possession, custody or control of the document or copies thereof;

- (ii.) as to a firm, partnership, corporation, or any other form of business entity, to state the full name, address, and telephone number;
- (iii.) as to a natural person, to state the full name, present business and home addresses, present business and home telephone numbers and present or last known business affiliation and title; and
- (iv.) as to information, to provide a detailed description of the information sought therein.

4. "Communication" is used in its broadest sense, and means any transmission of information from one "person" or entity to another by any means, including, without limitation, written communications, telephone communications, telephone communications, in-person communications, email and other electronic communications.

5. "Person" means any natural person, business or other legal entity.
6. "Petition for Cancellation" refers to the petition filed by Petitioner in the above-captioned proceeding, and any amendment(s) thereto.
7. Your "Answer" refers to the answer you filed to the Petition for Cancellation.
8. "Petitioner's Interrogatories" means and refers to these interrogatories and any amendments thereto.
9. The THUMS UP Mark refers to any mark used, registered, owned or claimed to be owned by Petitioner and any entity related to Petitioner that consists of, in whole or in part, the phrase "Thums Up," in any form or style.
10. The "Subject Mark" refers to the mark "Thums Up" that is the subject of Registration No. 4,205,598 (the "'598 Registration") in any form or style.
11. "Adversarial Proceeding" shall mean and refer to any judicial process, quasi-judicial process, administrative process, or any other formal process authorized by law to adjudicate or resolve legal claims in connection with any trademark matter and minimally includes any federal or state civil court action, arbitration, Opposition proceeding, and/or Cancellation proceeding, in the United States or otherwise.
12. The phrase "First Use Date" means the date of the first "use in commerce," as that phrase is defined in 15 U.S.C. §1127.

13. The term “Meenaxi Goods and Services” means any and all goods and/or services that you sell, offer, provide, have sold, have provided or have offered in the United States and on or in connection with which you have used the Subject Mark.

14. The term “Foreign Mark” means any trademark or service mark that any person other than you owns, has owned, claims or claimed an ownership interest in, uses, has used, registered, or for which a person has applied for registration in any territory outside of the United States, including, but not limited to, the marks THUMS UP, LIMCA, THUMS UP TASTE THE THUNDER, IDHAYAM, SAGA, RASNA, GARDEN NAMKEEN, REAL NAMKEEN, BOURNVITA, NUTRELA, and BHAVANI.

15. The term “Foreign Label” refers to a product label used on, affixed to, or in connection with a product that is or was sold or offered for sale by any person other than you in any territory outside of the United States.

16. The term “Foreign Packaging” refers to any box, bottle, container, package, wrapping, or other packaging used in connection with a product that is or was sold or offered for sale by any person other than you in any territory outside of the United States.

17. The term “116 Declaration” means any declaration that you submitted or made to the United States Patent and Trademark Office in connection with your application for registration Ser. No. 85/534,116 (the “116 Application”).

18. Without limiting their scope in any way, the terms “advertising” or “advertisements” include and encompass materials, including but not limited to advertising, promotional or marketing materials, that promote or advertise the goods or services in question.

19. A request to provide information “concerning” something means relating to, referencing, evidencing or constituting.

20. A “formative version” of a mark is a version of the mark that includes or incorporates a style, color, design, graphic, visual element, additional character(s), additional word(s), or other distinctive element.

21. The use of the singular form of any word includes the plural, and the use of the plural form includes the singular form.

22. The term “each” includes the word “every” and “every” includes the word “each.”

23. A request directed to “a” person, product, or thing shall be construed either disjunctively or conjunctively so as to bring within the scope of the request responses that which might otherwise be construed to be outside the scope, such

that, for example, a request directed to “a” person, shall be construed to encompass one or more persons.

24. The terms “and,” “or,” as well as “and/or” shall be construed either disjunctively or conjunctively so as to bring within the scope of the interrogatory or request for production responses that which might otherwise be construed to be outside the scope.

25. The term “any” includes the word “all” and “all” includes the word “any.”

INSTRUCTIONS

1. You are requested to answer each Interrogatory set forth below separately and completely in writing under oath. Your response hereto is to be signed and verified by the person making it, and the objections signed by you, as required by Federal Rule of Civil Procedure 33(b) and section 405.04(c) of the Trademark Trial and Appeal Board Manual of Procedure (“T.B.M.P.”).

2. Each Interrogatory shall be answered fully unless it is objected to in good faith, in which event the reasons for your objection shall be stated in detail. If an objection pertains to only a portion of an Interrogatory, or a word, phrase or clause contained within it, you are required to state your objection to that portion only and to respond to the remainder of the Interrogatory, using your best efforts to do so.

3. If you assert that any information responsive to any Interrogatory is privileged or otherwise protected from discovery, you are required to comply with the requirements of Federal Rule of Civil Procedure 26(b)(5) as to each document, thing, oral communication or piece of information for which a claim of privilege or protection from discovery is made. For any document or information withheld on the grounds that it is privileged or otherwise claimed to be excludable from discovery, identify the information or document, describe its subject matter and date, identify all authors and all recipients (including copied and blind copied recipients), and specify the basis for the claimed privilege or other grounds of exclusion.

4. If you answer any of the Interrogatories by reference to records from which the answer may be derived or ascertained, you are required to comply with the requirements of Federal Rule of Civil Procedure 33 and section 405.04(b) of the T.B.M.P.

5. If any responsive document is no longer in existence, cannot be located or is not in your possession, custody or control, identify it, describe its subject matter and describe its disposition, including, without limitation, identifying the person having knowledge of the disposition.

6. These Interrogatories are continuing in nature and your responses to them are to be promptly supplemented or amended if, after the time of your initial

responses, you learn that any response is or has become in some material respect incomplete or incorrect, to the full extent provided for by Federal Rule of Civil Procedure 26(e).

III. INTERROGATORIES

INTERROGATORY NO. 1.

Identify each person (including you) that has used a mark consisting of, in whole or in part, the phrase THUMS UP in connection with providing or offering for sale goods or services in the United States and the goods and services used in connection therewith, including, without limitation, each “third-part[y] that spell[s] ‘Thumbs’ without a ‘b’ and use the term THUM as a portion of a trademark indicating a thumb” referenced in Paragraph 11 of your Answer.

INTERROGATORY NO. 2.

With respect to each person identified in response to Interrogatory No. 1, describe in detail each person’s use of the mark consisting of, in whole or in part, the term THUMS UP, including, without limitation: a description of the goods or services provided or offered in connection therewith and manner in which such goods or services have been promoted in the United States; the dates of the mark’s first use in the United States; the geographic scope of such use; the consumer group or groups to which such use was directed; and the dates during which each such person has continuously used the mark, or if such use(s) has (have) not been

continuous, state with particularity the dates and reasons for any period that the mark has not been used by such person(s).

INTERROGATORY NO. 3.

Identify each person with knowledge of your creation of, approval of, selection of, adoption of, development of, or plans to use the Subject Mark, and, for each such person, state the person's role and responsibility and the time period during which each such person had such involvement.

INTERROGATORY NO. 4.

Describe fully the facts and circumstances surrounding your creation of, approval of, selection of, adoption of, development of, and plans to use the Subject Mark.

INTERROGATORY NO. 5.

Describe fully the facts and circumstances surrounding your knowledge and awareness of the THUMS UP Mark, including, without limitation, an identification of each formative version of such mark of which you are aware, the date you became knowledgeable or aware of each such formative version, where you were when you became knowledgeable or aware of each such formative version of such mark, and how you became knowledgeable or aware of each formative version of such mark.

INTERROGATORY NO. 6.

Describe in detail the Meenaxi Goods and Services, including identification of all package sizes, flavor variants and other details of each separate such good or service.

INTERROGATORY NO. 7.

