ESTTA Tracking number: **ESTTA841766**

Filing date: **08/24/2017**

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

Proceeding	92064261
Party	Plaintiff Michael Spitzbarth
Correspondence Address	NORMAN P SOLOWAY HAYES SOLOWAY PC 4640 E SKYLINE DRIVE TUCSON, AZ 85718 UNITED STATES Email: jbarton@hayes-soloway.com, admin@hayes-soloway.com
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Stephen B. Mosier
Filer's email	smosier@hayes-soloway.com, tlopez@hayes-soloway.com
Signature	/stephen b. mosier/
Date	08/24/2017
Attachments	Motion to Compel Discovery.pdf(38963 bytes) Attachment A.pdf(158134 bytes) Exhibit 1 to Motion to Compel.pdf(267868 bytes) Exhibit 2 to Motion to Compel.pdf(65326 bytes) Exhibit 3 to Motion to Compel.pdf(596188 bytes) Exhibit 4 to Motion to Compel.pdf(735983 bytes) Exhibit 5 to Motion to Compel.pdf(895141 bytes) Exhibit 6 to Motion to Compel.pdf(2212052 bytes) Exhibit 7 to Motion to Compel.pdf(132466 bytes)

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

In the matter of Trademark Registration No.:	4099565
For the Mark:	"IBLEED"
Date of Registration:	February 14, 2012
Cancellation No.:	92064261

Michael Spitzbarth,
Petitioner,

v.

John Groat,
Registrant.

TRADEMARK TRIAL & APPEAL BOARD
Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

PETITIONER'S MOTION TO COMPEL DISCOVERY AND TO EXTEND THE DISCOVERY PERIOD FOR THE LIMITED PURPOSES DELINEATED HEREIN

TO THE TRADEMARK TRIAL AND APPEAL BOARD:

Petitioner Spitzbarth moves the Board for entry of an order (1) compelling Registrant John Groat to serve responses to Petitioner Spitzbarth's First Set of Written Interrogatories and First Set of Requests for Production of Documents (dated February 10, 2017), to produce all documents requested by Petitioner in connection with said documentary production requests, all within 21 days of the date of entry of the order granting this motion; and (2) resetting the discovery period in this case, solely for the limited purpose of permitting Petitioner to receive and review Registrant's discovery responses and to take and complete such depositions as may

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be reasonable, necessary or appropriate in this case subsequent to the completion of Registrant's documentary production, as to which depositions Registrant shall be ordered to cooperate, assist in facilitate in the orderly scheduling and completion insofar is within his control, such discovery period as extended to expire 30 days after the date of entry of the order granting this motion.

The reasons and authorities upon which this Motion is predicated are set forth in the brief memorandum below.

I. FACTS PERTINENT TO THIS MOTION

Registrant John Groat has engaged in what might reasonably be characterized as a wholesale refusal to conduct discovery in this case (except in one very limited respect which underscores Registrant's conscious knowledge of his own discovery abuses). Registrant has refused to produce a single piece of paper (or electronic document) in discovery, has refused to respond ever or at all to interrogatories, until yesterday has refused to respond to request for admissions served on February 10, 2017, has refused to produce or make available for inspection the documents identified by Registrant in his Initial Disclosure as the evidence upon which he intends to rely to support his claims or defenses in this case, and has refused to state any lawful or reasonable basis for withholding such discovery from Petitioner until at or after the close of the discovery period as set by order of the Board. All of this is documented in the exhibits attached hereto, or in the Board's docket for this proceeding.

Registrant himself both sought and received from Petitioner written responses to Registrant's own written interrogatories and request for production of documents, without delay or incident, in late 2016.

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Thereafter, on February 10, 2017, Petitioner duly served on the Registrant the Petitioner's First Set of Requests for Admissions, First Set of Requests for Production of Documents and First Set of Written Interrogatories. In response, Registrant totally ignored those requests, and has refused to produce a single document in discovery in this case from its inception. Notably, and only after multiple communications from Petitioner's counsel warning of the rapid approach of the close of the discovery period, Registrant only yesterday belatedly served responses to the February 10th Request for Admissions, out of rule and without having sought or received leave of the Board to respond untimely, all the while ignoring altogether Petitioner's long overdue interrogatories, documentary production requests, and the underlying documentary production itself.

Clearly, Registrant's responses served just yesterday to the Request for Admissions were solely intended to stave off a summary judgment motion, and most certainly were not served for the purpose of responding in good faith to long overdue discovery. Even more troubling is the fact that the discovery period ends today, yet Registrant still has not produced the documents and materials yet identified in Registrant's Initial Disclosures as comprising the evidence upon which it intends to rely to support Registrant's claims and defenses in this proceeding. The prejudice to Petitioner resulting from Registrant's discovery misconduct is palpable.

On July 24, 2017 counsel for Petitioner transmitted to counsel for Registrant via email the following communication:

> "kindly furnish us, without further delay, all of the written discovery responses and documents to which my client currently is entitled by Rule in connection with the formal discovery requests previously served upon Respondent in the above-captioned matter. As you know, my client on February 10, 2017 served upon you his

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> first full set of written discovery, including written interrogatories, requests for admissions and requests for production of documents, but to date your client has neither answered nor objected to any of those requests. Nor has your client produced any responsive documents. Notably, by Rule your client's time for responding, objecting and/or documentary production expired some time ago. As you know, this case is no longer under suspension, and the discovery period is coming to an end as per the Board's most recent Order. Your client's continued withholding of the discovery responses and documents (including even the documents you identified in the Initial Disclosures as the materials on which your client relies in support of its case in chief---materials we long ago expressly requested be provided to us) is now highly prejudicial to my client. We trust that you will promptly rectify these multiple oversights, and work with us cooperatively to ameliorate any unfair prejudice to my client accruing as a consequence of your client's non-compliance with the governing Rules of the Board."
>
> See Exhibit 1, attached hereto.[1]

On August 16, 2017 counsel for Petitioner transmitted to counsel for Registrant via email the following communication:

> "As you know, there are now just eight days left before the close of discovery in the above-captioned Cancellation proceeding, and so far, up to today, your client, Respondent John Groat, and you as his counsel:
> (1) have failed, refused or declined to produce for my inspection and copying, and have otherwise failed to transmit to me, copies of any of the documents Respondent identified in his Initial Disclosures as the materials upon which he intends to reply to support his claims and defenses in this proceeding (even though I have twice specifically ask you to produce or transmit to me those very same documents);
> (2) have failed, refused or declined to respond to Petitioner Spitzbarth's first set of written interrogatories, first set of requests for production of documents and first set of requests for admissions, in fact have refused to produce a single document to Petitioner from the inception of this dispute, and the deadline for timely serving your client's responses to all of those discovery requests and producing all responsive documents expired some number of weeks ago; and

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[1] All exhibits are authenticated in the Declaration of Stephen B. Mosier, attached hereto as Attachment A.

> (3) have failed, refused or declined to reply to my email to you of July 24,2017, wherein I raised with you, specifically each of the above-identified instances of noncompliance by your client with his fundamental discovery obligations in this case; --- instead of responding to my email, you simply ignored it, and failed even to acknowledge it.
> As I am sure you can and do fully appreciate, your client's outright refusal to comply with his basic discovery obligations in this case is highly prejudicial to my client. If your client does not wish to participate in these proceedings, I trust that you will let me know right away, so that I may so apprise the Board.
> Finally, as you know, the discovery period ends on August 24, and it is my intention to take the depositions of Mr. Groat and his licensees, shortly after you have responded, fully and properly, to all previously-served discovery requests, including by producing all documents responsive to my client's prior unanswered requests. Accordingly, may I represent to the Board that you unconditionally consent to a stipulated 30-day extension of the discovery period, solely for the limited purpose of permitting my client to complete the deposition of your client and his licensees (including specifically Dyke Marler) after my client has received and has had an opportunity to evaluate your client's full and proper discovery responses and documentary productions with respect to all previously served discovery requests? Kindly reply by not later than close of business tomorrow.
> Please understand that we are not seeking any extension of the discovery period beyond the sole and limited purpose described hereinabove."
>
> See Exhibit 2, attached hereto.

