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Filing date: **11/06/2018**

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

Proceeding	92063829
Party	Plaintiff Jerrick Ventures, LLC
Correspondence Address	KENNETH RUBINSTEIN COHEN TAUBER SPIEVACK & WAGNER PC 420 LEXINGTON AVENUE SUITE 2400 NEW YORK, NY 10170 UNITED STATES krubinstein@ctswlaw.com, ltauber@ctswlaw.com, jdavis@ctswlaw.com 212-586-5800
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Kenneth J. Rubinstein
Filer's email	krubinstein@ctswlaw.com, jdavis@ctswlaw.com, asalbashian@ctswlaw.com
Signature	/Kenneth J. Rubinstein/
Date	11/06/2018
Attachments	Motion to Compel.pdf(402806 bytes ) Declaration.pdf(1473702 bytes )

JERRICK VENTURES, LLC,	:	In re Registration No. 4,932,689
	:	
Petitioner,	:	For the mark: OMNI
	:	
v.	:	Date Registered: April 5, 2016
	:	
PAMELA WEINTRAUB, PENTHOUSE	:	Cancellation No.: 92,063,829
GLOBAL MEDIA, INC., PENTHOUSE	:	
WORLD MEDIA, LLC, and ALPHA	:	
CYGNI, INC.,	:	
	:	
	:	
Respondents.	:	
	:	

Petitioner Jerrick Ventures, LLC, by its attorneys, Cohen Tauber Speivack & Wagner P.C., hereby moves to compel respondents Pamela Weintraub (“Weintraub”), Penthouse Global Media, Inc. (“PGMI”), Penthouse World Media LLC (“PWML,” together with PGMI, “Penthouse”), and Alpha Cygni, Inc. (“Alpha Cygni,” together with Weintraub and Penthouse, “Respondents”) to comply with their discovery obligations pursuant to TBMP §§ 411.02, 411.04, and 523.01, and Rule 37 of the Federal Rules of Civil Procedure.

On September 21, 2016, Petitioner served its First Request for Production of Documents (the “Requests,” a copy of which are annexed to the Declaration of Kenneth J. Rubinstein (“Rubinstein Decl.”), submitted as part of this motion, as Exhibit A). Weintraub provided written responses to the Requests on October 25, 2016. (Rubinstein Decl., Ex. B) In the

responses, Weintraub asserted boilerplate objections and otherwise agreed to produce documents in response to each and every request. No documents were ever produced.

On November 4, 2016, Petitioner served a notice for Weintraub's deposition to be conducted on December 19, 2016. (Rubinstein Decl., Ex. C)

In November 2016, the parties began to have settlement negotiations. By early December, discussions advanced to the point where Weintraub sought to postpone discovery in order to pursue settlement. As a result of the settlement discussions, Weintraub's deposition was adjourned.

While settlement efforts were on-going, Weintraub filed four motions -- on December 22, 2016, January 15, 2017, March 11, 2017, and May 3, 2017 -- to extend the deadline for discovery in order to facilitate settlement discussions. By early March, the parties had reached an agreement-in-principle on the material terms for settlement and, on May 12, 2017, Petitioner provided what it considered to be a final version of the settlement agreement to Weintraub. Thereafter, Weintraub ignored all communications from Petitioner.

On July 11, 2017, Weintraub filed a motion to substitute Penthouse as the respondent in this proceeding and to suspend this proceeding in favor of an action filed by Penthouse against Petitioner (among others) in the United States District Court for the Central District of California (the "California Action"). It was revealed that, during the settlement negotiations, Weintraub purportedly transferred her claimed interest in the OMNI Mark to a Wyoming corporation, Alpha Cygni, Inc., who in turn transferred it to Penthouse. Consequently, Penthouse is the purported successor-in-interest to all of Weintraub's purported rights and interests to the OMNI Mark that is the subject of this proceeding.

On October 3, 2017, this proceeding was suspended in favor of the California Action, however, the Board declined to substitute Penthouse as the respondent in this proceeding. Instead, the Board determined that Weintraub would remain a respondent and joined Penthouse as an additional respondent. In particular, the Board noted that “discovery would be better served by the retention of [Weintraub] as a party-defendant in this matter” and that Petitioner’s claims “rely on information that is presumably in Ms. Weintraub’s sole possession and implicates testimony that is particular to Ms. Weintraub.” (Rubinstein Decl., Ex. D)

In January 2018, Penthouse filed for bankruptcy protection in the United States Bankruptcy Court for the Central District of California, San Fernando Valley Division. As a result of an auction process conducted during the bankruptcy proceeding, Penthouse’s assets, including whatever purported rights it holds in the OMNI Mark, were transferred to WGCZ Ltd. On June 6, 2018, the California Action was dismissed. (Rubinstein Decl., Ex. E)

On July 17, 2018, the Board granted Respondents’ motion to suspend the proceeding for 30 days (through July 27, 2018) and scheduled future dates, including August 11, 2018, for the close of discovery. On July 24, 2018, Petitioner moved to adjourn the discovery schedule because, as outlined above, it had been denied a meaningful opportunity to conduct necessary discovery. On October 2, 2018, the Board granted Petitioner’s motion and extended the close of discovery to November 12, 2018.

On October 11, 2018, Petitioner sent lead counsel for Respondents (Jason Fischer) notice outlining the Respondents’ outstanding discovery obligations (the “Deficiency Notice”).<sup>1</sup> In

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<sup>1</sup> On August 3, 2018, the Board entered an Order which, among other things, noted that Mr. Fischer is lead counsel for the Respondents. (Rubinstein Decl., Ex. F) Upon information and belief, Mr. Fischer was and/or is counsel to WGCZ Ltd.

response, Mr. Fischer advised that Joshua Bressler represents Weintraub and confirmed that he forwarded the Deficiency Notice to Mr. Bressler. (Rubinstein Decl., Ex. G)

To date, Respondents have failed to produce documents responsive to the Requests or confirm a date for Weintraub's deposition.

Against this backdrop, Petitioner moves to compel Respondents to produce documents responsive to the Requests and to compel Weintraub appear for her deposition.

Pursuant to TBMP § 411.02, "if any party fails to produce and permit the inspection and copying of any document or thing, the party seeking discovery may file a motion for an order to compel production and an opportunity to inspect and copy." Similarly, pursuant to TBMP § 411.04, "[i]f a party . . . fails to attend a discovery deposition . . . the party seeking discovery may file a motion with the Board for an order to compel . . . attendance at a deposition." And, pursuant to TBMP § 523.01, "a motion to compel is available in the event of a failure to provide required disclosures or discovery requested by means of discovery depositions, interrogatories, and requests for production of documents and things."

As outlined above, Respondents have failed to produce documents responsive to the Requests and have failed to make Weintraub available for a deposition. Accordingly, Respondents should be ordered to produce documents responsive to the Requests and Weintraub should be ordered to appear for a deposition within 30 days of the date on which Respondents complete their document production. In the alternative, Respondents should be precluded from presenting any evidence in support of their claims and/or defenses at trial.

Based on the foregoing, Petitioner's motion should be granted and (i) Respondents should be ordered to produce documents responsive to the Requests within 30 days of the Board's order granting this motion; and (ii) Weintraub should be ordered to appear for a

deposition within 30 days of the date on which Respondents complete their document production. Alternatively, Respondents should be precluded from presenting any evidence in support of their claims and/or defenses at trial, together with such other and further relief as the Board may deem just and proper.

Dated: November 6, 2018

COHEN TAUBER SPIEVACK & WAGNER P.C.  
*Counsel for Petitioner*

By: 

Kenneth J. Rubinstein  
Laurence S. Tauber  
Jackson S. Davis  
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(212) 586-5800  
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE BEFORE THE  
TRADEMARK TRIAL AND APPEAL BOARD**

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JERRICK VENTURES, LLC,

Petitioner,

v.

PAMELA WEINTRAUB, PENTHOUSE  
GLOBAL MEDIA, INC., PENTHOUSE  
WORLD MEDIA, LLC, and ALPHA  
CYGNI, INC.,

Respondents.