For each of the Meenaxi Goods and Service, identify each person in its supply line from manufacturer to consumer, including, without limitation, any manufacturer, any wholesaler, any distributor, any importer, any co-packer, any retailer, or any other person in the chain of distribution, and, for each such person, state the person's relationship with Meenaxi and the time period(s) during which each person has participated in the supply line.

INTERROGATORY NO. 8.

With respect to any of the goods and/or services identified in response to Interrogatory No. 6, provide the date(s) that the Subject Mark was first used within the United States on or in connection with such goods or services, and identify the channels of trade through which such goods or services have been or are offered, provided, sold, distributed and/or marketed.

INTERROGATORY NO. 9.

Describe in detail any claim, allegation, complaint or accusation by any person that you have adopted, used, registered, or applied for registration of their

trademark or service mark, or one confusingly similar thereto, including, without limitation, identifying the person making such claim, allegation, complaint or accusation, when the same was made, the geographic territory at issue, the associated trademark or service mark and any good or service associated therewith, and any Adversarial Proceeding associated with the same.

INTERROGATORY NO. 10.

Identify and describe each trademark or service mark that you own, owned, have ever claimed to have owned, are using, considered using, used, adopted for use, applied for registration of, or registered in the United States that is/was based on, in whole or in part, a Foreign Mark.

INTERROGATORY NO. 11.

Identify and describe each label or packaging that you own, owned, have ever claimed to have owned, are using, considered using, used, adopted for use in the United States that is/was based on, in whole or in part, a Foreign Label or Foreign Packaging.

INTERROGATORY NO. 12.

Describe fully and identify any advertising conducted by any person for the Meenaxi Goods and Services, including, without limitation, the nature or type of such advertising, the method of such advertising, the identity of each person who has conducted such advertising (e.g., name(s), phone number(s), email

address(es), physical address(es), etc.), the geographic scope of such advertising, when such advertising was conducted, and the amount of money spent for such advertising on a yearly basis.

INTERROGATORY NO. 13.

Describe in detail the basis for your assertion in the '116 Declaration that you are using the Subject Mark in commerce on or in connection with the goods recited in the application.

INTERROGATORY NO. 14.

Identify each witness, including any expert witness, you intend to call, present or rely upon in this proceeding.

INTERROGATORY NO. 15.

Identify each person who supplied information included in any of the answers or responses to Petitioner's Interrogatories or who was consulted or whose documents or files were consulted in connection with the preparation of the answers or responses.

INTERROGATORY NO. 16.

Identify and describe in detail each instance in which any person has ever expressed or exhibited any confusion as to your affiliation or relationship with Petitioner, expressed or exhibited any confusion as to the source of any goods or services or services provided in connection with the Subject Mark, or confused

your goods or services with that of any other provider of goods or service using a mark containing, in whole or in part, the term THUMS UP, including, but not limited to, any e-mail, letter, package, facsimile, telex, or other communication of any kind to you when the sender actually intended to send the communication to Petitioner. A complete response will include at least the name of any person(s) to whom the expression or exhibition of confusion was directed (e.g., any person who received any relevant communication), the name of the person/sender that exhibited or expressed any confusion, a description of the nature of the confusion (e.g., the contents of any relevant communication), a description of any response you made to such confusion (e.g., any oral or written response you made to the sender of any relevant communication), and any other action you took in response to such confusion.

INTERROGATORY NO. 17.

Describe in detail any steps you have taken to ascertain whether any other person or party owned or owns rights in marks containing the term THUMS UP or phonetically similar terms in the United States.

INTERROGATORY NO. 18.

Separately for each year beginning in 2008 to the present, state your annual dollar and unit volume of sales and/or anticipated dollar and unit volume of sales

in the United States for each of the Meenaxi Goods and Services, broken down by good or service.

INTERROGATORY NO. 19.

Identify the individuals who have primary responsibility for and are most knowledgeable regarding your adoption of the Subject Mark, the manufacture and distribution of any of the Meenaxi Goods and Services, and any advertising for the Meenaxi Goods and Services.

INTERROGATORY NO. 20.

With respect to each of your designs displayed in Paragraph 11 of Petitioner's Amended Petition to Cancel in the above-captioned proceeding, describe the use and creation of each design, including, without limitation, identifying who created or participated in the creation of each design, when each design was created, where the products or services branded with such designs or having packaging bearing such designs have been advertised, distributed or sold, and who advertised, distributed, packaged or sold any products or services branded with such designs or having packaging bearing such designs.

INTERROGATORY NO. 21.

Identify and describe each instance in which you have given a license or permission to use the Subject Mark in the U.S. or otherwise import, market or sell products bearing the Subject Mark in the U.S., and, for each such instance, describe the terms of such license or permission and identify all oral or written communications evidencing such license or permission.

INTERROGATORY NO. 22.

State fully your basis for asserting in your Answer that “Petitioner intentionally abandoned use of the THUMS UP brand in India, and or” minimized advertising, the goodwill and/or recognition in THUMS UP in India, and that “THUMS UP was known and or referred to by consumers in India as MAHA COLA.”

INTERROGATORY NO. 23.

Identify each trademark or service mark that you own, use, used, have owned, applied for registration of, or registered that is/was not based on, in whole or in part, a Foreign Mark.

INTERROGATORY NO. 24.

For each Foreign Mark on which any mark that you own, owned, have ever claimed to have owned, considered using, adopted, applied for registration of, or registered is based, identify the putative owner of the Foreign Mark, the relevant

foreign territory(ies), any application or registration numbers associated therewith, any goods or services used in connection with the Foreign Mark, the type of mark (e.g., word mark, design mark, etc.), a description of each Foreign Mark, and any Adversarial Proceeding concerning the Foreign Mark in which you were involved.

INTERROGATORY NO. 25.

Identify your past and current officers, directors, shareholders, owners and managers.

INTERROGATORY NO. 26.

Identify any complaint or expression of dissatisfaction or disapproval that you have received from any person regarding any goods or services that you sell, offer, provide, have sold, provided or have offered in the United States and on or in connection with which you have used the Subject Mark.

This 10th day of November, 2017.

/Tennell Lockett/

D. Tennell Lockett, Esq.

tennell.lockett@townsendlockett.com

TOWNSEND & LOCKETT, LLC

1401 Peachtree Street

Suite 500

Atlanta, Georgia, 30309

Phone: 404-870-8501

Fax: 404-870-8502

*Attorney for Petitioner, The Coca-Cola
Company*

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

In The Matter Of: Registration No. 4,205,598
Mark: THUMS UP
Issued: September 11, 2012

THE COCA-COLA COMPANY,

Petitioner,

v.

MEENAXI ENTERPRISE, INC.,

Registrant.

Cancellation No. 92063353

CERTIFICATE OF SERVICE

I hereby certify that on November 10th, 2017, I have caused a true and correct copy of the foregoing PETITIONER THE COCA-COLA COMPANY'S FIRST SET OF INTERROGATORIES TO REGISTRANT MEENAXI ENTERPRISE, INC. to be served upon the above-captioned Registrant by email the same to Registrant's counsel of record as follows:

Jason DeFrancesco
BAKER AND RANNELLS, PA
92 E. Main Street, Ste. 302
Somerville, NJ 08876
jld@br-tmlaw.com

/Tennell Lockett/

D. Tennell Lockett

EXHIBIT B

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

In The Matter Of: Registration No. 4,205,598
Mark: THUMS UP
Issued: September 11, 2012

THE COCA-COLA COMPANY,

Petitioner,

v.

MEENAXI ENTERPRISE, INC.,

Registrant.