On August 17, 2017 counsel for Petitioner and counsel for Registrant exchanged via email the communications set forth in Exhibit 3, including the following admonition directed to Registrant by counsel for Petitioner:

> "Your email immediately below does not mention why:
> (1) you have failed, refused or declined to produce for my inspection and copying, and have otherwise failed to transmit to me, copies of any of the documents Respondent identified in his Initial Disclosures as the materials upon which he intends to reply to support his claims and defenses in this proceeding (even though I have twice specifically ask you to produce or transmit to me those very same documents);

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> (2) you have failed, refused or declined to respond to Petitioner Spitzbarth's first set of written interrogatories, first set of requests for production of documents and first set of requests for admissions, in fact have refused to produce a single document to Petitioner from the inception of this dispute, and the deadline for timely serving your client's responses to all of those discovery requests and producing all responsive documents expired some number of weeks ago; and
> (3) you have failed, refused or declined to reply to my email to you of July 24,2017, wherein I raised with you, specifically, each of the above-identified instances of noncompliance by your client with his fundamental discovery obligations in this case; --- instead of responding to my email, you simply ignored it, and failed even to acknowledge it.
> Kindly advise why you have elected to pursue this path, including in particular why you feel entitled to request a mutual extension of the discovery period for the purpose of permitting your client to conduct discovery from my client, notwithstanding your own wholesale refusal to allow my client to conduct any discovery whatever, up to and including today, with only seven (7) days now remaining before the end of the discovery period. Your own client's fundamental and ongoing violations of his discovery obligations is very troubling, to say the least, as is
> your refusal even to respond to my several prior communications raising these issues. After I receive and evaluate your response including specifically your stated reasons for the foregoing, I expect that I will then be in a position to respond on a fully-informed basis to your proposal below."
>
> See Exhibit 3, attached hereto.

On August 18, 2017, counsel for Registrant advised counsel for Petitioner as follows:

> "If the Registrant were to respond to Applicant's discovery, you would be sorely disappointed with what you find. Rather than have my client incur the expense ***in responding to the discovery when there is a pending, potentially dispositive motion, it seems the prudent course would be to wait and see what happens with that motion. *** If the currently pending potentially dispositive motion is granted, then the discovery is moot, and if the motion is denied, then it would be appropriate to respond to the Applicant's discovery."
>
> See Exhibit 4, attached hereto.

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In response, counsel for Petitioner noted his categorical disagreement with the course counsel for Registrant had proposed. *Id.*

On August 24, 2017, counsel for Petitioner transmitted to counsel for Registrant via email the following communication:

> "Please note that as of today, the last day of the discovery period, your client still has not yet provided any responses to the written interrogatories and requests for production of documents, although your client's responses (and the entire documentary production) were due nearly 9 months ago. More troubling; Registrant has never produced a single piece of paper (nor any electronic documents) in discovery, from the inception of this litigation through today. Even more troubling still, your client has refused to date to make available for inspection and copying the documents your client identified in its initial disclosures, comprising the evidence upon which Registrant intends to rely to prove its defenses.
> As you well know (evidenced by the fact that you have now responded, albeit belatedly, to my client's Requests for Admissions), today is the last day of the discovery period. Accordingly, the prejudice to my client resulting from Registrant's discovery misconduct is severe.
> We deem your client's conduct to date, namely, it refusal to participate meaningfully in discovery, and failure to respond to any of its discovery obligations (other than the few responses to requests for admissions we belatedly received out of rule from your office yesterday) to constitute a wholesale failure to participate in good faith in the discovery process in this case. We note further that you have still not apprised us of any reason or basis for your client's refusal to participate meaningfully in discovery in this matter."
>
> See Exhibit 5, attached hereto.

Copies of Petitioner's First Set of Written Interrogatories, First Set of Requests for Production of Documents and First Set of Requests for Admissions are attached as composite Exhibit 6. A copy of Registrant's Initial Disclosures as amended are attached hereto as Exhibit 7.

Today, August 24, 2017, after Respondent John Groat has refused throughout this proceeding to produce a single piece of paper or electronic document in discovery, ignored

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Petitioner's written interrogatories and documentary production requests duly served on Registrant many months ago, refused even to produce the documents Registrant himself has identified as those upon which he intends to rely as the evidence to support his claims and defenses in this proceeding, the undersigned has been apprised that Registrant has moved on this date for a 60 day mutual extension of the discovery period. Petitioner objects to Registrant's contested request, on all of the grounds stated herein, and respectfully suggests instead that any extension of the discovery period entered in this case be on the terms and conditions set forth in this motion.

II. Law and Argument

37 C.F.R. §2.120(a) and (f) read, in pertinent part, as follows:

> (a) *In general*;
> (1) Except as otherwise provided in this section, and wherever appropriate, the provisions of the Federal Rules of Civil Procedure relating to disclosure and discovery shall apply in opposition, cancellation, interference and concurrent use registration proceedings. The…timing and sequence of discovery… signing of disclosures and discovery responses, and supplementation of disclosures and discovery responses, are applicable to Board proceedings in modified form, as noted in these rules…
>
> ***
>
> **(f) *Motion for an order to compel disclosure or discovery*;**
> **(1) If a party fails to make required initial disclosures…or fails to answer any question propounded in…any interrogatory, or fails to produce and permit the inspection and copying of any document, electronically stored information, or tangible thing, the party entitled to disclosure or seeking discovery may file a motion to compel disclosure…or an answer, or production and an opportunity to inspect and copy. …A motion to compel discovery shall include a copy of the request for designation…a copy of the interrogatory…or a copy of the request for production;**

As noted in TBMP §403.04,

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> ...[A] party which receives discovery requests early in the discovery period may not, by delaying its response thereto, or by responding improperly so that its adversary is forced to file a motion to compel discovery, deprive its adversary of the opportunity to take "follow-up" discovery. Such a delay or improper response constitutes good cause for an extension of the discovery period. Therefore, the Board will, at the request of the propounding party, extend the discovery period (at least for the propounding party) so as to restore that amount of time which would have remained in the discovery period had the discovery responses been made in a timely and proper fashion. [FN]
>
> ---
>
> [FN] *See Miss America Pageant v. Petite Productions, Inc.*, 17 USPQ2d 1067, 1070 (TTAB 1990) (Board will, upon motion, reopen or extend discovery **solely for benefit of party who was unfairly deprived of follow-up discovery by opponent who wrongfully refused to answer or delayed responses to discovery**); *Neville Chemical Co. v. Lubrizol Corp.*, 184 USPQ 689, 690 (TTAB 1975) (granting motion to extend time to restore amount of time remaining in discovery to the day when applicant's interrogatories were served).

In the case at bar, the controlling authority is *Miss America Pageant* (cited above), and the only reasonably just and fair result in light of Registrant's ongoing refusal to permit Petitioner any reasonable opportunity to conduct discovery is a unilateral re-opening of the discovery period for a short period with delineated purposes. Any other action would unfairly reward Registrant for discovery misconduct occurring and continuing up to and including the last day of the discovery period.

III. Conclusion

Based on the foregoing reasons and authorities, Petitioner Spitzbarth's Motion to Compel Discovery and to Extend the Discovery Period for the Limited Purposes Delineated Herein is well taken and should be granted.