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:  
: In re Registration No. 4,932,689  
:  
: For the mark: OMNI  
:  
: Date Registered: April 5, 2016  
:  
: Cancellation No.: 92,063,829  
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**DECLARATION OF KENNETH J. RUBINSTEIN**

I, Kenneth J. Rubinstein, hereby declare the following pursuant to 28 U.S.C. §1746:

1. I am a member of Cohen Tauber Spievack & Wagner P.C., counsel to Petitioner in this proceeding. I submit this declaration in support of Petitioner's motion to compel Respondents to comply with their discovery obligations.

2. Attached as Exhibit A is a copy of the Petitioner's First Request for Production of Documents (the "Requests").

3. Attached as Exhibit B is Pamela Weintraub's ("Weintraub") written responses to the Requests.

4. Attached as Exhibit C is a copy of a notice for Weintraub's deposition, dated November 4, 2016.

5. Attached as Exhibit D is a copy of an Order issued by the Trademark Trial and Appeal Board (the "Board"), dated October 3, 2017, which, *inter alia*, joined Penthouse as a respondent to this proceeding.

6. Attached as Exhibit E is a copy of a June 6, 2018 Order from the United States District Court for the Central District of California dismissing the action captioned *Penthouse Global Media, Inc. et al. v. Guccione Collection, LLC et al.* (Case No. 2:17-CV-04980-PA).

7. Attached as Exhibit F is a copy of an Order issued by the Board, dated August 3, 2018, which, among other things, noted that Jason A. Fischer, Esq. is lead counsel for Respondents.

8. Attached as Exhibit G is a copy of a letter, dated October 11, 2018, that I sent to Mr. Fischer and Mr. Fischer's response thereto.

9. To date, Respondents have failed to produce documents responsive to the Requests or confirm a date for Weintraub's deposition.

I declare under penalty of perjury that the foregoing is true and correct.

Dated: November 6, 2018



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Kenneth J. Rubinstein

# **EXHIBIT A**

JERRICK VENTURES, LLC,	:	In re Registration No. 4,932,689
	:	
Petitioner,	:	For the mark: OMNI
	:	
v.	:	Date Registered: April 5, 2016
	:	
PAMELA WEINTRAUB,	:	Cancellation No.: 92,063,829
	:	
Respondent.	:	
	:	
	:	

Petitioner Jerrick Ventures, LLC (“Petitioner”), by and through its attorneys, Cohen Tauber Spievack & Wagner, P.C., requests that Respondent Pamela Weintraub (“Respondent”) produce and permit disclosure, discovery, inspection and copying by Petitioner, its attorneys, or others acting on its behalf, the following described documents and things in the possession, custody, or control of Respondent or her attorneys. Said documents or things are to be produced at the offices of Cohen Tauber Spievack & Wagner P.C., 420 Lexington Avenue, Suite 2400, New York, New York 10170, within thirty (30) days after the date of service of this Request.

1. This Request is intended to cover all documents in the possession, custody or control of Respondent, her employees, agents, or representatives.
2. Except when express reference is made to another paragraph, each paragraph herein should be construed independently and not by reference to any other paragraph herein for purposes of limitation.

3. “Refer or relate” means to include, constitute, mention, define, explain or pertain to in any way, expressly or impliedly, to the matter called for.

4. “Communications” includes every means of transmitting, receiving or recording transmission or receipt of facts, information, opinion, or thoughts.

5. “Documents” means the originals (or any copy when originals are not available) and any non-identical copies (whether different from the originals because of notes made on such copies or otherwise), of any written, printed, recorded, or graphic matter in the broadest sense of the term allowable under the Federal Rules of Civil Procedure and 37 C.F.R. Part 2, including writings of every kind and description, whether inscribed by mechanical, electronic, microfilm, microfiche, photographic or other means, phonic (such as tape recordings) or visual reproduction of oral statements, conversations or events, and including, but not limited to books, records, articles, contracts, correspondence, agreements, teletype messages, facsimiles, telexes, telegrams, affidavits, memoranda, letters, printed copies of e-mails, diaries, drafts, notes, reports, position papers, telephone messages or telephone logs, calendar or desk pads, scrapbooks, notebooks, commentaries, periodicals, brochures, postcards, compilations, lists, legal analyses, schedules, studies, pools, screens, minutes of meetings, inter-office and intra-office communications, accounts, tabulations, phone records, photographs, declarations, tallies, studies, analyses, charts, accounts, maps, diagrams, drawings, plans, pictures, computer runs, written statements, witnesses statements, summaries of computer runs, and any translations of any of the forgoing.

6. “Petition,” as used in this Request, means the Petition for Cancellation dated May 31, 2016, filed in this proceeding.

7. “Challenged Mark,” as used in this Request, means the “OMNI” mark, registered in the name of Respondent, as referenced in the Petition.

8. “Magazine” or “Magazines,” as used in this Request, means any magazine, (whether in print, on a website, or otherwise available electronically) bearing the Challenging Mark.

9. “You” or “your,” as used in this Request, means (i) Respondent; (ii) any entity in which Respondent has an interest; (iii) any person or entity to whom Respondent has licensed or given permission (explicitly or implicitly) to use the Challenged Mark; and (iv) any other person or entity that otherwise uses the Challenged Mark.

10. “Statement of Use,” as used in this Request, means the Statement of Use filed on January 13, 2016, as referenced in paragraph 20 of the Petition.

11. “Extension Requests,” as used in this Request, means your requests for an extension of time to file the Statement of Use, as referenced in paragraphs 15-19 of the Petition.

12. All other capitalized terms not defined and used herein shall have the meanings ascribed in the Petition.

13. All words, terms, and phrases not specifically defined in these Requests are to be given their normal and customary meaning in the context in which they are used herein.

14. A request for a document shall be deemed to include a request for all drafts and successive iterations thereof and all modifications thereto, in addition to the document itself.

15. Each document produced must be produced in its entirety, including all attachments, enclosures, and transmittal sheets, and in its original folder, binder, or other cover or container, unless that is not possible. Whenever a document or group of documents is removed from a file folder, binder, file drawer, file box, notebook or other cover or container, a copy of the label of such cover or other container must be attached to the document. A request for any document shall be deemed to include a request for any and all transmittal sheets, cover

letters, exhibits, enclosures, or attachments to the document, in addition to the document itself.

16. With respect to each document withheld from production on the ground of privilege, work product, or other similar claim, provide the following information for each such document: (a) the name(s) and title(s) of the author(s) and/or sender(s) and of the addressee(s) and any other recipient(s); (b) the name and title of each person (other than stenographic or clerical assistants) participating in the preparation of the document; (c) the name and title of each person to whom the contents of the document have heretofore been disseminated by copy, exhibition, reading or substantial summarization; (d) the date and number of pages of the document; (e) a description of the nature and subject matter of the document; (f) a statement of the basis on which it is claimed that the document is protected from disclosure; and (g) the name and title of the person supplying the information requested in subparagraphs (a) through (f) above.

17. In the event that any document called for has been lost, destroyed, discarded, or otherwise disposed of, identify the document by identifying: (i) its author or preparer; (ii) all persons to whom distributed or shown; (iii) date; (iv) subject matter; (v) attachments or appendices; (vi) date, manner, and reason for destruction or other disposition; (vii) person authorizing destruction or other disposition; and (viii) the document request or requests to which the document is responsive.

18. Notwithstanding a claim that a document or any portion thereof is protected from disclosure, any documents that are withheld must be produced with the portion claimed to be protected redacted.

19. Documents shall be produced as they are kept in the usual course of business or organized and labeled to correspond with the Request to which they are responsive.

20. The following rules of construction apply to these Requests: (a) the terms “all” and “each” shall be construed as all and each and shall be construed either as disjunctive or conjunctive so as to bring within the scope of the Request any documents that might otherwise be construed to be outside the scope of the Request; (b) the connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of these Requests all responses that might otherwise be construed to be outside of their scope; and (c) the use of the singular form of any word includes the plural and vice versa.

21. Unless otherwise stated, the time period applicable to the Requests shall be January 1, 2012 through the present.

### **Requests**

1. All documents that refer or relate to your intent to use the Challenged Mark between June 6, 2012 and January 13, 2016.