Cancellation No. 92063353

**PETITIONER THE COCA-COLA COMPANY'S FIRST SET
OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS
AND THINGS TO REGISTRANT MEENAXI ENTERPRISE, INC.**

Pursuant to Section 2.120 of the Rules of Practice in Trademark Cases, 37 Code of Federal Regulations Part 2, and Rule 34 of the Federal Rules of Civil Procedure, Petitioner THE COCA-COLA COMPANY ("Petitioner") requests that Registrant MEENAXI ENTERPRISE, INC. ("Registrant" or "Meenaxi") produce all documents and tangible things described below within thirty (30) days of service hereof in accordance with the following Definitions and Instructions:

I. SUPPLEMENTATION

Pursuant to Rule 26(e) of the Federal Rules Civil Procedure, you are under a duty to amend and supplement your production in response to these Requests

if you obtain or uncover additional documents or things that are responsive to any of Petitioner's Requests or discover or determine that documents and things that were withheld, or otherwise not produced to Petitioner, are responsive to any of Petitioner's Requests, such that a failure to amend the response is in substance a knowing concealment.

II. INSTRUCTIONS AND DEFINITIONS

DEFINITIONS

Petitioner incorporates as if set forth in full herein the definitions set forth in Petitioner's First Set of Interrogatories to Registrant served simultaneously herewith.

INSTRUCTIONS

1. Production and inspection of documents pursuant to these requests shall commence at the offices of Townsend & Lockett, LLC, 1401 Peachtree Street, Suite 500, Atlanta, Georgia, 30309, directed to the attention of Petitioner's attorney(s) of record, thirty (30) days from service of these requests, or at such other time(s) and place(s) as may be mutually agreed upon by the parties or set by the Board.

2. The documents requested shall be produced as they are kept in the usual course of your business or shall be organized and labeled in a manner responsive to these requests.

3. If any document, communication or thing is withheld under any claim of privilege or work product, state the precise nature of the objection to production and provide a list of such documents, communications or things including the following: the type of document, *i.e.*, whether a letter, memorandum, report etc.; the nature of the information; the identity of the author(s) or participant(s); the identity of each recipient of the document or information; the identity of the individual(s) to whom copies of the document have been furnished or the information communicated; the date the document was created or the information disseminated; a description of the subject matter of the document or information; and the specific interrogatory or document request to which each document or information is responsive.

4. If any request is objected to on grounds of overbreadth, respond to the request as narrowed to conform with your objection. Petitioner waives no right or action by virtue of these instructions.

III. DOCUMENTS TO BE PRODUCED

REQUEST FOR PRODUCTION NO. 1.

Documents and things sufficient to establish the First Use Date for the Subject Mark.

REQUEST FOR PRODUCTION NO. 2.

Documents and things sufficient to establish or show your past, current, or planned future use or non-use of the Subject Mark in commerce in the United States.

REQUEST FOR PRODUCTION NO. 3.

Documents and things sufficient to establish your alleged current and continuous use of the Subject Mark in commerce in the United States in connection with each good or service identified in the '598 Registration from your claimed date of first use in commerce to the present.

REQUEST FOR PRODUCTION NO. 4.

Documents and things sufficient to identify each formative version of the Subject Mark that you have used, adopted, created, considered, or in which you have claimed an ownership interest.

REQUEST FOR PRODUCTION NO. 5.

Documents and things that evidence, reflect, show, demonstrate or relate to your decision to adopt, use, and/or apply for registration of each formative version the Subject Mark.

REQUEST FOR PRODUCTION NO. 6.

Documents and things that evidence, reflect, show, demonstrate or relate to your decision to adopt, use, and/or apply for registration of any slogan,

packaging, color scheme, or anything confusingly similar to the same, that you were aware was also used by Petitioner.

REQUEST FOR PRODUCTION NO. 7.

Documents and things sufficient to identify each of the Meenaxi Goods and Services.

REQUEST FOR PRODUCTION NO. 8.

Documents and things sufficient to identify each geographic territory in which you offer, offered, sell, sold, or intend to offer or sell each of the Meenaxi Goods and Services.

REQUEST FOR PRODUCTION NO. 9.

Documents and things showing, demonstrating or evidencing the actual or target consumer demographic for each of the Meenaxi Goods and Services.

REQUEST FOR PRODUCTION NO. 10.

A sample of each label design, packaging, wrapper, beverage can, beverage bottle, or product container that you use, used, adopted, created, considered, plan to use, or planned to use in connection with any of the Meenaxi Goods and Services.

REQUEST FOR PRODUCTION NO. 11.

Documents or things sufficient to identify each mark, design, slogan or other device capable of use as a source identifier that you used, adopted, mimicked,

copied, or selected, in whole or in part, in creating, designing, adopting, registering, using or applying for registration of a trademark or service mark in the United States, including any THUMS UP Mark.

REQUEST FOR PRODUCTION NO. 12.

Any summaries, reports, drafts of reports, or other document produced or relied upon by any expert witness or consultant hired by you or your attorneys in connection with the above-captioned proceeding.

REQUEST FOR PRODUCTION NO. 13.

Documents and things relating, reflecting or referring to: any work performed for you, or at your request or direction, by any person or persons whom you intend to call as an expert witness on your behalf in this proceeding; correspondence with any such person(s); engagement or fee arrangements with any such person(s); any documents you has provided to or received from any such persons or persons; and any preliminary or final opinions or observations of any such person or persons.

REQUEST FOR PRODUCTION NO. 14.

Documents and things referring, reflecting or relating to each instance in which you or your agents explained to any third party that you or your products, services, or commercial activities are or are not affiliated with, sponsored by, or otherwise connected with any other party (including Petitioner) or such other

party's products, services, or commercial activities, or each instance in which any third party mentioned that, indicated that, or questioned whether you or your products, services, or commercial activities are or might be affiliated with, sponsored by, or otherwise connected with any other party (including Petitioner) or such other party's products, services, or commercial activities.

REQUEST FOR PRODUCTION NO. 15.

Documents and things referring, reflecting or relating to any communication, including, but not limited to, telephone calls, electronic mailings, letters, or memorandum, that was directed, delivered or transmitted to you but that was intended for, or directed or addressed to, Petitioner or referenced any goods of Petitioner or any person or entity related to Petitioner.

REQUEST FOR PRODUCTION NO. 16.

Documents and things referring, reflecting or relating to any confusion, incorrect belief, mistake or misunderstanding concerning the source of any of the Meenaxi Goods and Services.

REQUEST FOR PRODUCTION NO. 17.

To the extent not produced in response to the foregoing requests, Documents and things that refer, reflect, or relate to any instance identified in your response to Interrogatory Nos. 16 and 26 of Petitioner's Interrogatories.

REQUEST FOR PRODUCTION NO. 18.

To the extent not produced in response to the foregoing requests, documents and things concerning any instance of actual confusion between you and Petitioner, you and the THUMS UP Mark, or the Subject Mark and the THUMS UP Mark.

REQUEST FOR PRODUCTION NO. 19.

Documents and things that refer, reflect, or relate to any complaints of any kind or nature regarding any of the goods or services you have sold at any time in connection with the Subject Mark.

REQUEST FOR PRODUCTION NO. 20.

Documents sufficient to show and identify all channels of trade through which any of the Meenaxi Goods and Services are or have been distributed.

REQUEST FOR PRODUCTION NO. 21.

One (1) specimen of all advertising, marketing, and promotional materials of any kind, in any medium, that include the Subject Mark, and all drafts thereof, including, without limitation, a specimen of any media plan, marketing plan or media buy document for any of the Meenaxi Goods and Services.

REQUEST FOR PRODUCTION NO. 22.

Documents and things sufficient to show the placement or distribution of any advertising, marketing, or promotional material that displays or refers to the

Subject Mark or any of the Meenaxi Goods and Services, in any medium whatsoever, including, but not limited to, the costs of such placement or distribution, where such placement or distribution was made, and the dates of such placements or distributions.

REQUEST FOR PRODUCTION NO. 23.

For each year in which Meenaxi has offered any of the Meenaxi Goods and Services in the United States, documents and things sufficient to show Meenaxi's annual advertising budget for the Meenaxi Goods and Services in the United States and any amounts spent, on an annual basis, to advertise, promote or market any of the Meenaxi Goods and Services in the United States.