Respectfully submitted,

/s/ Stephen B. Mosier

Stephen B. Mosier
Attorney for Petitioner, Michael Spitzbarth

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CERTIFICATE OF SERVICE

I, Stephen B. Mosier, counsel for Petitioner, hereby certify that a copy of the foregoing "PETITIONER'S MOTION TO COMPEL DISCOVERY AND TO EXTEND THE DISCOVERY PERIOD FOR THE LIMITED PURPOSES DELINEATED HEREIN" was served upon counsel of record for the Registrant, via email on August 24, 2017, at the following address:

Robert E. Purcell, Esq.
The Law Office of Robert E. Purcell, PLLC
211 W. Jefferson St.
Syracuse, NY 13202
rpurcell@repurcelllaw.com

/s/ Stephen B. Mosier
Stephen B. Mosier

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ATTACHMENT A

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

In the matter of Trademark Registration No.:	4,099,565
For the Mark:	"IBLEED"
Date of Registration:	February 14, 2012
Cancellation No.:	92064261

Michael Spitzbarth,
Petitioner,

v.

John Groat,
Registrant.

TRADEMARK TRIAL & APPEAL BOARD
Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

DECLARATION OF STEPHEN B. MOSIER

I, Stephen B. Mosier, hereby state and affirm under penalty of perjury, as follows:

1. I have been and am the lead trial counsel for the Petitioner, Michael Spitzbarth, in connection with the instant cancellation proceeding.
2. A true and accurate copy of a communication transmitted by counsel for Petitioner to counsel for Registrant via email on July 24, 2017, is attached hereto as Exhibit 1.
3. A true and accurate copy of a communication transmitted by counsel for Petitioner to counsel for Registrant via email on August 16, 2017, is attached hereto as Exhibit 2.

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4. A true and accurate copy of communications transmitted between counsel for Petitioner and counsel for Registrant via email on August 17, 2017, is attached hereto as Exhibit 3.
5. A true and accurate copy of communications transmitted between counsel for Registrant and counsel for Petitioner via email on August 18, 2017, is attached hereto as Exhibit 4.
6. A true and accurate copy of communications transmitted between counsel for Petitioner and counsel for Registrant via email on August 24, 2017, is attached hereto as Exhibit 5.
7. A true and accurate copy of Petitioner's First Set of Written Interrogatories, First Set of Requests For Production of Documents and First Set of Requests For Admissions in this proceeding served on February 10, 2017, are attached hereto as Exhibit 6.
8. A true and accurate copy of Registrant's Initial Disclosures, as amended, served on December 19, 2016, is attached hereto as Exhibit 7.
9. Registrant has never served any responses or objections to Petitioner's First Set of Written Interrogatories or to Petitioner's First Set of Requests For Production of Documents in this proceeding served on February 10, 2017 (in relevant part, attached hereto as composite Exhibit 6).
10. I would have reviewed all documents produced to date by Registrant either in connection with his initial disclosures, his responses to interrogatories and requests for documents, or otherwise. Regrettably, however, Registrant has not produced any document (paper or electronic) in discovery, although Registrant has served

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Initial Disclosure which purport to identify relevant materials on which Registrant as advised that he will rely on in support of his claims or defenses.

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

Executed on August 24, 2017
at Tucson, Arizona

By: Stephen B. Mosier

Stephen B. Mosier

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EXHIBIT 1

Stephen Mosier

From: Stephen Mosier
Sent: Monday, July 24, 2017 4:44 PM
To: 'Robert Purcell'
Cc: Jessica Barton
Subject: RE: Cancellation No. 92064261
Attachments: Second Set of RFA.DOCX

Bob:

Please accept service of Petitioner's Second Set of Requests for Admissions, a copy of which is attached above.

Also, kindly furnish us, without further delay, all of the written discovery responses and documents to which my client currently is entitled by Rule in connection with the formal discovery requests previously served upon Respondent in the above-captioned matter. As you know, my client on February 10, 2017 served upon you his first full set of written discovery, including written interrogatories, requests for admissions and requests for production of documents, but to date your client has neither answered nor objected to any of those requests. Nor has your client produced any responsive documents. Notably, by Rule your client's time for responding, objecting and/or documentary production expired some time ago. As you know, this case is no longer under suspension, and the discovery period is coming to an end as per the Board's most recent Order. Your client's continued withholding of the discovery responses and documents (including even the documents you identified in the Initial Disclosures as the materials on which your client relies in support of its case in chief---materials we long ago expressly requested be provided to us) is now highly prejudicial to my client. We trust that you will promptly rectify these multiple oversights, and work with us cooperatively to ameliorate any unfair prejudice to my client accruing as a consequence of your client's non-compliance with the governing Rules of the Board.

This request is made without prejudice to my client's rights and remedies under the Rules governing this proceeding. We shall await until at least Thursday, July 27 at 2:00pm EDT your anticipated prompt response (and all further required corrective actions on our previously-served interrogatories and documentary production requests), in accordance with the Rules governing the captioned proceeding.

Respectfully,
Steve Mosier

EXHIBIT 2

Stephen Mosier

From:	Stephen Mosier
Sent:	Wednesday, August 16, 2017 5:12 PM
To:	'rpurcell@repurcelllaw.com'
Cc:	Jessica Barton
Subject:	Spitzbarth v. Groat, TTAB Cancellation No. 92064261
Attachments:	RE: Cancellation No. 92064261

Tracking:	**Recipient**	**Delivery**	**Read**
	'rpurcell@repurcelllaw.com'		
	Jessica Barton	Delivered: 8/16/2017 5:12 PM	Read: 8/17/2017 8:38 AM

Dear Mr. Purcell:
As you know, there are now just eight days left before the close of discovery in the above-captioned Cancellation proceeding, and so far, up to today, your client, Respondent John Groat, and you as his counsel:

(1) have failed, refused or declined to produce for my inspection and copying, and have otherwise failed to transmit to me, copies of any of the documents Respondent identified in his Initial Disclosures as the materials upon which he intends to reply to support his claims and defenses in this proceeding (even though I have twice specifically ask you to produce or transmit to me those very same documents);
(2) have failed, refused or declined to respond to Petitioner Spitzbarth's first set of written interrogatories, first set of requests for production of documents and first set of requests for admissions, in fact have refused to produce a single document to Petitioner from the inception of this dispute, and the deadline for timely serving your client's responses to all of those discovery requests and producing all responsive documents expired some number of weeks ago; and
(3) have failed, refused or declined to reply to my email to you of July 24, 2017, wherein I raised with you, specifically, each of the above-identified instances of noncompliance by your client with his fundamental discovery obligations in this case; --- instead of responding to my email, you simply ignored it, and failed even to acknowledge it.

As I am sure you can and do fully appreciate, your client's outright refusal to comply with his basic discovery obligations in this case is highly prejudicial to my client. If your client does not wish to participate in these proceedings, I trust that you will let me know right away, so that I may so apprise the Board.

Finally, as you know, the discovery period ends on August 24, and it is my intention to take the depositions of Mr. Groat and his licensees, shortly after you have responded, fully and properly, to all previously-served discovery requests, including by producing all documents responsive to my client's prior unanswered requests. Accordingly, may I represent to the Board that you unconditionally consent to a stipulated 30-day extension of the discovery period, solely for the limited purpose of permitting my client to complete the deposition of your client and his licensees (including specifically Dyke Marler) after my client has received and has had an opportunity to evaluate your client's full and proper discovery responses and documentary productions with respect to all previously served discovery requests? Kindly reply by not later than close of business tomorrow. Please understand that we are not seeking any extension of the discovery period beyond the sole and limited purpose described hereinabove.