2. All documents that refer or relate to any steps taken towards the creation of a Magazine relating to the Challenged Mark between June 6, 2012 and January 13, 2016, including, but not limited to, business plans, investor presentations, promotional efforts, market research, agreements with vendors, publishers, or distributors, and/or the preparation of mock-up or sample issues of any Magazine bearing the Challenged Mark.

3. All communications with employees, officers, directors, or agents of Discover Magazine or Kalmbach Publishing Company ((including any vendor, publisher, distributor, or affiliate thereof) that refer or relate to the Magazine or the Challenged Mark.

4. Documents sufficient to identify any employees, independent contractors, or agents hired or retained by you relating to the Magazine, or any website or online source concerning the Challenged Mark, from June 6, 2012 to present, including the date on which any

such person was hired or retained.

5. Copies of any and all issues of the Magazine.

6. All documents that refer or relate to any sale of the Magazine, including, but not limited to, documents sufficient to indicate to whom any such sales were made and the states in which such sales were made.

7. All documents that refer or relate to any attempt to sell any copy of the Magazine.

8. Documents sufficient to identify locations where physical copies of the Magazine are available for sale, including the date on which the Magazine began to be sold at such location.

9. Documents sufficient to identify any website, online source, mobile telephone application on which copies of the Magazine are available for purchase, including the dates on which the Magazine began to be sold on such location.

10. Documents sufficient to identify any website, online source, or mobile telephone application on which articles or other content from the Magazine may be viewed, including the date on which such articles or content became available on such location.

11. All documents that refer or relate to any agreement with any vendor, publisher, or distributor concerning the Magazine.

12. All communications with any vendor, publisher, or distributor that refer or relate to the Magazine.

13. All invoices from any vendor, publisher, or distributor relating to the Magazine.

14. All sales receipts and sales reports that refer or relate to the Magazine.

15. All documents that refer or relate to any agreement or release of the copyright of any article or other content appearing the Magazine that was not previously published by you or

the Magazine.

16. All communications with any author that refers or relates to the publication of any article or other content in the Magazine, or any other website or online source bearing the Challenged Mark.

17. All documents that refer or relate to the publication of new or original content in the Magazine, or any other website or online source bearing the Challenged Mark.

18. All documents that refer or relate to the Statement of Use.

19. All documents that refer or relate to your application for the trademark of the Challenged Mark.

20. All documents that refer or relate to your statement in the Extension Requests that you have “made the following ongoing efforts to use the mark in commerce . . . : product or service research or development.”

21. All documents that refer or relate to your registration for any website or online source concerning the Challenged Mark, including, but not limited to, [www.omnimagazine.com](http://www.omnimagazine.com).

22. All documents that refer or relate to the sale of any products, goods, or services concerning the Challenged Mark from any website or online source, including but not limited to the date on which such sales were made and the identity of the purchaser.

23. All correspondence with or about Petitioner or Petitioner’s employees, agents, or representatives that refers or relates to the Challenged Mark or the Magazine.

24. All documents that refer or relate to your affirmative defense that Petitioner’s claims are barred by the doctrine of unclean hands.

25. All documents that refer or relate to your affirmative defense that Petitioner’s claims are barred by the doctrine of acquiescence.

26. All documents that refer or relate to your affirmative defense that Petitioner's trademark rights are invalid due to abandonment.

27. All documents that refer or relate to your affirmative defense that Petitioner's claims are invalid due to assignment in gross.

Dated: September 21, 2016

COHEN TAUBER SPIEVACK & WAGNER P.C.  
*Counsel for Petitioner Jerrick Ventures, LLC*

By: 

Kenneth J. Rubinstein  
Laurence S. Tauber  
Jackson S. Davis  
420 Lexington Avenue, Suite 2400  
New York, New York 10170  
(212) 586-5800

## **CERTIFICATE OF SERVICE**

I, Jackson S. Davis, hereby certify that today a true and complete copy of the foregoing **PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS** has been served on counsel of record for Respondent in the above-captioned proceeding by depositing same with the U.S. Postal Service as U.S. first class mail with postage-prepaid in an envelope addressed as follows:

Joshua R. Bressler  
Bressler Law PLLC  
3 West 35th Street, 9th Floor  
New York, NY 10001

September 21, 2016

COHEN TAUBER SPIEVACK & WAGNER P.C.  
*Counsel for Petitioner Jerrick Ventures, LLC*

/s/ Jackson S. Davis

Kenneth J. Rubinstein  
Laurence S. Tauber  
Jackson S. Davis  
420 Lexington Avenue, Suite 2400  
New York, New York 10170  
(212) 586-5800

# **EXHIBIT B**

In the Matter of Registration 4,932,689

Mark: OMNI

Reg. Date: April 5, 2016

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

-----X	
JERRICK VENTURES, LLC,	:
	:
Petitioner,	:
	:
v.	:
	:
PAMELA WEINTRAUB,	:
	:
Respondent.	:
-----X	

Cancellation No. 92063829

**RESPONDENT'S RESPONSES AND OBJECTIONS TO  
PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Respondent Pamela Weintraub ("Respondent"), through her undersigned counsel, hereby serves her responses and objections to Petitioner Jerrick Ventures, LLC's ("Petitioner") First Request for Production of Documents.

**GENERAL OBJECTIONS**

Respondent makes the following general responses and objections ("General Objections") to the definitions, instructions, and requests set forth in Petitioner's First Request for Production of Documents (collectively, the "Requests"). These General Objections are hereby incorporated into each specific response. The assertion of the same, similar, or additional objections or partial responses to individual Requests does not waive any of Respondent's General Objections.

1. Respondent objects to Petitioner's Requests to the extent that each seeks to subject Respondent to any obligations broader than rules applicable to this Petition for Cancellation proceeding require of Respondent. Without limitation, Respondent objects to Petitioner's proposed definitions of "Refer or relate" (Instruction No. 3), "Communications" (Instruction No. 4), and "Documents" (Instruction No. 5) on such basis.
2. Respondent objects to Petitioner's proposed definition of "Challenged Mark" as vague, ambiguous, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. In this Response, Respondent defines "Challenged Mark" to mean "that certain OMNI mark owned and claimed by Respondent and registered as and by U.S. Registration 4,932,689".
3. Respondent objects to Petitioner's Instruction No. 1 on the ground that it results in seeking production documents are in the possession, custody, or control of third persons and entities other than Respondent herself.
4. Respondent objects to Petitioner's definition of "Magazine" and "Magazines" (Instruction No. 8) as vague, ambiguous, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. In this Response, Respondent defines "Magazine" and "Magazines" to mean any print magazine bearing the Challenged Mark.
5. Respondent objects to Petitioner's proposed specification that "the time period applicable to the Requests shall be January 1, 2012 through the present". Respondent's proposed time period improperly extends beyond the January 13, 2016 date by which all facts and circumstances must have existed, if at all, in order to support Petitioner's Petition as

pleaded. Respondent accordingly has construed the time period applicable to the Request to be January 1, 2012 through January 13, 2016.

6. Respondent objects to production of any and all documents and information constituting or concerning Respondent's confidential information until such time as Respondent and Petitioner amend the current applicable Protective Order in this Proceeding to subject all such produced information to an attorney's eyes only restriction. Respondent bases this objection in part on Petitioner's affiliate Jerick Media Holdings Inc.'s ("JMHI") bad faith and wrongful issuance of a purported Digital Millennium Copyright Act Notice of Infringement to third party FastComet Inc., which is the Internet service provider that hosted the Internet website [www.omni-magazine.com](http://www.omni-magazine.com) licensed by Respondent. JMHI's wrongful and unsupported allegation of copyright infringement caused FastComet to take down that website such that it was made unavailable to visitors. Respondent believes that Petitioner will misuse her documents and information to harass and threaten third persons and entities with which Respondent conducts her OMNI business and otherwise improperly interfere with her OMNI business. Respondent raised this issue with Petitioner via her counsel's letter dated on October 18, 2016. Petitioner has not explained the basis for its affiliate's Notice of Infringement and has not otherwise responded to Respondent's concerns in this regard.
7. Nothing herein is intended to be nor may it be construed as a waiver of the attorney-client privilege, the work product doctrine, or any other protection. Inadvertent production of such protected information is not intended to be and shall not operate as a waiver of the applicable privilege or doctrine.