REQUEST FOR PRODUCTION NO. 24.

One (1) specimen of every news article, journal article, press release, or news release that has been or will be issued, released or published concerning any of the Meenaxi Goods and Services.

REQUEST FOR PRODUCTION NO. 25.

Documents sufficient to identify and show Internet Web sites, Web pages, advertisements, or banners on which you have displayed, or allowed others to display, the Subject Mark or any formative version of the Subject Mark.

REQUEST FOR PRODUCTION NO. 26.

For each year in which you have offered any of the Meenaxi Goods and Services in the United States, one (1) specimen of each your current or former manuals, including your training manuals, brand manuals, operations manuals, and the like.

REQUEST FOR PRODUCTION NO. 27.

Documents and things that show, describe, reflect, demonstrate, or evidence your adoption of any mark based, in whole or in part, on any THUMS UP Mark, including, without limitation, documents relating to when and how you obtained knowledge of the THUMS UP Mark, Petitioner's use of the THUMS UP Mark, and your decision to adopt, use, register or apply for registration of any such mark.

REQUEST FOR PRODUCTION NO. 28.

Documents and things sufficient to identify gross revenues by month and year derived from the sale or offering of any of the Meenaxi Goods and Services that you have sold or offered in the United States.

REQUEST FOR PRODUCTION NO. 29.

Documents and things sufficient to show your annual net revenue derived from sales of any of the Meenaxi Goods and Services in the United States.

REQUEST FOR PRODUCTION NO. 30.

Documents and things sufficient to identify the geographic regions within the United States in which you have promoted, marketed or intend to market any of the Meenaxi Goods and Services.

REQUEST FOR PRODUCTION NO. 31.

Any license, agreement or other document in which you give, grant, have given or have granted any right or permission to any person to use the Subject Mark in the U.S. or otherwise import, market or sell products under the Subject Mark in the U.S.

REQUEST FOR PRODUCTION NO. 32.

Any document or thing that shows, reflects, demonstrates, evidences or contains any communication that you have received from any person regarding the taste or quality of any of the Meenaxi Goods and Services that you sell, offer, provide, have sold, provided or have offered in the United States.

REQUEST FOR PRODUCTION NO. 33.

Documents and things that consist of, evidence or refer to any opinion regarding whether your use or registration of the Subject Mark is likely to cause confusion with, infringe or dilute the THUMS UP Mark or otherwise infringe, dilute or violate any right held by Petitioner.

REQUEST FOR PRODUCTION NO. 34.

Documents and things that consist of, evidence or refer to any opinion regarding whether your use or registration of any mark is likely to cause confusion with, infringe or dilute any Foreign Mark or otherwise infringe, dilute or violate any right held by any third-party.

REQUEST FOR PRODUCTION NO. 35.

Documents and things relating to any surveys, studies, polls, or focus group interviews of any kind or nature regarding the Subject Mark, the THUMS UP Mark, and/or any Foreign Mark including, but limited to, trademark clearance searches, market studies, and consumer awareness studies.

REQUEST FOR PRODUCTION NO. 36.

Documents, things, communications or correspondence, including cease and desist or demand letters, directed to, discussing or regarding third-party use or third-party registration of any Foreign Mark.

REQUEST FOR PRODUCTION NO. 37.

Business models, plans, programs, correspondence, communications or other documents or things directed to, discussing, considering, setting forth, describing, reflecting, or regarding you using, adopting, registering, or applying for registration of any Foreign Mark in the United States.

REQUEST FOR PRODUCTION NO. 38.

Each contract, agreement, or other document setting forth a business arrangement between you and any manufacturer, wholesaler, distributor, importer, co-packer, retailer, or any other person in Meenaxi's supply chain, concerning any of the Meenaxi Goods and Services, whether such person provided such service to you currently or in the past.

REQUEST FOR PRODUCTION NO. 39.

All documents used, identified, relied upon or referred to by you when answering Petitioner's Interrogatories or any other discovery requests propounded by Petitioner.

REQUEST FOR PRODUCTION NO. 40.

For each logo, design, label, or packaging that you have adopted, considered adopting or used in the United States that is, in whole or in part, based on a Foreign Mark, Foreign Label or Foreign Packaging, produce documents sufficient to identify each such logo, design, label, and packaging, and the Foreign Mark(s), Foreign Label(s) and Foreign Packaging upon which it was based.

This 10th day of November, 2017.

/Tennell Lockett/

D. Tennell Lockett, Esq.

tennell.lockett@townsendlockett.com

TOWNSEND & LOCKETT, LLC

1401 Peachtree Street

Suite 500

Atlanta, Georgia, 30309

Phone: 404-870-8501

Fax: 404-870-8502

*Attorney for Petitioner, The Coca-Cola
Company*

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

In The Matter Of: Registration No. 4,205,598
Mark: THUMS UP
Issued: September 11, 2012

THE COCA-COLA COMPANY,

Petitioner,

v.

MEENAXI ENTERPRISE, INC.,

Registrant.

Cancellation No. 92063353

CERTIFICATE OF SERVICE

I hereby certify that on November 10th, 2017, I have caused a true and correct copy of the foregoing PETITIONER THE COCA-COLA COMPANY'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS TO REGISTRANT MEENAXI ENTERPRISE, INC. to be served upon the above-captioned Registrant by electronic mail to the attorney of record for the Registrant as follows:

Jason DeFrancesco
BAKER AND RANNELLS, PA
92 E. Main Street, Ste. 302
Somerville, NJ 08876
jld@br-tmlaw.com

/Tennell Lockett/
D. Tennell Lockett

EXHIBIT C

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

In The Matter of: Registration No. 4,205,598

Mark: THUMS UP

Issued: September 11, 2012

THE COCA-COLA COMPANY,

Petitioner,

v.

MEENAXI ENTERPRISE, INC.,

Registrant.

Cancellation No. 92063353

**DECLARATION OF D. TENNELL LOCKET IN SUPPORT OF PETITIONER'S
MOTION FOR ONE-DAY EXTENSION OF DISCOVERY DEADLINE AND MOTION
TO COMPEL RESPONSES TO PETITIONER'S WRITTEN DISCOVERY REQUESTS**

Pursuant to 28 U.S.C. § 1746 and 37 C.F.R. § 2.20, I, D. TENNELL LOCKET, hereby declare and state as follows:

1. My name is D. Tennell Lockett. I am of legal age and under no legal disability. I have personal knowledge of the facts in this Declaration and know them to be true and correct. I authorize the use of this Declaration in connection with the above-captioned cancellation proceeding.

2. I am a partner in the law firm of Townsend Lockett, LLC and was, until November 20, 2017, counsel of record for Petitioner The Coca-Cola Company in the above-captioned cancellation proceeding.

3. This Declaration is based upon my personal knowledge and my review of correspondence with Petitioner.

4. I served Petitioner's First Set of Interrogatories and First Set of Requests for the Production of Documents and Things ("Petitioner's Written Discovery") upon counsel for Registrant Meenaxi Enterprise, Inc. on November 10, 2017.

5. At the time of service, I was aware that, under the amended Trademark Rules of Procedure ("Amended Rules"), discovery requests must be served at a time such that they will be due no later than the close of discovery. *See* 37 C.F.R. § 2.120(a)(3).