The foregoing requests are made without prejudice to my client's rights and remedies under the Rules governing this proceeding. We shall await until at least Thursday, August 17, at 5:00pm EDT for your anticipated prompt response (and all further required corrective actions on our previously-served interrogatories and documentary production requests), in accordance with the Rules governing the captioned proceeding. Thank you.

Respectfully,
Stephen Mosier

****

Stephen B. Mosier, Esq.
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(520) 882-7643 Fax
smosier@hayes-soloway.com

EXHIBIT 3

Stephen Mosier

From: Stephen Mosier
Sent: Thursday, August 17, 2017 1:50 PM
To: 'Robert Purcell'
Cc: Jessica Barton
Subject: RE: Spitzbarth v. Groat, TTAB Cancellation No. 92064261

Importance: High

Dear Mr. Purcell:
Your email immediately below does not mention why:

(1) you have failed, refused or declined to produce for my inspection and copying, and have otherwise failed to transmit to me, copies of any of the documents Respondent identified in his Initial Disclosures as the materials upon which he intends to reply to support his claims and defenses in this proceeding (even though I have twice specifically ask you to produce or transmit to me those very same documents);
(2) you have failed, refused or declined to respond to Petitioner Spitzbarth's first set of written interrogatories, first set of requests for production of documents and first set of requests for admissions, in fact have refused to produce a single document to Petitioner from the inception of this dispute, and the deadline for timely serving your client's responses to all of those discovery requests and producing all responsive documents expired some number of weeks ago; and
(3) you have failed, refused or declined to reply to my email to you of July 24, 2017, wherein I raised with you, specifically, each of the above-identified instances of noncompliance by your client with his fundamental discovery obligations in this case; --- instead of responding to my email, you simply ignored it, and failed even to acknowledge it.

Kindly advise why you have elected to pursue this path, including in particular why you feel entitled to request a mutual extension of the discovery period for the purpose of permitting your client to conduct discovery from my client, notwithstanding your own wholesale refusal to allow my client to conduct any discovery whatever, up to and including today, with only seven (7) days now remaining before the end of the discovery period. Your own client's fundamental and ongoing violations of his discovery obligations is very troubling, to say the least, as is your refusal even to respond to my several prior communications raising these issues. After I receive and evaluate your response including specifically your stated reasons for the foregoing, I expect that I will then be in a position to respond on a fully-informed basis to your proposal below.

The foregoing is made without prejudice to my client's rights and remedies under the Rules governing this proceeding. We shall await until at least Thursday, August 17, at 5:00pm EDT for your anticipated prompt response (and all further required corrective actions respecting my client's previously-served discovery requests), in accordance with the Rules governing the captioned proceeding. Thank you.

Respectfully,
Stephen Mosier

From: Robert Purcell [mailto:rpurcell@repurcelllaw.com]
Sent: Thursday, August 17, 2017 8:27 AM
To: Stephen Mosier
Subject: RE: Spitzbarth v. Groat, TTAB Cancellation No. 92064261

Steve:
I believe the best way to work this through is for us to stipulate to a 60 days extension of time for all dates, including the discovery cut-off date.
As you know, the Board still has not ruled on the potentially dispositive motion of reconsidering its clearly erroneous ruling denying summary judgment; if that motion is granted and the Board in turn grants

summary judgment, then all discovery will be moot. A motion to stay based on the motion for reconsideration has also been pending before the Board without resolution for a couple of months.

For the reasons stated in the pending motion to stay, pursuing discovery and other activities at this juncture would be potentially wasteful of the parties' and the Board's resources.

Are you amenable to the suggested stipulation?

Bob

From: Stephen Mosier [mailto:SMosier@hayes-soloway.com]
Sent: Wednesday, August 16, 2017 8:12 PM
To: rpurcell@repurcelllaw.com
Cc: Jessica Barton
Subject: Spitzbarth v. Groat, TTAB Cancellation No. 92064261

Dear Mr. Purcell:
As you know, there are now just eight days left before the close of discovery in the above-captioned Cancellation proceeding, and so far, up to today, your client, Respondent John Groat, and you as his counsel:

(1) have failed, refused or declined to produce for my inspection and copying, and have otherwise failed to transmit to me, copies of any of the documents Respondent identified in his Initial Disclosures as the materials upon which he intends to reply to support his claims and defenses in this proceeding (even though I have twice specifically ask you to produce or transmit to me those very same documents);
(2) have failed, refused or declined to respond to Petitioner Spitzbarth's first set of written interrogatories, first set of requests for production of documents and first set of requests for admissions, in fact have refused to produce a single document to Petitioner from the inception of this dispute, and the deadline for timely serving your client's responses to all of those discovery requests and producing all responsive documents expired some number of weeks ago; and
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As I am sure you can and do fully appreciate, your client's outright refusal to comply with his basic discovery obligations in this case is highly prejudicial to my client. If your client does not wish to participate in these proceedings, I trust that you will let me know right away, so that I may so apprise the Board.

Finally, as you know, the discovery period ends on August 24, and it is my intention to take the depositions of Mr. Groat and his licensees, shortly after you have responded, fully and properly, to all previously-served discovery requests, including by producing all documents responsive to my client's prior unanswered requests. Accordingly, may I represent to the Board that you unconditionally consent to a stipulated 30-day extension of the discovery period, solely for the limited purpose of permitting my client to complete the deposition of your client and his licensees (including specifically Dyke Marler) after my client has received and has had an opportunity to evaluate your client's full and proper discovery responses and documentary productions with respect to all previously served discovery requests? Kindly reply by not later than close of business tomorrow. Please understand that we are not seeking any extension of the discovery period beyond the sole and limited purpose described hereinabove.

The foregoing requests are made without prejudice to my client's rights and remedies under the Rules governing this proceeding. We shall await until at least Thursday, August 17, at 5:00pm EDT for your anticipated prompt response (and all further required corrective actions on our previously-served

interrogatories and documentary production requests), in accordance with the Rules governing the captioned proceeding. Thank you.

Respectfully,
Stephen Mosier

****

Stephen B. Mosier, Esq.
Hayes Soloway P.C.
4640 E. Skyline Drive
Tucson, Arizona 85718
(520) 882-7623
(520) 882-7643 Fax
smosier@hayes-soloway.com

EXHIBIT 4

Stephen Mosier

From: Stephen Mosier
Sent: Friday, August 18, 2017 8:31 AM
To: 'Robert Purcell'
Cc: Jessica Barton
Subject: RE: Spitzbarth v. Groat, TTAB Cancellation No. 92064261

Dear Mr. Purcell:
I am sorry you feel that way. I respectfully disagree.
Respectfully,
Stephen Mosier

From: Robert Purcell [mailto:rpurcell@repurcelllaw.com]
Sent: Friday, August 18, 2017 7:15 AM
To: Stephen Mosier
Cc: Jessica Barton
Subject: RE: Spitzbarth v. Groat, TTAB Cancellation No. 92064261

Steve:

If the Registrant were to respond to Applicant's discovery, you would be sorely disappointed with what you find.

Rather than have my client incur the expense of many thousands of dollars in attorney fees and tens of hours of time in responding to the discovery when there is a pending, potentially dispositive motion, it seems the prudent course would be to wait and see what happens with that motion. The TTAB rules provide for the automatic issuance of a stay of all activities when such a motion is filed; why the TTAB has not complied with its own rules or granted, or even addressed, the pending motion to stay is a mystery. Also, typically, when the TTAB denies a dispositive motion, it resets all dates that were still in the future as of the date of filing the potentially dispositive motion.