8. Any response herein that Respondent agrees to produce responsive documents subject to Respondent's objections is not an admission or representation that any such document exists or is in Respondent's possession, custody or control.
9. These responses are based on discovery available as of the date hereof. Further discovery, independent investigation, or other analysis may lead to the discovery of additional information or documents, which may lead to additions or changes to the responses set forth herein. These responses are given without prejudice to Respondent's right to produce or rely on subsequently discovered information or documents.
10. Respondent objects to Petitioner's Requests on the ground that they were not accompanied by any Certificate of Service as required by rules applicable to this Proceeding.

### **SPECIFIC OBJECTIONS AND RESPONSES**

Subject to the foregoing General Objections and the specific objections set forth below, Respondent objects and responds to Petitioner's First Request for Production of Documents as follows:

#### **REQUEST NO. 1**

All documents that refer or relate to your intent to use the Challenged Mark between June 6, 2012 and June 13, 2016.

### **RESPONSE TO REQUEST NO. 1**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 2**

All documents that refer or relate to any steps taken towards the creation of a Magazine relating to the Challenged Mark between June 6, 2012 and January 13, 2016, including, but not limited to, business plans, investor presentations, promotional efforts, market research, agreements with vendors, publishers, or distributors, and/or the preparation of mock-up or sample issues of any Magazine bearing the Challenged Mark.

### **RESPONSE TO REQUEST NO. 2**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 3**

All communications with employees, officers, directors, or agents of Discover Magazine or Kalmbach Publishing Company (including any vendor, publisher, distributor, or affiliate thereof) that refer or relate to the Magazine or the Challenged Mark.

### **RESPONSE TO REQUEST NO. 3**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 4**

Documents sufficient to identify any employees, independent contractors, or agents hired or retained by you relating to the Magazine, or any website or online source concerning the Challenged Mark, from June 6, 2012 to present, including the date on which any such person was hired or retained.

### **RESPONSE TO REQUEST NO. 4**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will

misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 5**

Copies of any and all issues of the Magazine.

#### **RESPONSE TO REQUEST NO. 5**

Respondent objects to this Request on the grounds that it is vague. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 6**

All documents that refer or relate to any sale of the Magazine, including, but not limited to, documents sufficient to indicate to whom any such sales were made and the states in which such sales were made.

#### **RESPONSE TO REQUEST NO. 6**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 7**

All documents that refer or relate to any attempt to sell any copy of the Magazine.

#### **RESPONSE TO REQUEST NO. 7**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 8**

Documents sufficient to identify locations where physical copies of the Magazine are available for sale, including the date on which the Magazine began to be sold at such location.

#### **RESPONSE TO REQUEST NO. 8**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 9**

Documents sufficient to identify any website, online source, mobile telephone application on which copies of the Magazine are available for purchase, including the dates on which the Magazine began to be sold on such location.

### **RESPONSE TO REQUEST NO. 9**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 10**

Documents sufficient to identify any website, online source, or mobile telephone application on which articles or other content from the Magazine may be viewed, including the date on which such articles or content became available on such location.

### **RESPONSE TO REQUEST NO. 10**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 11**

All documents that refer or relate to any agreement with any vendor, publisher, or distributor concerning the Magazine.

### **RESPONSE TO REQUEST NO. 11**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 12**

All communications with any vendor, publisher, or distributor that refer or relate to the Magazine.

### **RESPONSE TO REQUEST NO. 12**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 13**

All invoices from any vendor, publisher, or distributor relating to the Magazine.

### **RESPONSE TO REQUEST NO. 13**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 14**

All sales receipts and sales reports that refer or relate to the Magazine.

### **RESPONSE TO REQUEST NO. 14**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 15**

All documents that refer or relate to any agreement or release of the copyright of any article or other content appearing the Magazine that was not previously published by you or the Magazine.

### **RESPONSE TO REQUEST NO. 15**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks

documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 16**

All communications with any author that refers or relates to the publication of any article or other content in the Magazine, or any other website or online source bearing the Challenged Mark.

#### **RESPONSE TO REQUEST NO. 16**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 17**

All documents that refer or relate to the publication of new or original content in the Magazine, or any other website or online source bearing the Challenged Mark.

### **RESPONSE TO REQUEST NO. 17**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 18**

All documents that refer or relate to the Statement of Use.

### **RESPONSE TO REQUEST NO. 18**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 19**

All documents that refer or relate to your application for the trademark of the Challenged Mark.

### **RESPONSE TO REQUEST NO. 19**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 20**

All documents that refer or relate to your statement in the Extension Requests that you have "made the following ongoing efforts to use the mark in commerce . . . : product or service research or development."

### **RESPONSE TO REQUEST NO. 20**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 21**

All documents that refer or relate to your registration for any website or online source concerning the Challenged Mark, including, but not limited to, [www.omnimagazine.com](http://www.omnimagazine.com).

### **RESPONSE TO REQUEST NO. 21**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 22**

All documents that refer or relate to the sale of any products, goods, or services concerning the Challenged Mark from any website or online source, including but not limited to the date on which such sales were made and the identity of the purchaser.

### **RESPONSE TO REQUEST NO. 22**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 23**

All correspondence with or about Petitioner or Petitioner's employees, agents, or representatives that refers or relates to the Challenged Mark or the Magazine.

### **RESPONSE TO REQUEST NO. 23**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 24**

All documents that refer or relate to your affirmative defense that Petitioner's claims are barred by the doctrine of unclean hands.

### **RESPONSE TO REQUEST NO. 24**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 25**

All documents that refer or relate to your affirmative defense that Petitioner's claims are barred by the doctrine of acquiescence.

#### **RESPONSE TO REQUEST NO. 25**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 26**

All documents that refer or relate to your affirmative defense that Petitioner's trademark rights are invalid due to abandonment.

#### **RESPONSE TO REQUEST NO. 26**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 27**

All documents that refer or relate to your affirmative defense that Petitioner's claims are invalid due to assignment in gross.

**RESPONSE TO REQUEST NO. 27**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

Dated: October 25, 2016

By: s/ Joshua R. Bressler  
Joshua R. Bressler  
Bressler Law PLLC  
3 West 35<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, NY 10001  
Tel: (917) 969-4343  
e-mail: jrb@jrblaw.com

*Counsel of record for Respondent*  
*Pamela Weintraub*

**CERTIFICATE OF SERVICE**

I, Joshua R. Bressler, hereby certify that today a true and complete copy of the foregoing  
**RESPONDENT'S RESPONSES AND OBJECTIONS TO PETITIONER'S FIRST  
REQUEST FOR PRODUCTION OF DOCUMENTS** has been served on counsel of record  
for Petitioner in the above-captioned proceeding by depositing same with the U.S. Postal Service  
as U.S. first class mail with postage prepaid in an envelope addressed as follows:

Kenneth Rubinstein  
Cohen Tauber Spievack & Wagner P.C.  
420 Lexington Avenue, Suite 2400  
New York, NY 10170

Date: October 25, 2016

**BRESSLER LAW PLLC**

s/ Joshua R. Bressler

Joshua R. Bressler  
3 West 35<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, NY 10001  
Tel: (917) 969-4343  
Fax: (917) 591-7111  
e-mail: [jrb@jrblaw.com](mailto:jrb@jrblaw.com)

*Attorney for Respondent  
Pamela Weintraub*

# EXHIBIT C

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

---

JERRICK VENTURES, LLC,

Petitioner,

v.

PAMELA WEINTRAUB,

Respondent.