6. Under my reading of the Amended Rules, I believe that November 10, 2017 was the last day to timely serve discovery requests under 37 C.F.R. §§ 2.120(a)(3) and 2.196, given the December 10, 2017 close of discovery in this proceeding. In interpreting the Amended Rules, I relied on at least *Estudi Moline Dissey, S.L. v. Biourn Inc.*, 123 U.S.P.Q.2d 1268, 1269 (TTAB 2017) which provides the following guidance, in pertinent part, in calculating such date: "discovery requests must be served with at least thirty-one days remaining in the discovery period, *including the date of service*, regardless of whether the day of service falls on a weekend or holiday" and "[t]o reiterate, a party serving discovery must consider the thirty-day response time for discovery under Trademark Rule 2.120(a)(3), and ensure that the last day for the responding to discovery falls *on* or before the close of discovery." (emphasis added). Including the date of service, thirty-one days from the close of discovery (December 10, 2017) is November 10, 2017, the date upon which I served discovery.

7. I understand that Registrant's counsel is refusing to respond to Petitioner's Written Discovery, alleging that it was served one day late and is thus untimely.

8. If my reading of the Amended Rules was incorrect, my belief as to the deadline to serve discovery was a reasonable interpretation of Amended Rules, which went into effect during the pendency of this proceeding.

9. I made a good faith effort to comply with the Trademark Rules of Procedure and did not intend for Petitioner's discovery requests to be served upon Registrant in an untimely manner.

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

Executed On: December 11, 2017

/s/ D. Tennell Lockett
D. Tennell Lockett

EXHIBIT D

LaFantano, Sarah

From: Saporito, Holly Hawkins
Sent: Monday, November 20, 2017 4:29 PM
To: Jason L. DeFrancesco
Cc: LaFantano, Sarah; Gallagher, Mary Grace; Branch, Kelly
Subject: THUMS UP/LIMCA Cancellations
Attachments: TCCC (Meenaxi)_ Substitution of Counsel for TCCC (Thums Up)_1.DOCX; TCCC (Meenaxi)_ Substitution of Counsel for TCCC (Limca)_1.DOCX

Jason,

To follow up on the voicemail I left you earlier today, I wanted to introduce myself as I will be replacing Tennell Lockett as counsel for the above-referenced cancellation proceedings involving your client, Meenaxi Enterprise, Inc., and also go over a few aspects of these matters with you.

First, In order to complete the transition of counsel, we will be filing the attached Notices of Substitution of Counsel. Please let us know if you have any questions.

Second, as you are aware, we served four notices of deposition on your client and certain of its employees on Friday. The depositions are noticed for our New York office on December 7 and 8, but I wanted to discuss dates/locations to see if we can get these depositions set so that we can make the appropriate travel plans.

Third, I wanted to give you a heads up that we will be serving two subpoenas for documents and a deposition on the two attorneys who prosecuted the applications for your clients' various THUMS UP and LIMCA applications, JungJin Lee and Suraj Chivukuala. We will send you copies of those subpoenas soon in accordance with Fed. R. Civ. P. 45(a)(4).

Fourth, while we are prepared to complete the noticed discovery by the end of the current discovery period, given the upcoming holiday season, we would like to request a 30-day extension with the board to complete discovery, and would like to know if your client agrees to such an extension.

Finally, I understand that there have been some settlement discussions between the parties, and wanted to get a better understanding from you as to your client's position on settlement. Our client is interested in a possible resolution of these matters, and would like to re-open a dialogue along these grounds, if your client is interested in doing so.

Thank you in advance, and I look forward to speaking with you. Regarding the Notices of Substitution of Counsel, we plan to get these on file today.

Regards,

Holly Hawkins Saporito
partner | **ALSTON & BIRD** | atlanta
1201 west peachtree street
atlanta, ga 30309
phone | [404.881.4402](tel:404.881.4402)
fax | [404.881.7777](tel:404.881.7777)
holly.saporito@alston.com

EXHIBIT E

LaFantano, Sarah

From: Saporito, Holly Hawkins
Sent: Thursday, November 30, 2017 10:05 AM
To: Jason L. DeFrancesco
Cc: Branch, Kelly; LaFantano, Sarah; Gallagher, Mary Grace; K. Hnasko
Subject: RE: THUMS UP/LIMCA Cancellations

Jason,

Thank you for providing times for a meet and confer. I am available on Monday from 2-2:45pm, and will block out my calendar accordingly. Please call me at 404-881-4402.

Regards,

Holly Hawkins Saporito
partner | **ALSTON & BIRD** | atlanta
1201 west peachtree street
atlanta, ga 30309
phone | [404.881.4402](tel:404.881.4402)
fax | [404.881.7777](tel:404.881.7777)
holly.saporito@alston.com

From: Jason L. DeFrancesco [<mailto:JLD@br-tmlaw.com>]
Sent: Thursday, November 30, 2017 10:00 AM
To: Saporito, Holly Hawkins <Holly.Saporito@alston.com>
Cc: Branch, Kelly <Kelly.Branch@alston.com>; LaFantano, Sarah <Sarah.LaFantano@alston.com>; Gallagher, Mary Grace <MaryGrace.Gallagher@alston.com>; K. Hnasko <K.Hnasko@br-tmlaw.com>
Subject: RE: THUMS UP/LIMCA Cancellations

Holly,

I agree to discuss issues regarding discovery and depositions with you as part of a meet and confer.

I am very tied up this day and tomorrow but have my schedule reserved for Monday to discuss at 10:30AM – 11:15AM or 2:00PM – 2:45PM. I think this should be enough time to determine if we can resolve or not. Please let me know as soon as you can what is best so I can plan my calendar accordingly.

Regards,
Jason

From: Saporito, Holly Hawkins [<mailto:Holly.Saporito@alston.com>]
Sent: Wednesday, November 29, 2017 2:31 PM
To: Jason L. DeFrancesco
Cc: Branch, Kelly; LaFantano, Sarah; Gallagher, Mary Grace
Subject: RE: THUMS UP/LIMCA Cancellations

Jason,

While I appreciate finally receiving a substantive response to the email that I sent you on November 20, your email is unnecessarily aggressive and replete with unwarranted characterizations of TCCC's discovery. I will respond to each of the points you raised in turn.

TCCC's Interrogatories to Meenaxi

With regard to the interrogatories TCCC served on Meenaxi, your email includes an unfounded allegation that service was "untimely" (it was not) and that TCCC has somehow exceeded the 75 interrogatory limit by virtue of serving your client with 26 discrete, narrowly-tailored interrogatories in each proceeding. If your client is seriously refusing to provide any substantive response to these interrogatories and instead intends to rely on its unfounded objections pursuant to 37 CFR § 2.120(d) and T[BM]P § 405.03(e), we plan to move to compel substantive responses. Accordingly, please let me know by **10am Eastern tomorrow, November 30, 2017**, whether your client will withdraw its objections. If not, please let me know when you are available this week to meet and confer regarding your client's position pursuant to TBMP § 405.03(e) to see if we can resolve any issues regarding your client's position prior to TCCC filing its motion to compel.

Depositions

Your characterization of TCCC's reasonable, limited requests for deposition of your client and its employees is also inaccurate and out of context. TCCC did not notice eight depositions of your client – rather, we noticed four; short (2-3 hours long) 30(b)(1) depositions of three individuals, and one 30(b)(6) notice of your client, for a total of two days of deposition. And while there are indeed two proceedings for which each notice relates to, given how much of the testimony we believe will overlap, we combined notices in an effort to minimize costs and burdens on both parties. With regard to locations, as made clear in my multiple emails to you and the notices themselves, we are willing to take the depositions at a location closer to your client—our New York office was simply noted as a placeholder, as per standard practice. We also agree to stenographic depositions.

Regarding the noticed individuals, thank you for informing us of Ms. Sundarraj's pregnancy. She claims to be an employee of Meenaxi (see <https://www.linkedin.com/in/malathi-sundarraj-20358a1b>) so I am not sure what basis you refuse to "accept service" of a deposition notice for her testimony. Nevertheless, given your representation that Ms. Sundarraj is nearing her due date, TCCC is willing to meet and confer with you regarding Ms. Sundarraj's deposition to see if we can agree to reasonable accommodations for her deposition (e.g., at a location of her choosing, a telephonic deposition, etc.). As per our notice for Ms. Sundarraj's deposition, we intend to depose her for less than 3 hours. TCCC also reserves the right to take a testimonial deposition of Ms. Sundarraj.