If the currently pending potentially dispositive motion is granted, then the discovery is moot, and if the motion is denied, then it would be appropriate to respond to the Applicant's discovery.

The nature of any further discovery that the Registrant might wish to pursue depends to a large degree on what the TTAB might state and its analysis in the event it denies the motion.

Bob

From: Stephen Mosier [mailto:SMosier@hayes-soloway.com]
Sent: Thursday, August 17, 2017 4:50 PM
To: Robert Purcell
Cc: Jessica Barton
Subject: RE: Spitzbarth v. Groat, TTAB Cancellation No. 92064261
Importance: High

Dear Mr. Purcell:
Your email immediately below does not mention why:

(1) you have failed, refused or declined to produce for my inspection and copying, and have otherwise failed to transmit to me, copies of any of the documents Respondent identified in his Initial Disclosures as the materials upon which he intends to reply to support his claims and defenses in this proceeding (even though I have twice specifically ask you to produce or transmit to me those very same documents);
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produce a single document to Petitioner from the inception of this dispute, and the deadline for timely serving your client's responses to all of those discovery requests and producing all responsive documents expired some number of weeks ago; and
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Kindly advise why you have elected to pursue this path, including in particular why you feel entitled to request a mutual extension of the discovery period for the purpose of permitting your client to conduct discovery from my client, notwithstanding your own wholesale refusal to allow my client to conduct any discovery whatever, up to and including today, with only seven (7) days now remaining before the end of the discovery period. Your own client's fundamental and ongoing violations of his discovery obligations is very troubling, to say the least, as is your refusal even to respond to my several prior communications raising these issues. After I receive and evaluate your response including specifically your stated reasons for the foregoing, I expect that I will then be in a position to respond on a fully-informed basis to your proposal below.

The foregoing is made without prejudice to my client's rights and remedies under the Rules governing this proceeding. We shall await until at least Thursday, August 17, at 5:00pm EDT for your anticipated prompt response (and all further required corrective actions respecting my client's previously-served discovery requests), in accordance with the Rules governing the captioned proceeding. Thank you.

Respectfully,
Stephen Mosier

From: Robert Purcell [mailto:rpurcell@repurcelllaw.com]
Sent: Thursday, August 17, 2017 8:27 AM
To: Stephen Mosier
Subject: RE: Spitzbarth v. Groat, TTAB Cancellation No. 92064261

Steve:

I believe the best way to work this through is for us to stipulate to a 60 days extension of time for all dates, including the discovery cut-off date.

As you know, the Board still has not ruled on the potentially dispositive motion of reconsidering its clearly erroneous ruling denying summary judgment; if that motion is granted and the Board in turn grants summary judgment, then all discovery will be moot. A motion to stay based on the motion for reconsideration has also been pending before the Board without resolution for a couple of months.

For the reasons stated in the pending motion to stay, pursuing discovery and other activities at this juncture would be potentially wasteful of the parties' and the Board's resources.

Are you amenable to the suggested stipulation?

Bob

From: Stephen Mosier [mailto:SMosier@hayes-soloway.com]
Sent: Wednesday, August 16, 2017 8:12 PM
To: rpurcell@repurcelllaw.com
Cc: Jessica Barton
Subject: Spitzbarth v. Groat, TTAB Cancellation No. 92064261

Dear Mr. Purcell:

As you know, there are now just eight days left before the close of discovery in the above-captioned Cancellation proceeding, and so far, up to today, your client, Respondent John Groat, and you as his counsel:

(1) have failed, refused or declined to produce for my inspection and copying, and have otherwise failed to transmit to me, copies of any of the documents Respondent identified in his Initial Disclosures as the materials upon which he intends to reply to support his claims and defenses in this proceeding (even though I have twice specifically ask you to produce or transmit to me those very same documents);
(2) have failed, refused or declined to respond to Petitioner Spitzbarth's first set of written interrogatories, first set of requests for production of documents and first set of requests for admissions, in fact have refused to produce a single document to Petitioner from the inception of this dispute, and the deadline for timely serving your client's responses to all of those discovery requests and producing all responsive documents expired some number of weeks ago; and
(3) have failed, refused or declined to reply to my email to you of July 24, 2017, wherein I raised with you, specifically, each of the above-identified instances of noncompliance by your client with his fundamental discovery obligations in this case; --- instead of responding to my email, you simply ignored it, and failed even to acknowledge it.

As I am sure you can and do fully appreciate, your client's outright refusal to comply with his basic discovery obligations in this case is highly prejudicial to my client. If your client does not wish to participate in these proceedings, I trust that you will let me know right away, so that I may so apprise the Board.

Finally, as you know, the discovery period ends on August 24, and it is my intention to take the depositions of Mr. Groat and his licensees, shortly after you have responded, fully and properly, to all previously-served discovery requests, including by producing all documents responsive to my client's prior unanswered requests. Accordingly, may I represent to the Board that you unconditionally consent to a stipulated 30-day extension of the discovery period, solely for the limited purpose of permitting my client to complete the deposition of your client and his licensees (including specifically Dyke Marler) after my client has received and has had an opportunity to evaluate your client's full and proper discovery responses and documentary productions with respect to all previously served discovery requests? Kindly reply by not later than close of business tomorrow. Please understand that we are not seeking any extension of the discovery period beyond the sole and limited purpose described hereinabove.

The foregoing requests are made without prejudice to my client's rights and remedies under the Rules governing this proceeding. We shall await until at least Thursday, August 17, at 5:00pm EDT for your anticipated prompt response (and all further required corrective actions on our previously-served interrogatories and documentary production requests), in accordance with the Rules governing the captioned proceeding. Thank you.

Respectfully,
Stephen Mosier

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Stephen B. Mosier, Esq.
Hayes Soloway P.C.
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Tucson, Arizona 85718
(520) 882-7623
(520) 882-7643 Fax
smosier@hayes-soloway.com

recipient, you are hereby notified that any use, dissemination, distribution or copying of this communication is strictly prohibited. If you have received this transmission in error, please immediately notify us by telephone, and destroy the original message and any copies thereof in whatever medium stored. Thank you.

EXHIBIT 5

Stephen Mosier

From: Robert Purcell [rpurcell@repurcelllaw.com]
Sent: Thursday, August 24, 2017 12:16 PM
To: Stephen Mosier
Cc: Jessica Barton
Subject: RE: Spitzbarth v. Groat, TTAB Cancellation No. 92064261

Steve:

To reiterate, I think the best procedure would be to ask for an extension of all dates for 60 days.

Bob

From: Stephen Mosier [mailto:SMosier@hayes-soloway.com]
Sent: Thursday, August 24, 2017 2:19 PM
To: Robert Purcell
Cc: Jessica Barton
Subject: RE: Spitzbarth v. Groat, TTAB Cancellation No. 92064261

Dear Mr. Purcell:

I note that subsequent to our email exchange of last Friday, August 18, 2017 (copied below), your office sent to me the responses of your client, Registrant John Groat, to Petitioner Spitzbarth's two separate sets of Requests for Admissions. Your client's responses to the earlier set of Request for Admissions were due on November 28, 2016, but your client's responses thereto were not served until yesterday, 225 days late, out of rule, and without your client having sought or received leave from the Board to serve those responses belatedly.

Please note that as of today, the last day of the discovery period, your client still has not yet provided any responses to the written interrogatories and requests for production of documents, although your client's responses (and the entire documentary production) were due nearly 9 months ago. More troubling, Registrant has never produced a single piece of paper (nor any electronic documents) in discovery, from the inception of this litigation through today. Even more troubling still, your client has refused to date to make available for inspection and copying the documents your client identified in its initial disclosures, comprising the evidence upon which Registrant intends to rely to prove its defenses. As you well know (evidenced by the fact that you have now responded, albeit belatedly, to my client's Requests for Admissions), today is the last day of the discovery period. Accordingly, the prejudice to my client resulting from Registrant's discovery misconduct is severe.