---

:  
: In re Registration No. 4,932,689  
:  
: For the mark: OMNI  
:  
: Date Registered: April 5, 2016  
:  
: Cancellation No.: 92,063,829  
:  
:  
:

**NOTICE OF DEPOSITION**

**PLEASE TAKE NOTICE** that, pursuant to Rules 26 and 30 of the Federal Rules of Civil Procedure , and 37 C.F.R. § 2.120, Petitioner Jerrick Ventures, LLC, by its attorneys, Cohen Tauber Spievack & Wagner P.C., will take the deposition upon oral questions of Pamela Weintraub, at the offices of Cohen Tauber Spievack & Wagner P.C., 420 Lexington Avenue, Suite 2400, New York, New York 10170, commencing on December 19, 2016 at 10:00 a.m., and continuing from day to day until completed. The deposition will be transcribed via stenographic means and/or via videotape before an officer authorized to administer oaths and take such deposition.

Dated: November 4, 2016

COHEN TAUBER SPIEVACK & WAGNER P.C.  
*Counsel for Petitioner Jerrick Ventures, LLC*

By: 

Kenneth J. Rubinstein

Laurence S. Tauber

Jackson S. Davis

420 Lexington Avenue, Suite 2400

New York, New York 10170

(212) 586-5800

To: Joshua R. Bressler  
Bressler Law PLLC  
3 West 35th Street, 9th Floor  
New York, NY 10001

## CERTIFICATE OF SERVICE

I, Jackson S. Davis, hereby certify that today a true and complete copy of the foregoing **PETITIONER'S NOTICE OF DEPOSITION** has been served on counsel of record for Respondent in the above-captioned proceeding by depositing same with the U.S. Postal Service as U.S. first class mail with postage-prepaid in an envelope addressed as follows:

Joshua R. Bressler  
Bressler Law PLLC  
3 West 35th Street, 9th Floor  
New York, NY 10001

November 4, 2016

COHEN TAUBER SPIEVACK & WAGNER P.C.  
*Counsel for Petitioner Jerrick Ventures, LLC*

/s/ Jackson S. Davis  
Kenneth J. Rubinstein  
Laurence S. Tauber  
Jackson S. Davis  
420 Lexington Avenue, Suite 2400  
New York, New York 10170  
(212) 586-5800

# **EXHIBIT D**

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500

VV

Mailed: October 3, 2017

Cancellation No. 92063829

*Jerrick Ventures, LLC*

*v.*

*Pamela Weintraub; and  
Penthouse Media Group, Inc.*

**Benjamin U. Okeke, Interlocutory Attorney:**

Now before the Board is Respondent's combined motion to substitute a party-defendant and to suspend the current proceeding pending disposition of a civil action Respondent filed in the U.S. District Court for the Central District of California, against Petitioner and several other parties (hereinafter "the civil action").<sup>1</sup> In support of its motion, Respondent attached a copy of the complaint filed in the civil action.

By way of assignment "Penthouse Media Group, Inc. ("Penthouse") is the successor in interest to all of Respondent Pamela Weintraub's ("Weintraub") rights and goodwill in and to the mark and registration that is the subject of this

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<sup>1</sup> The civil action is styled as *Penthouse Global Media, Inc., General Media Communications, Inc., v. Guccione Collection, LLC, Jeremy Frommer, Rick Schwartz, Jerrick Media Holdings, Inc., Jerrick Ventures, Inc., Jerrick Ventures LLC, Filthy Gorgeous Media, LLC, Paradox LLC, Jared Leto, et. al.*, Case No. 2:17-cv-04980-PA-FFM (C.D. Cal. 2017).

Cancellation proceeding.” 13 TTABVUE 2. Respondent further avers that the parties to this cancellation proceeding are now party to the civil action, and that the civil action is ongoing. Respondent asserts that the complaint it has filed and served in the civil action contains allegations of trademark infringement and seeks that this cancellation proceeding be dismissed, and thus suspension is appropriate “in the interests of judicial economy and the avoidance of inconsistent results.” *Id.* at 3.

Petitioner contests suspension of this proceeding, arguing that “TTAB proceedings may only be suspended when the “party or parties to a pending case are engaged in a civil action,” but that “[t]he parties in this proceeding are not the same as in the Penthouse Action....” 14 TTABVUE 11. Petitioner also asserts, “given the procedural posture of the TTAB proceeding and the Penthouse Action, proceeding before the TTAB to determine the registration OMNI Mark would be most efficient and is appropriate.” *Id.* at 10. The motion is fully briefed.

### ***Motion to Substitute Party***

Respondent attached a copy of the assignment agreement between assignee, Penthouse Media Group, Inc., and Respondent, and a copy of the assignment record from the USPTO Assignment Branch.<sup>2</sup> Petitioner contests this motion, arguing that substitution of respondent under the circumstances presented would be inappropriate in light of outstanding discovery requests directed to Respondent.

When there has been an assignment of a mark that is the subject of, or relied upon in, an *inter partes* proceeding before the Board, the assignee may be joined or

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<sup>2</sup> The assignment was recorded by the USPTO Assignment Branch on July 3, 2017, at reel/frame 6097/0908.

substituted, as may be appropriate, upon motion granted by the Board, or upon the Board's own initiative. *See, e.g., Life Zone Inc. v. Middleman Group Inc.*, 87 USPQ2d 1953, 1955 n.1 (TTAB 2008).

Where the mark(s) assigned, together with the corresponding application or registration, is the subject of an opposition or cancellation proceeding before the Board, the assignee may be joined as a party defendant once a copy of the assignment has been filed with the Board. *See* TBMP § 512.01 (June 2017). When the assignment is recorded in the Assignment Services Division of the USPTO, the assignee may be substituted as a party if the assignment occurred prior to the commencement of the proceeding, *Cf. Drive Trademark Holdings LP v. Inofin*, 83 USPQ2d 1433, 1434 n.1 (TTAB 2007), or the assignor is no longer in existence, or the plaintiff raises no objections to substitution, or the discovery and testimony periods have closed; otherwise, the assignee will be joined, rather than substituted, to facilitate discovery. *See, e.g.,* 37 CFR § 2.113(c); 37 CFR § 2.113(d), 37 CFR § 3.71 and 37 CFR § 3.73(b); Fed. R. Civ. P. 17 and 25; *Drive Trademark Holdings*, 83 USPQ2d at 1434 n.2; *NSM Res. Corp. v. Microsoft Corp.*, 113 USPQ2d 1029, 1031 (TTAB 2014) (finding joinder rather than substitution appropriate where assignment of pleaded mark was executed one year after proceeding commenced and nothing in the record indicated petitioner or business connected with mark no longer in existence).

In the present case, the assignment was executed on July 3, 2017 – over one year after this proceeding was commenced on May 31, 2016. Discovery is not currently

closed in this proceeding, and Petitioner cites certain outstanding discovery issues with Respondent that are yet to be resolved.

Further, neither the assignment agreement nor assignee's motion indicate that respondent, or the business connected with the mark, is no longer in existence. Finally, discovery would be better served by the retention of Respondent as a party-defendant in this matter. Once a joinder has occurred, each party is jointly and severally obligated to meet the discovery obligation of its position in the proceeding. For example, if an assignor fails to meet its discovery obligations, then the complete duty falls to the assignee. *Cf., Bank of New York v. Meridien BIAO Bank Tanzania Ltd.*, 171 F.R.D. 135, 148-49 (S.D.N.Y. 2007) (assignee responsible for discovery obligations of assignor despite the fact that assignment agreement, providing that assignee would take assignor's place in the lawsuit, contained no provision assuring that assignor would cooperate in producing documents).

The joint and several need to facilitate discovery undoubtedly applies here. The petition to cancel includes claims that Ms. Weintraub had not made use of the mark when she filed the underlying amendment to allege use or statement of use and that she was not the rightful owner of the mark at the time it was filed. Such claims rely on information that is presumably in Ms. Weintraub's sole possession and implicates testimony that is particular to Ms. Weintraub.

Accordingly, substitution would indeed be inappropriate in this matter. Therefore, Respondent's motion to *substitute* Penthouse Media Group, Inc. as party-defendant

in this proceeding is **DENIED**, to the extent that assignee will not be substituted, but will be **JOINED** as a party-defendant with Respondent.