Regarding Meenaxi G. and Kaushik, TCCC does intend to proceed in taking the depositions of both of these individuals. If one of them will be serving as Meenaxi's 30(b)(6) representative we can likely combine the individual deposition with the 30(b)(6) deposition, but we will not unilaterally withdraw our notice to Meenaxi G. as you seem to request in your correspondence. If your client refuses to provide either of these individuals for deposition, please confirm your refusal by **10 am Eastern tomorrow, November 30, 2017**. If so, we would like to meet and confer on this issue this week as well, as we will be forced to also move to compel depositions.

Finally, with regard to the subpoenas, our process server was not yet able to serve Mr. Lee, and as you know, we have requested Mr. Chivukula's contact information from you. I renew my request now. We will send you revised subpoenas, issued by individuals barred in the witness' respective states, shortly. These subpoenas were not intended to harass your client as you claim. While we understand that much of the information they have will be privileged, we do indeed request that they produce any non-privileged documents they may have. Regarding their depositions, again, we provided placeholder dates/times—I would prefer to take these depositions telephonically or by video conference, if you agree, and I imagine each will be about 2 hours long.

Extension

Your email stated that Meenaxi is amenable to an extension only to take a 30(b)(6) deposition of your client. For the reasons stated above, TCCC does not agree to withdraw its individual deposition notices. Please let us know if your

client agrees to taking these depositions outside of the discovery period as well, and provide us a location and dates of availability for each witness.

TCCC's Amended Initial Disclosures

In accordance with my previous correspondence, TCCC will be serving Amended Initial Disclosures by tomorrow under separate cover.

* * *

As stated above, please let me know by **10 am Eastern tomorrow, November 30, 2017**, whether your client will: (i) agree to provide substantive responses to TCCC's interrogatories in both the THUMS UP and LIMCA proceedings; and (ii) agree to the noticed depositions for Ms. Sundarraj, Meenaxi G., and Kaushik, the 30(b)(6) of Meenaxi, and when/where these depositions could take place. If your client is maintain its objections to either the interrogatories or these noticed depositions, let me know when you are available this week to meet and confer, as you leave us no choice but to file a motion to compel.

Regards,

Holly Hawkins Saporito

partner | **ALSTON & BIRD** | atlanta
1201 west peachtree street
atlanta, ga 30309
phone | [404.881.4402](tel:404.881.4402)
fax | [404.881.7777](tel:404.881.7777)
holly.saporito@alston.com

From: Jason L. DeFrancesco [<mailto:JLD@br-tmlaw.com>]

Sent: Tuesday, November 28, 2017 6:05 PM

To: Saporito, Holly Hawkins <Holly.Saporito@alston.com>

Cc: Branch, Kelly <Kelly.Branch@alston.com>; LaFantano, Sarah <Sarah.LaFantano@alston.com>; Gallagher, Mary Grace <MaryGrace.Gallagher@alston.com>

Subject: RE: THUMS UP/LIMCA Cancellations

Holly,

These matters have been pending almost two years and there are no ongoing settlement discussions. Meenaxi does not consent to any further extensions or delay. We cannot agree with your suggestion that the holidays have impact on a deadline that has been extended twice since June and is finally on the verge of closing next week.

Your client has been well-aware of the discovery deadline and chose to serve discovery after the very last minute. Service is untimely and the 75 limit has been exceeded by all your document requests and interrogatories. *Attached are Meenaxi's objections.*

In view of the excessive discovery violation, you now proceed with gamesmanship to overwhelm Meenaxi. All-in-all, noticing twelve overlapping depositions, unilaterally scheduled for the last week of discovery in New York and Michigan. The depositions are defective, without proper basis, are not scheduled in the federal judicial district where the proposed deponent resides or is regularly employed, are unduly burdensome, untimely, seek privileged material and overall constitute harassment.

The depositions you scheduled are listed as follows:

Date	Time	Location	Proceeding	Name
12/4	9:00 AM	New York	LIMCA	Suraj Chivukula
12/4	9:00 AM	New York	THUMS UP	Suraj Chivukula
12/5	9:00 AM	Michigan	THUMS UP	Jung Jin Lee
12/5	9:00 AM	Michigan	LIMCA	Jung Jin Lee
12/7	9:00 AM	New York	LIMCA	Malathi Sundarraj
12/7	9:00 AM	New York	THUMS UP	Malathi Sundarraj
12/7	11:30 AM	New York	LIMCA	30(b)(6)
12/7	11:30 AM	New York	THUMS UP	30(b)(6)
12/8	9:00 AM	New York	LIMCA	Kaushik Gandhi
12/8	9:00 AM	New York	THUMS UP	Kaushik Gandhi
12/8	12:00 PM	New York	LIMCA	Meenaxi Gandhi ("Meenaxi G.")
12/8	12:00 PM	New York	THUMS UP	Meenaxi G.

As an initial matter, it should be highlighted that your client has already represented to the Board that the two proceedings involve different issues (*see* 11 TTABVue, Motion to Divide). Nevertheless, you still scheduled deponents so that their depositions would overlap with the other proceeding(s)' deposition for no reasonable basis or purpose other than to harass. Likewise, knowing all well that the Board does not allow video, you attempt to reserve the right to take video, serving again no purpose other than to harass.

With specific regards to your notices: Malathi does not work or reside in New York and she is not an officer, director or managing agent. Malathi is more than 8 months pregnant and we are not authorized to accept service on her behalf. With regards to Meenaxi G., Kaushik and 30(b)(6) deponents neither work nor reside in New York. Subject to the aforementioned objections, Kaushik has been out of the country before you noticed his deposition and will not return before 12/8. And, Meenaxi G. has very little information, if any, to provide in this proceeding. In further view of the 30(b)(6) Notice, it improperly seeks documents and information identical to the discovery currently objected to in its entirety and improperly attempts to circumvent discovery rules.

As to the subpoenas noticed for Meenaxi's prior counsel, they are additionally objectionable and defective based on the overlapping schedules, locations or as signed personally by you. The subpoenas are not issued by the clerk and it does not seem you are licensed in Michigan or active in New Jersey. Notwithstanding, the subpoenas seek protected information, from people not identified in your initial disclosures, and Meenaxi does not waive its privilege or consent to depositions otherwise. In response to your request to accept service on behalf of its prior counsel, please be advised we are not authorized. You are urged to withdraw the subpoenas to avoid issues.

As a good-faith effort, please be advised that Meenaxi is agreeable to coordinating deposition(s) with you, however within reason. In this regard Meenaxi is willing to extend discovery *solely limited* to taking a 30(b)(6) deposition, by stenographer only, for each proceeding and not as a means to circumvent untimely discovery. If you are agreeable to this good-faith effort to resolve a dispute, we would be happy

to proceed accordingly. If not, we will look to quash your notices, seek a protective order and seek relief for failure to take reasonable steps to avoid imposing undue burden or expense.

As a final matter, you have taken concern with my reference to your initial disclosures served in February. As you are aware, prior counsel ubiquitously designated himself. Now that he is no longer on record, you will likely have to update?

Please let me know your intentions as to your initial disclosures and 12 depositions by the end of this week.

Regards,
Jason

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

From: Saporito, Holly Hawkins [<mailto:Holly.Saporito@alston.com>]
Sent: Monday, November 27, 2017 7:24 PM
To: Jason L. DeFrancesco
Cc: Branch, Kelly; LaFantano, Sarah; Gallagher, Mary Grace
Subject: Re: THUMS UP/LIMCA Cancellations

Jason, thanks. We look forward to receiving your response.