We deem your client's conduct to date, namely, it refusal to participate meaningfully in discovery, and failure to respond to any of its discovery obligations (other than the few responses to requests for admissions we belatedly received out of rule from your office yesterday) to constitute a wholesale failure to participate in good faith in the discovery process in this case. We note further that you have still not apprised us of any reason or basis for your client's refusal to participate meaningfully in discovery in this matter.

Accordingly, and without prejudice to my client's rights under applicable law, I reiterate my prior request that you consent unconditionally to a stipulated 30 day extension of the discovery period, solely for the limited purpose of permitting my client to complete the deposition of your client and his licensees (including specifically Dyke Marler), after my client has received and has had an opportunity to evaluate your client's full and proper discovery responses and documentary productions, with respect to all previously-served discovery requests. Please advise as to whether you so consent, and if not, kindly contact me ASAP today so that we may have a meet and confer prior to my bringing to the attention of the Board this discovery dispute.

Respectfully,

Steve Mosier

From: Stephen Mosier
Sent: Friday, August 18, 2017 8:31 AM
To: 'Robert Purcell'
Cc: Jessica Barton
Subject: RE: Spitzbarth v. Groat, TTAB Cancellation No. 92064261

Dear Mr. Purcell:
I am sorry you feel that way. I respectfully disagree.
Respectfully,
Stephen Mosier

From: Robert Purcell [mailto:rpurcell@repurcelllaw.com]
Sent: Friday, August 18, 2017 7:15 AM
To: Stephen Mosier
Cc: Jessica Barton
Subject: RE: Spitzbarth v. Groat, TTAB Cancellation No. 92064261

Steve:

If the Registrant were to respond to Applicant's discovery, you would be sorely disappointed with what you find.

Rather than have my client incur the expense of many thousands of dollars in attorney fees and tens of hours of time in responding to the discovery when there is a pending, potentially dispositive motion, it seems the prudent course would be to wait and see what happens with that motion. The TTAB rules provide for the automatic issuance of a stay of all activities when such a motion is filed; why the TTAB has not complied with its own rules or granted, or even addressed, the pending motion to stay is a mystery. Also, typically, when the TTAB denies a dispositive motion, it resets all dates that were still in the future as of the date of filing the potentially dispositive motion.

If the currently pending potentially dispositive motion is granted, then the discovery is moot, and if the motion is denied, then it would be appropriate to respond to the Applicant's discovery.

The nature of any further discovery that the Registrant might wish to pursue depends to a large degree on what the TTAB might state and its analysis in the event it denies the motion.

Bob

From: Stephen Mosier [mailto:SMosier@hayes-soloway.com]
Sent: Thursday, August 17, 2017 4:50 PM
To: Robert Purcell
Cc: Jessica Barton
Subject: RE: Spitzbarth v. Groat, TTAB Cancellation No. 92064261
Importance: High

Dear Mr. Purcell:
Your email immediately below does not mention why:

(1) you have failed, refused or declined to produce for my inspection and copying, and have otherwise failed to transmit to me, copies of any of the documents Respondent identified in his Initial Disclosures as the materials upon which he intends to reply to support his claims and defenses in this proceeding (even though I have twice specifically ask you to produce or transmit to me those very same documents);
(2) you have failed, refused or declined to respond to Petitioner Spitzbarth's first set of written interrogatories, first set of requests for production of documents and first set of requests for admissions, in fact have refused to produce a single document to Petitioner from the inception of this dispute, and the deadline for timely serving

your client's responses to all of those discovery requests and producing all responsive documents expired some number of weeks ago; and
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Sent: Thursday, August 17, 2017 8:27 AM
To: Stephen Mosier
Subject: RE: Spitzbarth v. Groat, TTAB Cancellation No. 92064261

Steve:
I believe the best way to work this through is for us to stipulate to a 60 days extension of time for all dates, including the discovery cut-off date.
As you know, the Board still has not ruled on the potentially dispositive motion of reconsidering its clearly erroneous ruling denying summary judgment; if that motion is granted and the Board in turn grants summary judgment, then all discovery will be moot. A motion to stay based on the motion for reconsideration has also been pending before the Board without resolution for a couple of months.
For the reasons stated in the pending motion to stay, pursuing discovery and other activities at this juncture would be potentially wasteful of the parties' and the Board's resources.
Are you amenable to the suggested stipulation?

Bob

From: Stephen Mosier [mailto:SMosier@hayes-soloway.com]
Sent: Wednesday, August 16, 2017 8:12 PM
To: rpurcell@repurcelllaw.com
Cc: Jessica Barton
Subject: Spitzbarth v. Groat, TTAB Cancellation No. 92064261

Dear Mr. Purcell:
As you know, there are now just eight days left before the close of discovery in the above-captioned Cancellation proceeding, and so far, up to today, your client, Respondent John Groat, and you as his counsel:

(1) have failed, refused or declined to produce for my inspection and copying, and have otherwise failed to transmit to me, copies of any of the documents Respondent identified in his Initial Disclosures as the materials upon which he intends to reply to support his claims and defenses in this proceeding (even though I have twice specifically ask you to produce or transmit to me those very same documents);
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Respectfully,
Stephen Mosier

****

Stephen B. Mosier, Esq.
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(520) 882-7643 Fax
smosier@hayes-soloway.com

transmission in error, please immediately notify us by telephone, and destroy the original message and any copies thereof in whatever medium stored. Thank you.

EXHIBIT 6

Traci Lopez

From: Traci Lopez
Sent: Friday, February 10, 2017 5:19 PM
To: 'rpurcell@repurcelllaw.com'
Cc: Stephen Mosier
Subject: Spitzbarth v. Groat
Attachments: First Set of ROG.pdf; First Set of ROG.docx; First Set of RFP.pdf; First Set of RFP.docx; First Set of RFA.pdf; First Set of RFA.docx; Exhibit 1 to RFA.pdf; Exhibit 2 to RFA.pdf

Tracking:

Recipient	Read
'rpurcell@repurcelllaw.com'	
Stephen Mosier	Read: 2/10/2017 5:19 PM

Mr. Purcell,

Please see the attached documents. Thank you.

Traci Lopez

****

Traci Lopez
Assistant to Stephen B. Mosier
Hayes Soloway P.C.
4640 E. Skyline Drive
Tucson, Arizona 85718
(520) 882-7623
(520) 882-7643 Fax
tlopez@hayes-soloway.com

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

In the matter of Trademark Registration No.:	4099565
For the Mark:	"IBLEED"
Date of Registration:	February 14, 2012
Cancellation No.:	92064261

Michael Spitzbarth,
Petitioner,

v.

John Groat,
Registrant.

TRADEMARK TRIAL & APPEAL BOARD
Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

PETITIONER'S INTERROGATORIES DIRECTED TO RESPONDENT

Petitioner, by his attorneys, requests that Respondent answer the following interrogatories pursuant to Rule 2.120 of the Trademark Rules and Rule 33 of the Federal Rules of Civil Procedure, within thirty (30) days of the date of service hereof. These interrogatories are continuing in nature and any information that may be discovered subsequent to service of the answers should be disclosed through supplemental answers within a reasonable time following its discovery.

In answering these interrogatories, please furnish all information known or available to Respondent regardless of whether this information is possessed directly by Respondent, or by its agents, employees, representatives, investigators, or by Respondent's attorneys or their agents, employees, representatives or investigators.