***Motion to Suspend***

It is the policy of the Board to suspend proceedings when the parties are involved in a civil action, which may be dispositive of or have a bearing on the Board case. *See* Trademark Rule 2.117(a). The Board may suspend proceedings whenever it comes to the attention of the Board that a party or parties to a case pending before it are involved in a civil action that may have a bearing on the Board case.<sup>3</sup> Trademark Rule 2.117(a) (emphasis added). *See General Motors Corp. v. Cadillac Club Fashions Inc.*, 22 USPQ2d 1933 (TTAB 1992). Therefore, inasmuch as the Board may suspend whenever a concurrent civil action comes to its attention, Petitioner's arguments regarding the timing of Respondent's motion are unavailing. Suspension of a Board proceeding pending the final determination of another proceeding is solely within the discretion of the Board. *See Opticians Ass'n of Am. v. Indep. Opticians of Am. Inc.*, 734 F. Supp. 1171, 14 USPQ2d 2021 (D.N.J. 1990). Further, the standard is not that the determination of the civil action be dispositive of the Board proceeding, or that the issues in both forums are duplicated or will be precluded, but instead that the civil action "may have a bearing on the Board's proceeding." *See* Trademark Rule 2.117(a); TBMP § 510.02(a).

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<sup>3</sup> The Board may suspend proceedings for the disposition of a civil action without any motion at all. A civil action need only be brought to the Board's attention. The Board will normally require a copy of the operative pleadings from the civil action be submitted, so that the Board can ascertain whether the final determination of the civil action may have a bearing on the issues before the Board. *See New Orleans Louisiana Saints LLC v. Who Dat? Inc.*, 99 USPQ2d 1550, 1552 (TTAB 2011). However, the Board may suspend the proceeding even without the submission of the complaint and require the movant to promptly file such complaint.

Respondent's motion to suspend, which indicates that the parties to this proceeding are both parties to a civil action involving a question of trademark infringement is sufficient to bring the civil action to the Board's attention. Indeed, Penthouse Media Group, Inc., which has been joined to this proceeding by this order, is a named plaintiff in the civil action, and Petitioner is a named defendant. Therefore, Petitioner's argument that the parties to this proceeding are not also parties to the civil action is inaccurate.

Although Petitioner is correct in its assertion that the "TTAB's determination of the rights to a mark has a preclusive effect on subsequent trademark infringement claims," its conclusion that determination of this proceeding would "dispose of Penthouse's claims in the California action," is overreaching. 14 TTABVue 10 (citing *B & B Hardware, Inc. v. Hargis Indus. Inc.*, 135 S. Ct. 1293, 1305-06 (2015)). A civil action may involve other matters outside Board jurisdiction and may consider broader issues beyond right to registration and, therefore, judicial economy is usually served by suspension. *See, e.g., B&B Hardware, Inc. v. Hargis Industries, Inc.*, 135 U.S. 1293, 135 S. Ct. 1293, 113 USPQ2d 2045, 2048, 2053, 2056 (2015); *Goya Foods Inc. v. Tropicana Prods. Inc.*, 846 F.2d 848, 6 USPQ2d 1950, 1954 (2d Cir. 1988) (doctrine of primary jurisdiction might be applicable if a district court action involved only the issue of registrability, but would not be applicable where court action concerns infringement where the interest in prompt adjudication far outweighs the value of having the views of the USPTO); *Am. Bakeries Co. v. Pan-O-Gold Baking Co.*, 650 F. Supp. 563, 2 USPQ2d 1208, 1211 (D. Minn. 1986) (primary jurisdiction

should not be invoked where, *inter alia*, a stay of the district court action is more likely to prolong the dispute than lead to its economical disposition and where the district court action includes claims which cannot be raised before the Board).

Additionally, this cancellation involves a claim of likelihood of confusion, which implicates questions akin to those considered in a district court's determination of infringement, *e.g.* similarity of the marks, relatedness of the goods, priority, etc. Where grounds for a civil action involve a claim of infringement, a district court's findings regarding the similarity of the marks or relatedness of the goods or services, or any of the sub-issues involved therein, may have a bearing on a concurrent Board proceeding and would in any case inform our determination on those issues. Therefore, suspension of the Board's proceeding would be appropriate in view of a related civil action involving a claim of infringement. *See Other Tel. Co. v. Conn. Nat'l Tel. Co.*, 181 USPQ 125, 126-27 (TTAB 1974) (decision in civil action for infringement and unfair competition would have bearing on outcome of Trademark Act § 2(d) claim before Board), *pet. denied*, 181 USPQ 779 (Comm'r 1974).

Accordingly, Respondent's motion to suspend is **GRANTED** and this proceeding is **SUSPENDED** pending final disposition of the civil action.

Within **TWENTY DAYS** after the final determination of the civil action, the parties shall so notify the Board so that this proceeding may be called up for

appropriate action.<sup>4</sup> Such notification to the Board should include a copy of any final order or final judgment that issued in the civil action.

During the suspension period, the parties must notify the Board of any address changes for the parties or their attorneys. In addition, the parties are to promptly inform the Board of any other related cases, even if they become aware of such cases during the suspension period. Upon resumption, if appropriate, the Board may consolidate related Board cases.

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<sup>4</sup> A proceeding is considered to have been finally determined when a decision on the merits of the case (*i.e.*, a dispositive ruling that ends litigation on the merits) has been rendered, and no appeal has been filed therefrom, or all appeals filed have been decided. *See* TBMP § 510.02(b).

# EXHIBIT E

**UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

PENTHOUSE GLOBAL MEDIA, INC., a  
Delaware corporation, GENERAL  
MEDIA COMMUNICATIONS, INC., a  
New York corporation,

Plaintiffs,

v.

GUCCIONE COLLECTION, LLC, a  
Delaware limited liability company,  
JEREMY FROMMER, an individual,  
RICK SCHWARTZ, an individual,  
JERRICK MEDIA HOLDINGS, INC., a  
Nevada corporation, JERRICK  
VENTURES, INC., a Nevada corporation,  
JERRICK VENTURES LLC, FILTHY  
GORGEOUS MEDIA, LLC, PARADOX  
LLC, a California limited liability  
company, JARED LETO, an individual,  
and DOES 1-100, inclusive,

Defendants.

Case No. 2:17-CV-04980-PA (FFMx)

**ORDER RE STIPULATION FOR  
DISMISSAL OF ALL CLAIMS  
WITHOUT PREJUDICE**

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1 Pursuant to the stipulation of the parties and for good cause shown, IT IS  
2 HEREBY ORDERED that:

3 A. All of the claims asserted in this action are dismissed without prejudice  
4 pursuant to Fed. R. Civ. P. 41(a)(1)(A)(ii); and

5 B. The parties to this stipulation will each bear their own costs and fees as  
6 incurred against one another in this action.

7  
8  
9 DATED: June 6, 2018

  
HONORABLE PERCY ANDERSON  
United States District Judge

AKERMAN LLP

601 WEST FIFTH STREET, SUITE 300  
LOS ANGELES, CALIFORNIA 90071  
TEL.: (213) 688-9500 – FAX: (213) 627-6342

# **EXHIBIT F**

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451  
General Contact Number: 571-272-8500  
General Email: TTABInfo@uspto.gov

wbc

August 3, 2018

Cancellation No. 92063829

*Jerrick Ventures, LLC*

*v.*

*Pamela Weintraub and Penthouse Global  
Media, Inc.; Penthouse World Media, LLC  
and Alpha Cygni, Inc. (Joined by  
Assignment)*

**Wendy Boldt Cohen, Interlocutory Attorney:**

**Motion to Extend**

Petitioner filed a motion to extend deadlines. *See* 21 TTABVUE. Proceedings are **suspended** pending disposition of the motion to extend.

**Joinder**

In the Board's July 17, 2018 motion, it required Respondent to provide information about Alpha Cygni, Inc., a party that is included in the pleaded registration's assignment history. *See* 20 TTABVUE. In response thereto, Respondent asserts that Alpha Cygni, Inc. is "an intermediate assignee in the purchase/sale transaction for the underlying mark and associated goodwill." 22 TTABVUE 3.