Regards,

Holly Hawkins Saporito
Alston & Bird LLP
570-974-3200

On Nov 27, 2017, at 5:59 PM, Jason L. DeFrancesco <JLD@br-tmlaw.com<<mailto:JLD@br-tmlaw.com>>> wrote:

Holly,

Just met with client today and will have a response tomorrow.

Regards,
Jason

From: Saporito, Holly Hawkins [<mailto:Holly.Saporito@alston.com>]
Sent: Monday, November 27, 2017 10:04 AM
To: Jason L. DeFrancesco; Branch, Kelly
Cc: LaFantano, Sarah; Gallagher, Mary Grace
Subject: RE: THUMS UP/LIMCA Cancellations

Jason,

With regard to my client's Initial Disclosures, I note that these were served in February 2017, yet you waited over 9 months to raise any sort of objection to their sufficiency. Nevertheless, my client does plan to update its disclosures this week, and we will serve these disclosures as soon as possible.

I also have not received a response from you to my November 20 email (attached hereto for your convenience). Please confirm that your client and the noticed employees are available for deposition on December 7-8 in Alston & Bird's New York office, or let me know what alternate dates they are available. Also, please let us know your client's position on our proposed 30 day extension to the discovery period, given the holiday season.

Finally, I want to reiterate that my client is open to further settlement discussions, and would like to re-open such discussions with your client if it is willing to do so.

Thank you, and I look forward to hearing from you.

Regards,

Holly Hawkins Saporito
partner | ALSTON & BIRD | atlanta
1201 west peachtree street
atlanta, ga 30309
phone | 404.881.4402<tel:404.881.4402>
fax | 404.881.7777<tel:404.881.7777>
holly.saporito@alston.com<mailto:holly.saporito@alston.com>

From: Jason L. DeFrancesco [mailto:JLD@br-tmlaw.com]
Sent: Monday, November 20, 2017 6:31 PM
To: Branch, Kelly <Kelly.Branch@alston.com<mailto:Kelly.Branch@alston.com>>
Cc: LaFantano, Sarah <Sarah.LaFantano@alston.com<mailto:Sarah.LaFantano@alston.com>>; Gallagher, Mary Grace <MaryGrace.Gallagher@alston.com<mailto:MaryGrace.Gallagher@alston.com>>; Saporito, Holly Hawkins <Holly.Saporito@alston.com<mailto:Holly.Saporito@alston.com>>
Subject: RE: THUMS UP/LIMCA Cancellations

Thanks.

I understand you have been reviewing this case and now made an appearance. Attached are the initial disclosures filed on behalf of your client. I am looking forward to your supplement/correction.

Regards,
Jason

From: Branch, Kelly [mailto:Kelly.Branch@alston.com]
Sent: Monday, November 20, 2017 6:01 PM
To: Jason L. DeFrancesco
Cc: LaFantano, Sarah; Gallagher, Mary Grace; Saporito, Holly Hawkins
Subject: THUMS UP/LIMCA Cancellations

Hello Jason,

The attached documents were filed today in Cancellation Nos. 92063353 and 92064398.

Thank you,
Kelly

Kelly Kennedy Branch

Paralegal
ALSTON & BIRD
1201 West Peachtree Street
Atlanta, GA 30309
404-881-4257 (O)
Kelly.Branch@alston.com<mailto:Kelly.Branch@alston.com>

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EXHIBIT F

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

The Coca-Cola Co.,

Petitioner,

v.

Meenaxi Enterprises, Inc.,

Registrant.

Cancellation No.: 92063353

Mark: THUMS UP

**REGISTRANT’S OBJECTIONS TO
PETITIONER’S FIRST SET OF INTERROGATORIES**

Pursuant to 37 CFR § 2.120(d) and TMEP § 405.03(e) *Remedy for Excessive Interrogatories*, Registrant hereby responds as follows to the First Set of Interrogatories (the “Interrogatories”),

**OBJECTION TO FIRST SET OF INTERROGATORIES UNDER
TRADEMARK RULE OF PRACTICE 2.120(d)**

Registrant objects to the Interrogatories on the basis that the same violates 37 CFR § 2.120(d) because the amount of requests served exceeds the limitation specified in this paragraph, and Registrant is not willing to waive this basis for objection.

If a party on which interrogatories have been served, in a proceeding before the Board, believes that the number of interrogatories exceeds the limit specified in 37 CFR § 2.120(d), and wishes to object to the interrogatories on that basis, the party must, within the time for, and instead of, serving answers and specific objections to the interrogatories, serve a general objection on the ground of their excessive number. TMEP § 405.03(e), FN 1 *citing* 37 CFR § 2.120(d); *Emilio Pucci International BV v. Sachdev*, 118 USPQ2d 1383, 1385 (TTAB 2016).

Registrant, in compliance with the Rule, serves only general objections. Registrant’s failure to set forth herein its specific objections or specific responses to individual interrogatories is not a waiver and is without prejudice.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Registrant objects to Instructions and Definitions on the ground that they are overly broad and unduly burdensome. Registrant further objects to Instructions and Definitions to the extent it imposes greater burdens on it than are permitted by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

OBJECTIONS

1. Registrant objects to the Interrogatories to the extent they are overly broad or expose Registrant to undue burden or expense in relation to its likely benefit, taking into account the needs of the case, the property in controversy, Registrant's resources, the importance of the issues at stake in the litigation, and the importance of proper discovery in resolving the Issues.

2. Registrant objects to the Interrogatories on the ground of irrelevance to the extent that they (a) seek information concerning any activities of Registrant outside of the United States, (b) seek information on issues not raised in the pleadings, or (c) seek information not reasonably calculated to lead to the discovery of admissible evidence.

3. Registrant objects to the Interrogatories to the extent they are duplicative; unreasonably cumulative; and the information sought can be obtained from sources that are more convenient, less burdensome, or less expensive.

4. Registrant objects to the Interrogatories to the extent they are not particular and seek information merely tangential to the proceeding and are not limited in time.

5. Registrant objects to the Interrogatories to the extent they are vague, ambiguous and untimely (37 CFR § 2.120(a)(3)).

6. Registrant objects to the Interrogatories to the extent that they call for information subject to the attorney-client, attorney work product, or other privilege.

Dated: November 28, 2017

Respectfully submitted,
Baker and Rannells, PA

By: /Jason DeFrancesco/
Jason L. DeFrancesco
92 East Main Street, Ste. 302
Somerville, New Jersey 08876
(908) 722-5640

Attorneys for the Registrant,
Meenaxi Enterprises, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to HOLLY HAWKINS SAPORITO by email to holly.saporito@alston.com on this the 28th day of November 2017.

/Jason DeFrancesco/
Jason DeFrancesco

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

The Coca-Cola Co.,

Petitioner,

v.

Meenaxi Enterprises, Inc.,

Registrant.

Cancellation No.: 92063353

Mark: THUMS UP

**REGISTRANT’S OBJECTIONS TO
PETITIONER’S FIRST REQUEST FOR PRODUCTION**

Pursuant to 37 CFR § 2.120(e) and TMEP § 406.05(e) *Remedy for Excessive Requests for Production*, Registrant hereby responds as follows to the First Request for Production (the “Requests”),

**OBJECTION TO FIRST SET OF REQUESTS UNDER
TRADEMARK RULE OF PRACTICE 2.120(e)**

Registrant objects to the Requests on the basis that the same violates 37 CFR § 2.120(e) because the amount of requests served exceeds the limitation specified in this paragraph, and Registrant is not willing to waive this basis for objection.

If a party on which requests for production of documents and things have been served, in a proceeding before the Board, believes that the number of requests exceeds the limit specified in 37 CFR § 2.120(e), and wishes to object to the requests on this basis, the party must, within the time for (and instead of) serving responses and specific objections to the requests, serve a general objection on the ground of their excessive number. TMEP § 406.05(e), FN 1 *citing* 37 CFR § 2.120(e). *Cf. Amazon Technologies v. Wax*, 93 USPQ2d 1702, 1705 (TTAB 2009)

Registrant, in compliance with the Rule, serves only general objections. Registrant’s failure to set forth herein its specific objections or specific responses to individual requests is not a waiver and is without prejudice.