HAYES SOLOWAY P.C.
4640 E. SKYLINE DRIVE
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

DEFINITIONS

The following definitions are incorporated by reference in each interrogatory as set forth hereinafter:

A. 'Person" or "persons" means all entities, including, but not limited to, all individuals, single proprietorships, associations, companies, partnerships, joint ventures, and corporations.

B. The term "trademark" refers to trademark, service mark, certification mark and collective mark.

C. As referred to herein, **MARK** and **RESPONDENT's MARK**, shall mean the trademark pleaded in the Petition to Cancel, namely Registration No. 4,099,565 for "IBLEED" for short-sleeved or long-sleeved t-shirts in class 25.

When a discovery request seeks information as to **RESPONDENT's MARK** , the specific information will be provided with respect to the trademark "IBLEED", as shown in Respondent's Registration No. 4,099,565, subject to the paragraph immediately below. When an Interrogatory requests information as to **Respondent's GOODS**, the specific information will be provided for short-sleeved or long-sleeved t-shirts, and any other goods upon which Respondent is using the mark "IBLEED" or intends to use the mark "IBLEED".

In any instance in which a variant of **RESPONDENT'S MARK** has been used (e.g., I BLEED in lieu of or in addition to IBLEED), Respondent shall separately set forth, and separately provide the requested information with respect to, each variant form of the **MARK**, separately segregated from responsive information as to use of the **MARK** in the exact form as depicted in Registration No. 4,099,565.

HAYES SOLOWAY P.C.
4640 E. SKYLINE DRIVE
TUCSON, AZ 85718
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175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

D. When a date is requested, it shall mean the exact day, month and year if known, or if not, the best approximation thereof.

E. "Document" is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34(a) and includes, but is not limited to, the original and any non-identical copy, regardless of origin or location, of any written, recorded, transcribed, pinched, taped, filmed or graphic matter however produced, now or formerly in your possession, custody or control, including, but not limited to, any drawing, photograph, book, pamphlet, periodical, letter, correspondence, agreements, licenses, instruments of assignment or conveyance, documents of title, stock and share certificates, telegram, telex, telefax, invoice, contract, purchase order, estimate report, memorandum, intra-office communication, working paper, record, ledger, journal, financia1 statement, study, paper, work sheet, cost sheet, estimating sheet, bid, bill, time card, work record, chart, graph, manual, index, data sheet data processing card, tape or disc recording, transcriptions thereof, and all other memorials of any conversations, meetings, and conferences by telephone or otherwise.

F. "Identify"', unless otherwise qualified in a particular interrogatory, means (1) when used in reference to a natural individual, to state the individual's full name, present home address, present business address, and present or last known position and business affiliation; (2) when used in reference to a company, to state its full name and the present or last known address of its principal place of business; (3) when used in relation to an officer, director or employee of Respondent, to state the person's full name, title or position and how long such title or position has been held; and (4) when used in reference to a document, to state:

1. its nature *(e.g,* contract, letter, tape, recording, ledger sheet memorandum, voucher, lab notebook, etc.);

2. its title, if any;

HAYES SOLOWAY P.C.
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3. the substance of its contents;

4. the date and place of its preparation;

5. if it is in the nature of a communication:

a. the date and place it was sent;

b. the date and place it was received

c. the identity (as defined above) of the sender;

d. the identity (as defined above) of the receiver;

e. the identity (as defined above) of each person for whom the sender or receiver acted or purported to act

6. The identity (as defined above) of all persons signing it, preparing or making it or participating in or present at its preparation, making or signing.

7. The identity (as defined above) of all persons having custody of the document and if the present location of the document is unknown, the last known location of the document and any available information as to the disposition of the document or its whereabouts.

G. "You" or "Your" (or "you" or "your") and "Respondent" means the named Respondent, his predecessors in interest, and also their officers, agents, servants, employees, representatives, and attorneys, to the fullest extent the context permits.

H. "Respondent" means the named Respondent, his predecessors in interest, and also their officers, agents, servants, employees, representatives, and attorneys, to the fullest extent the context permits

I. The singular shall include the plural, and the plural, the singular and the past tense shall include the present and future, the present shall include the past and future, and the future shall include the past and present.

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J. If any act event, conversation, person, writing or other instance or matter is mentioned or referred to in response to more than one of these interrogatories, you need not completely identify and describe it, him or her in every such instance, provided you supply a complete identification and description in one such instance in full compliance with the foregoing definitions and in each other such instance make a specific reference to the place in your answer to these interrogatories where such complete identification and description first appears.

K. If an interrogatory calls for information not known to you, such interrogatory shall be deemed a request for your best estimate, understanding and belief as to the matter inquired about and you shall state that you are presenting information about matters which are not known to you but are your best estimate, understanding and belief and you shall state in full detail the basis of your estimate, understanding and belief.

L. A request in an interrogatory for specific information (as where the term "including, but not limited to" is used) shall not, in any case, be deemed a waiver or limitation of the generality of the foregoing definitions.

M. if any information called for by any interrogatory herein is withheld because you claim that such information is contained in a privileged document or communication, (1) identify each such document or communication; (2) state the basis upon which the privilege is claimed; (3) state the number and subsection number of each interrogatory to which each such document or communication is responsive; and (4) identify each person (other than the attorneys representing you in this action) to whom the contents of each such document or communication has heretofore been disclosed, either orally or in writing.

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INTERROGATORIES

INTERROGATORY NO. 1

List each product on or in connection with which Respondent uses, intends to use or has ever used **Respondent's MARK** alone or as part of another mark.

INTERROGATORY NO.2

Identify Respondent's first use of **Respondent's MARK** in interstate commerce in connection with each of the goods named in answer to Interrogatory No. 1, including the date of such use, the goods on which **Respondent's MARK** was first used, details of any *bona fide* sales involved, and the customer, if any, which purchased the specific product or if use has not been made the date **Respondent's MARK** was conceived and the circumstances related thereto.

INTERROGATORY NO.3

(a) Identify all persons who have had any responsibility for the marketing of **Respondent's MARK** as used on or with **Respondent's GOODS**.

(b) Identify all persons who have responsibility for the advertising of **Respondent's MARK** as used on or with **Respondent's GOODS**.

(c) Identify the first sale in which Respondent or his predecessor-in-interest used a variant form of the **MARK** with a space between "I" and "BLEED".

INTERROGATORY NO. 4

Identify each purchaser and/or user of **Respondent's GOODS** sold under

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Respondent's MARK. As used in this interrogatory "purchaser and/or user" refers to any class or classes of purchasers or users, such as may be identified by trade category or industry or business or individual.

INTERROGATORY NO. 5

State the sales in dollars and units by Respondent for all of **Respondent's Goods** sold under **Respondent's MARK** since the date of first use to date, by month.

INTERROGATORY NO. 6

(a) With respect to Respondent's advertising or other promotional activities relative to **Respondent's GOODS** connected with **Respondent's MARK**.

(a) Identify the types of advertising or promotional activities;

(b) Identify the amount of money in dollars expended for advertising and promotion of **Respondent's GOODS** bearing **Respondent's MARK** since the date of first use, by month.

INTERROGATORY NO. 7

Identify all trademark searches relating to **Respondent's Mark**, and as to each identify each third-party use of the mark "IBLEED" referenced in any trademark search.

INTERROGATORY NO. 8

State when and how Respondent first learned of any third-party use of **Petitioner's MARK,** and identify all documents which refer or relate to such knowledge.

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INTERROGATORY NO. 9

State whether Respondent ever discontinued its use of **Respondent's MARK** for any

goods for any period(s) of time and if so, provide the dates of such non-use.

INTERROGATORY NO. 10

Has Respondent ever received notice that Respondent's use of **Respondent's MARK** as part of a mark or in combination with any other word or words, allegedly infringed a mark used by another party? If so, identify all documents related thereto and for each such notice.