If a mark is assigned and a copy of the assignment is filed with the Board, the assignee ordinarily will be substituted for the originally named party if the assignment occurred prior to the commencement of the proceeding, if the discovery

and testimony periods have closed, if the assignor is no longer in existence, or if the defendant raises no objection to substitution. TBMP § 512.01 (June 2018). However, it is the practice of the Board to join an assignee when the assignment occurred after the commencement of the proceeding, as in this case, in order to facilitate discovery. *See NSM Resources Corp. v. Microsoft Corp.*, 113 USPQ2d 1029, 1031 (TTAB 2014); *see also* TBMP § 512.01.

Although Respondent asserts the assignment was “only for an insignificant instant,” the assignment involving Alpha Cygni, Inc. and U.S. Registration No. 4932689 was recorded with the Office on July 3, 2018 (6097/0920 and 6097/0908), after commencement of this proceeding. 22 TTABVUE 2. Inasmuch as the assignment of the U.S. Reg. No. 4932689 has been recorded and the assignment occurred after the commencement of this proceeding, in order to facilitate discovery, Alpha Cygni, Inc. is also **joined** as a party defendant. The Board’s records shall be updated accordingly.

### **Lead Counsel**

Pursuant to the Board’s order requiring Respondents to inform the Board who is the lead counsel in this proceeding to whom the Board’s correspondence regarding this proceeding can be directed, Respondents have noted that Jason A. Fischer of Fisher Law, PL is lead counsel. The Board’s records will be updated as necessary.

# EXHIBIT G

C | T | S | W  
COHEN TAUBER SPIEVACK & WAGNER P.C.

direct: 212-381-8745  
e-mail: [krubinstein@ctswlaw.com](mailto:krubinstein@ctswlaw.com)

October 11, 2018

***By E-mail and Regular Mail***

Jason A. Fischer, Esq.  
Fischer Law, PL  
2 South Biscayne Blvd., Suite 2600  
Miami, Florida 33131

***Re: Jerrick Ventures, LLC v. Pamela Weintraub, et al.  
Trademark Trial and Appeal Board Cancellation No. 92063829***

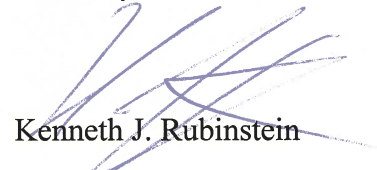
Dear Jason,

Respondent has failed to produce documents responsive to Petitioner's First Request for Production of Documents (the "Requests"). (For ease of reference, a copy of Respondent's responses to the Requests, which includes the Requests, is enclosed.) As the discovery deadline of November 12, 2018 is rapidly approaching, these documents must be produced by no later than October 18, 2018, in order to afford time for Petitioner to review the documents and conduct Ms. Weintraub's deposition. (As you will see from the responses, aside from asserting boilerplate objections, Respondent agreed to produce documents responsive to each of Petitioner's requests.)

Please also provide dates on which Ms. Weintraub is available to be deposed. (Petitioner noticed Ms. Weintraub's deposition in November 2016, but agreed to adjourn the deposition while the parties engaged in settlement discussions.)

Please contact me should you have any questions or wish to discuss this matter.

Sincerely,



Kenneth J. Rubinstein

Encl.

In the Matter of Registration 4,932,689

Mark: OMNI

Reg. Date: April 5, 2016

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

-----X	
JERRICK VENTURES, LLC,	:
	:
Petitioner,	:
	:
v.	:
	:
PAMELA WEINTRAUB,	:
	:
Respondent.	:
-----X	

Cancellation No. 92063829

**RESPONDENT'S RESPONSES AND OBJECTIONS TO  
PETITIONER'S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Respondent Pamela Weintraub ("Respondent"), through her undersigned counsel, hereby serves her responses and objections to Petitioner Jerriick Ventures, LLC's ("Petitioner") First Request for Production of Documents.

**GENERAL OBJECTIONS**

Respondent makes the following general responses and objections ("General Objections") to the definitions, instructions, and requests set forth in Petitioner's First Request for Production of Documents (collectively, the "Requests"). These General Objections are hereby incorporated into each specific response. The assertion of the same, similar, or additional objections or partial responses to individual Requests does not waive any of Respondent's General Objections.

1. Respondent objects to Petitioner's Requests to the extent that each seeks to subject Respondent to any obligations broader than rules applicable to this Petition for Cancellation proceeding require of Respondent. Without limitation, Respondent objects to Petitioner's proposed definitions of "Refer or relate" (Instruction No. 3), "Communications" (Instruction No. 4), and "Documents" (Instruction No. 5) on such basis.
2. Respondent objects to Petitioner's proposed definition of "Challenged Mark" as vague, ambiguous, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. In this Response, Respondent defines "Challenged Mark" to mean "that certain OMNI mark owned and claimed by Respondent and registered as and by U.S. Registration 4,932,689".
3. Respondent objects to Petitioner's Instruction No. 1 on the ground that it results in seeking production documents are in the possession, custody, or control of third persons and entities other than Respondent herself.
4. Respondent objects to Petitioner's definition of "Magazine" and "Magazines" (Instruction No. 8) as vague, ambiguous, overly broad, and not reasonably calculated to lead to the discovery of admissible evidence. In this Response, Respondent defines "Magazine" and "Magazines" to mean any print magazine bearing the Challenged Mark.
5. Respondent objects to Petitioner's proposed specification that "the time period applicable to the Requests shall be January 1, 2012 through the present". Respondent's proposed time period improperly extends beyond the January 13, 2016 date by which all facts and circumstances must have existed, if at all, in order to support Petitioner's Petition as

pleaded. Respondent accordingly has construed the time period applicable to the Request to be January 1, 2012 through January 13, 2016.

6. Respondent objects to production of any and all documents and information constituting or concerning Respondent's confidential information until such time as Respondent and Petitioner amend the current applicable Protective Order in this Proceeding to subject all such produced information to an attorney's eyes only restriction. Respondent bases this objection in part on Petitioner's affiliate Jerick Media Holdings Inc.'s ("JMHI") bad faith and wrongful issuance of a purported Digital Millennium Copyright Act Notice of Infringement to third party FastComet Inc., which is the Internet service provider that hosted the Internet website [www.omni-magazine.com](http://www.omni-magazine.com) licensed by Respondent. JMHI's wrongful and unsupported allegation of copyright infringement caused FastComet to take down that website such that it was made unavailable to visitors. Respondent believes that Petitioner will misuse her documents and information to harass and threaten third persons and entities with which Respondent conducts her OMNI business and otherwise improperly interfere with her OMNI business. Respondent raised this issue with Petitioner via her counsel's letter dated on October 18, 2016. Petitioner has not explained the basis for its affiliate's Notice of Infringement and has not otherwise responded to Respondent's concerns in this regard.
7. Nothing herein is intended to be nor may it be construed as a waiver of the attorney-client privilege, the work product doctrine, or any other protection. Inadvertent production of such protected information is not intended to be and shall not operate as a waiver of the applicable privilege or doctrine.

8. Any response herein that Respondent agrees to produce responsive documents subject to Respondent's objections is not an admission or representation that any such document exists or is in Respondent's possession, custody or control.
9. These responses are based on discovery available as of the date hereof. Further discovery, independent investigation, or other analysis may lead to the discovery of additional information or documents, which may lead to additions or changes to the responses set forth herein. These responses are given without prejudice to Respondent's right to produce or rely on subsequently discovered information or documents.
10. Respondent objects to Petitioner's Requests on the ground that they were not accompanied by any Certificate of Service as required by rules applicable to this Proceeding.

### **SPECIFIC OBJECTIONS AND RESPONSES**

Subject to the foregoing General Objections and the specific objections set forth below, Respondent objects and responds to Petitioner's First Request for Production of Documents as follows:

#### **REQUEST NO. 1**

All documents that refer or relate to your intent to use the Challenged Mark between June 6, 2012 and June 13, 2016.

### **RESPONSE TO REQUEST NO. 1**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 2**

All documents that refer or relate to any steps taken towards the creation of a Magazine relating to the Challenged Mark between June 6, 2012 and January 13, 2016, including, but not limited to, business plans, investor presentations, promotional efforts, market research, agreements with vendors, publishers, or distributors, and/or the preparation of mock-up or sample issues of any Magazine bearing the Challenged Mark.