OBJECTIONS TO DEFINITIONS AND INSTRUCTIONS

Registrant objects to Instructions and Definitions on the ground that they are overly broad and unduly burdensome. Registrant further objects to Instructions and Definitions to the extent it imposes greater burdens on it than are permitted by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

OBJECTIONS

1. Registrant objects to the Requests to the extent they are overly broad or expose Registrant to undue burden or expense in relation to its likely benefit, taking into account the needs of the case, the property in controversy, Registrant's resources, the importance of the issues at stake in the litigation, and the importance of proper discovery in resolving the Issues.

2. Registrant objects to the Requests on the ground of irrelevance to the extent that they (a) seek information concerning any activities of Registrant outside of the United States, (b) seek information on issues not raised in the pleadings, or (c) seek information not reasonably calculated to lead to the discovery of admissible evidence.

3. Registrant objects to the Requests to the extent they are duplicative; unreasonably cumulative; and the information sought can be obtained from sources that are more convenient, less burdensome, or less expensive.

4. Registrant objects to the Requests to the extent they are not particular and seek information merely tangential to the proceeding and are not limited in time.

5. Registrant objects to the Requests to the extent they are vague, ambiguous and untimely (37 CFR § 2.120(a)(3)).

6. Registrant objects to the Requests to the extent that they call for information subject to the attorney-client, attorney work product, or other privilege.

7. Registrant objects to the requests under *Towers, Perrin, Forster & Crosby Inc. v. Circle Consulting Group Inc.*, 16 USPQ2d 1398, 1399 (TTAB 1990) (refusal to respond to document requests was proper; Registrant could not respond to document requests without first having to answer excessive interrogatories). See FN 7, TMEP § 406.05(e) (“A party may properly refuse to respond to a document request seeking all documents identified or referred to in response to interrogatories if the number of interrogatories is believed to be excessive.”)

Dated: November 28, 2017

Respectfully submitted,
Baker and Rannells, PA

By: /Jason DeFrancesco/
Jason L. DeFrancesco
92 East Main Street, Ste. 302
Somerville, New Jersey 08876
(908) 722-5640

Attorneys for the Registrant,
Meenaxi Enterprises, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent to HOLLY HAWKINS SAPORITO by email to holly.saporito@alston.com on this the 28th day of November 2017.

/Jason DeFrancesco/
Jason DeFrancesco

EXHIBIT G

LaFantano, Sarah

From: Jason L. DeFrancesco <JLD@br-tmlaw.com>
Sent: Tuesday, December 5, 2017 6:14 PM
To: Saporito, Holly Hawkins
Cc: LaFantano, Sarah; Gallagher, Mary Grace; Branch, Kelly
Subject: RE: TCCC/Meenaxi: Summary of Meet and Confer in THUMS UP and LIMCA Cancellations
Attachments: RE: THUMS UP/LIMCA Cancellations

Holly,

I acknowledge you have withdrawn the subpoenas and cancelled depositions of Meenaxi Enterprise's prior counsel. I confirm all noticed depositions are cancelled, but that we agree to extend discovery solely for the purpose of allowing you to take 30(b)(6) depositions and Meenaxi Gandhi's 30(b)(1) deposition. This is agreed upon, *with reserve**

With regards to your discovery served November 10, I note your desire to file a motion to compel and seek a one-day extension. Meenaxi Enterprise does not consent or agree to otherwise waive the TTAB rules. Under the TTAB's revised rules, your service of discovery remains untimely and, your discovery far exceeds the allowed amount – *at least by two times over*. Your proposed motion therefore would be without merit, harassing and create an undue burden.

*If you file the proposed motion, we will oppose and seek relief and/or sanctions at least in the form of a motion to quash depositions (as based on our 11/28 e-mail).

Regards,
Jason

From: Saporito, Holly Hawkins [mailto:Holly.Saporito@alston.com]
Sent: Tuesday, December 05, 2017 9:22 AM
To: Jason L. DeFrancesco
Cc: LaFantano, Sarah; Gallagher, Mary Grace; Branch, Kelly
Subject: TCCC/Meenaxi: Summary of Meet and Confer in THUMS UP and LIMCA Cancellations

Jason,

Thank you again for taking the time to meet and confer with us yesterday. Based on our conversation, and after further discussions with my client, it appears that we have an agreement on certain issues, but remain at an impasse on others. The parties' positions on the various issues discussed are set forth below.

I. The Coca-Cola Company's ("TCCC") Written Discovery Requests

During our call, you reiterated your belief that TCCC's interrogatories and requests for production served on November 10, 2017 were (i) untimely served and (ii) in excess of the allowed 75 interrogatories. We disagreed as to both points.

Regarding the timing of TCCC's interrogatories and requests for production, as you are aware, service on November 10, 2017 makes Respondent's deadline to respond December 11, 2017, which is the next business day after the Sunday,

December 10, 2017 close of discovery, and the same date that TCCC's responses to your client's discovery is due. Assuming your reading of the Rules is correct, we request a one-day extension of the discovery period (i.e., to December 11, 2017) so that TCCC may receive your client's written responses to its interrogatories and documents response to its requests for production. If Meenaxi does not agree to this requested extension, we intend to move the Board for an order extending the discovery period accordingly.

As to the number of interrogatories TCCC served, we understand that your position is that the 26 interrogatories served in each proceeding contain multiple subparts such that they constitute more than 75 interrogatories per proceeding. We disagreed and asked you to walk through the interrogatories with us so we could get a better understanding of your client's reading of the interrogatories. You said that this exercise would be fruitless because it was "so obvious" they were all problematic, but you did agree to walk through interrogatory number 1 in the THUMS UP proceeding, which you believe is actually three separate interrogatories:

Identify each person (including you) that has used a mark consisting of, in whole or in part, the phrase THUMS UP in connection with providing or offering for sale goods or services in the United States and the goods and services used in connection therewith, including, without limitation, each "third-part[y] that spell[s] 'Thumbs' without a 'b' and use the term THUM as a portion of a trademark indicating a thumb" referenced in Paragraph 11 of your Answer.

It appears we are at an impasse on this issue. Thus, assuming your client will not agree to the one-day extension of the discovery period requested above, we will move to compel responses to TCCC's discovery in conjunction with our request for a one-day extension.

II. Party Depositions

With respect to depositions of Meenaxi and its employees, you agreed that we may depose Mr. Kaushik Gandhi and Ms. Malathi Sundarraj as 30(b)(6) representatives of Meenaxi Enterprise Inc. and Ms. Meenaxi Gandhi as an individual (30(b)(1)) deponent, that such depositions may be taken in March 2018 given Ms. Sundarraj's pregnancy and the witnesses' travel schedules, and that all further deadlines in the proceeding (not including the discovery deadline, other than for the purpose to take the aforementioned depositions) will be extended accordingly. The date and time of these depositions is yet to be determined, but they will be held in New Jersey. We assume you would prefer to hold these depositions at your offices, but please let us know if an alternate location would be easier for you and the deponents. You agreed to check with your client and provide us with proposed dates.

III. Subpoenas of Mr. Lee and Mr. Chivukula

After further discussions with our client, we are withdrawing the subpoenas to Mr. Lee and Mr. Chivukula, both those initially issued on 11/20/17 and those issued on 11/30/17.

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In sum, it appears that we have an agreement as to the noticed depositions, but are at an impasse with respect to TCCC's interrogatories and requests for production. As to the interrogatories and requests for production, please let us know your position on our request for a one-day extension of the discovery period, as outlined above by **4pm Eastern today**, as we intend to file our motion this week.

Regards,

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