### **RESPONSE TO REQUEST NO. 2**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 3**

All communications with employees, officers, directors, or agents of Discover Magazine or Kalmbach Publishing Company (including any vendor, publisher, distributor, or affiliate thereof) that refer or relate to the Magazine or the Challenged Mark.

### **RESPONSE TO REQUEST NO. 3**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 4**

Documents sufficient to identify any employees, independent contractors, or agents hired or retained by you relating to the Magazine, or any website or online source concerning the Challenged Mark, from June 6, 2012 to present, including the date on which any such person was hired or retained.

### **RESPONSE TO REQUEST NO. 4**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will

misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 5**

Copies of any and all issues of the Magazine.

#### **RESPONSE TO REQUEST NO. 5**

Respondent objects to this Request on the grounds that it is vague. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 6**

All documents that refer or relate to any sale of the Magazine, including, but not limited to, documents sufficient to indicate to whom any such sales were made and the states in which such sales were made.

#### **RESPONSE TO REQUEST NO. 6**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 7**

All documents that refer or relate to any attempt to sell any copy of the Magazine.

#### **RESPONSE TO REQUEST NO. 7**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 8**

Documents sufficient to identify locations where physical copies of the Magazine are available for sale, including the date on which the Magazine began to be sold at such location.

#### **RESPONSE TO REQUEST NO. 8**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 9**

Documents sufficient to identify any website, online source, mobile telephone application on which copies of the Magazine are available for purchase, including the dates on which the Magazine began to be sold on such location.

### **RESPONSE TO REQUEST NO. 9**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 10**

Documents sufficient to identify any website, online source, or mobile telephone application on which articles or other content from the Magazine may be viewed, including the date on which such articles or content became available on such location.

### **RESPONSE TO REQUEST NO. 10**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 11**

All documents that refer or relate to any agreement with any vendor, publisher, or distributor concerning the Magazine.

### **RESPONSE TO REQUEST NO. 11**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 12**

All communications with any vendor, publisher, or distributor that refer or relate to the Magazine.

### **RESPONSE TO REQUEST NO. 12**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 13**

All invoices from any vendor, publisher, or distributor relating to the Magazine.

### **RESPONSE TO REQUEST NO. 13**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 14**

All sales receipts and sales reports that refer or relate to the Magazine.

### **RESPONSE TO REQUEST NO. 14**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 15**

All documents that refer or relate to any agreement or release of the copyright of any article or other content appearing the Magazine that was not previously published by you or the Magazine.

### **RESPONSE TO REQUEST NO. 15**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks

documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 16**

All communications with any author that refers or relates to the publication of any article or other content in the Magazine, or any other website or online source bearing the Challenged Mark.

#### **RESPONSE TO REQUEST NO. 16**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 17**

All documents that refer or relate to the publication of new or original content in the Magazine, or any other website or online source bearing the Challenged Mark.

### **RESPONSE TO REQUEST NO. 17**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 18**

All documents that refer or relate to the Statement of Use.

### **RESPONSE TO REQUEST NO. 18**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 19**

All documents that refer or relate to your application for the trademark of the Challenged Mark.

### **RESPONSE TO REQUEST NO. 19**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 20**

All documents that refer or relate to your statement in the Extension Requests that you have "made the following ongoing efforts to use the mark in commerce . . . : product or service research or development."

### **RESPONSE TO REQUEST NO. 20**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 21**

All documents that refer or relate to your registration for any website or online source concerning the Challenged Mark, including, but not limited to, [www.omnimagazine.com](http://www.omnimagazine.com).

### **RESPONSE TO REQUEST NO. 21**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 22**

All documents that refer or relate to the sale of any products, goods, or services concerning the Challenged Mark from any website or online source, including but not limited to the date on which such sales were made and the identity of the purchaser.

### **RESPONSE TO REQUEST NO. 22**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 23**

All correspondence with or about Petitioner or Petitioner's employees, agents, or representatives that refers or relates to the Challenged Mark or the Magazine.

### **RESPONSE TO REQUEST NO. 23**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, vague, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 24**

All documents that refer or relate to your affirmative defense that Petitioner's claims are barred by the doctrine of unclean hands.

### **RESPONSE TO REQUEST NO. 24**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

### **REQUEST NO. 25**

All documents that refer or relate to your affirmative defense that Petitioner's claims are barred by the doctrine of acquiescence.

#### **RESPONSE TO REQUEST NO. 25**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 26**

All documents that refer or relate to your affirmative defense that Petitioner's trademark rights are invalid due to abandonment.

#### **RESPONSE TO REQUEST NO. 26**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

#### **REQUEST NO. 27**

All documents that refer or relate to your affirmative defense that Petitioner's claims are invalid due to assignment in gross.

**RESPONSE TO REQUEST NO. 27**

Respondent objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, seeks documents protected by the attorney-client privilege, seeks documents protected by the work product doctrine, and seeks documents that Respondent has good cause to believe Petitioner will misuse unless protected by an attorney's eyes only restriction. Subject to and without waiving Respondent's objections, Respondent will produce responsive documents in due course.

Dated: October 25, 2016

By: s/ Joshua R. Bressler  
Joshua R. Bressler  
Bressler Law PLLC  
3 West 35<sup>th</sup> Street, 9<sup>th</sup> Floor  
New York, NY 10001  
Tel: (917) 969-4343  
e-mail: jrb@jrblaw.com

*Counsel of record for Respondent  
Pamela Weintraub*



## Arpi Salbashian

---

**From:** Jason Fischer <jason@fischerlawpl.com>  
**Sent:** Thursday, October 11, 2018 10:44 AM  
**To:** Kenneth Rubinstein  
**Cc:** Jackson Davis  
**Subject:** Re: TTAB Proceeding  
**Attachments:** signature.asc

This will confirm that I forwarded your email with its attachment.

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On Oct 11, 2018, at 10:43 AM, Kenneth Rubinstein <[KRubinstein@ctswlaw.com](mailto:KRubinstein@ctswlaw.com)> wrote:

Please confirm that you forwarded him my e-mail.

---

**From:** Jason Fischer <[jason@fischerlawpl.com](mailto:jason@fischerlawpl.com)>  
**Sent:** Thursday, October 11, 2018 10:41 AM  
**To:** Kenneth Rubinstein <[KRubinstein@ctswlaw.com](mailto:KRubinstein@ctswlaw.com)>  
**Cc:** Jackson Davis <[jdavis@ctswlaw.com](mailto:jdavis@ctswlaw.com)>  
**Subject:** Re: TTAB Proceeding

Ken,

We do not represent Ms. Weintraub, who has the obligation to respond to these discovery requests (per the TTAB's order indicating that she must remain a party to this action specifically for the purpose of satisfying discovery obligations). I have reached out to Joshua Bressler, who we understand does represent Ms. Weintraub, in order to properly address the points raised in your letter.

Best regards,

Jason A. Fischer  
Fischer Law, P.L.  
2 South Biscayne Blvd., Suite 2600

Miami, Florida 33131  
Phone: [305-306-3995](tel:305-306-3995)  
eFax: [305-397-2772](tel:305-397-2772)

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On Oct 11, 2018, at 10:25 AM, Kenneth Rubinstein <[KRubinstein@ctswlaw.com](mailto:KRubinstein@ctswlaw.com)> wrote:

Jason, Please see the attached letter.

Kenneth J. Rubinstein  
<image002.png>  
Cohen Tauber Spievack & Wagner P.C.  
*[Partners in Your Strategic Vision](#)*  
420 Lexington Ave., Suite 2400  
New York NY 10170-2499  
Direct: [\(212\) 381-8745](tel:212-381-8745)  
Main: [\(212\) 586-5800](tel:212-586-5800)  
Fax: [\(212\) 586-5095](tel:212-586-5095)  
Email: [krubinstein@ctswlaw.com](mailto:krubinstein@ctswlaw.com)  
[www.ctswlaw.com](http://www.ctswlaw.com)

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<Letter (00371459).PDF>