INTERROGATORY NO. 11

Has Respondent ever notified any party that a mark used by such party infringed any of **Respondent's MARK.** If so, identify all documents related thereto and for each such person.

INTERROGATORY NO. 12

State whether Respondent has actual knowledge of use by any third-party of the trademark IBLEED or I BLEED, and if so, state how Respondent acquired knowledge as to such use.

INTERROGATORY NO. 13

With respect to your admissions (in whole or in part) or denials (in whole or in part) of each of the following numbered Requests for Admissions served concurrently herewith:

1, 2, 4, 8, 9. 10, 18, 19, 22, 23, 24, 26,

state the factual basis for your response and identify the documents that support your response.

INTERROGATORY NO. 14

State the complete factual and legal bases of your contention that Respondent's sales of goods under a modified form of the **MARK** (having a space between the "I" and the "B") constitutes a mere insubstantial modification of the **MARK**.

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INTERROGATORY NO. 15

With respect to each and every statement or opinion obtained by Respondent or otherwise in Respondent's possession, custody or control regarding any of the issues in this cancellation proceeding, identify the person or persons who rendered each statement or opinion, state whether it was oral or in writing, and identify all documents which refer or relate thereto.

INTERROGATORY NO.16

Identify each expert witness, and separately identify each lay witnesses, Respondent intends to call to testify on its behalf, and as to each expert witness, state the subject matter(s) on which the expert will testify, and the opinions expected to be elicited.

INTERROGATORY NO: 17

(a) Identify the retail outlets where **Respondent's Goods** can be purchased; (including internet based outlets); and

(b) Provide the approximate retail costs for each of **Respondent's GOODS**.

RESPECTFULLY SUBMITTED this 10th day of February, 2017.

/s/ Stephen B. Mosier
Stephen B. Mosier, Esq.
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CERTIFICATE OF SERVICE

I, Stephen B. Mosier, counsel for Petitioner, hereby certify that a copy of the foregoing Petitioner's Interrogatories Directed to Respondent was served upon counsel of record for the Registrant, via email on February 10, 2017 at the following address:

Robert E. Purcell, Esq.
The Law Office of Robert E. Purcell, PLLC
211 W. Jefferson St.
Syracuse, NY 13202
rpurcell@repurcelllaw.com

/s/ Stephen B. Mosier
Stephen B. Mosier

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

In the matter of Trademark Registration No.:	4099565
For the Mark:	"IBLEED"
Date of Registration:	February 14, 2012
Cancellation No.:	92064261

Michael Spitzbarth,
Petitioner,

v.

John Groat,
Registrant.

TRADEMARK TRIAL & APPEAL BOARD
Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

PETITIONER'S FIRST REQUEST TO RESPONDENT FOR PRODUCTION OF DOCUMENTS

Pursuant to Fed. R. Civ. P. 34, Petitioner requests that Respondent respond to the following requests within thirty (30) days from the date of service, and produce for inspection and copying at the offices of Petitioner's attorneys, the below listed documents and things on Tuesday, March 14, 2017, or at such other time and in such other manner as may be mutually agreed upon between counsel for the parties.

The following requests are continuing in character so that if at any time after Respondent makes production in response to these requests Respondent obtains possession, custody or control of documents or things within the scope of these requests, Respondent is requested to make supplemental production of these documents or things for inspection and

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copying within thirty (30) days thereafter, as though Petitioner had served upon Respondent new requests to supplement prior responses.

Petitioner incorporates by reference the definitions and instructions set forth in "Petitioner's Interrogatories to Respondent" served concurrently herewith. In addition, as referred to herein, "**Respondent's Goods**" shall mean all goods and services sold or offered for sale in connection with **Respondent's MARK**

DOCUMENT PRODUCTION REQUESTS

DOCUMENT REQUEST NO. 1

Copies of all agreements, contracts or other arrangements (including, without limitation, between Respondent and any third-party, or between John Groat and Dyke Marler) which refer or relate to or comment on **Respondent's MARK** or any of Respondent's rights with respect thereto.

DOCUMENT REQUEST NO.2

All documents transmitted to, received from, or exchanged by any means with Dyke Marler d/b/a IBLEED Sports Apparel.

DOCUMENT REQUEST NO.3

A sample, copy, photograph, illustration, sketch or other depiction of each different logotype, design, font of type or style in which **Respondent's MARK** or any variation thereof has been or now is being used by Respondent.

DOCUMENT REQUEST NO.4

Provide documents sufficient to show the names, titles and addresses of each and every

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person who participated in the Respondent's selection, design and adoption of **Respondent's MARK**, including, specifically, the name(s) of the person and persons who first suggested that Respondent adopt and use **Respondent's MARK** for Respondent's goods.

DOCUMENT REQUEST NO.5

All documents showing, concerning, evidencing, relating or referring to any searches, investigations or any other inquiries, whether formal or informal, conducted by or for Respondent relating **to Respondent's MARK** or its potential availability for use, or with respect to any use of the **MARK** by others.

DOCUMENT REQUEST NO. 6

All documents showing, concerning, evidencing, relating or referring to the production of Respondent's goods, including, without limitation, documentation identifying every place of business where Respondent's goods are (or will be) produced or rendered and the dates of such production and/or rendering, documentation of the total volume of sales in units and the equivalent dollar value, and any documents describing the process of producing or rendering such goods.

DOCUMENT REQUEST NO. 7

All documents and things ever used by Respondent or used on behalf of Respondent to advertise or promote the goods which bear **Respondent's MARK** including, without limitation, flyers, periodicals, newspapers, telephone directory listings, video tapes, television scripts, audio discs, displays, promotional brochures, catalogs and outdoor window signs. If advertising activities include periodical magazines, produce a copy of each publication.

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DOCUMENT REQUEST NO. 8

All documents showing, concerning, evidencing, relating or referring to the organization and implementation of the Respondent's advertising program, including without limitation, documents sufficient to identify: (a) the date; (b) the place; (c) the monetary amount expended; (d) the class of customers to whom the advertising or promotional materials were (or are) directed; (e) the number of copies of such materials; and (f) the names and addresses of each person, advertising agency, public relations firm or any other business entity hired or retained in connection with such advertisements.

DOCUMENT REQUEST NO.9

All documents including invoices, showing, concerning, evidencing, relating or referring to Respondent's first use of **Respondent's MARK** on goods or services in the United States including, without limitation, information on the geographical localities of such first use and any third persons involved.

DOCUMENT REQUEST NO.10

All documents including invoices, showing, concerning, evidencing, relating or referring to Respondent's first use of **Respondent's MARK** on goods or services in interstate commerce, the circumstances under which each such first use occurred, the geographical localities of such first use and any third persons involved.

DOCUMENT BEQUEST NO.11

Documents sufficient to show any and all owners, principals, agents, distributors, licensees, and/or retailers of Respondent's goods from the date of first use to the present.

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DOCUMENT REQUEST NO.12

All documents showing, concerning, evidencing, relating, or referring to Respondent's permission given to any other company, agent or other person to use **Respondent's MARK**, including, without limitation all documentation identifying: (a) the name of such company, agent or person; (b)the date of such use; and (c) the goods or services used by such company, agent or person and any such documents which refer to any other company, agent or other person giving or having been given permission to use **Respondent's MARK**.

DOCUMENT REQUEST NO.13

All documents showing, concerning, evidencing, relating, or referring to any assignment or license with respect to **Respondent's MARK**, including, without limitation, all documentation identifying: (a) the date of such assignment or license; (b) the name and address of the assignee and the assignor (or licensee and licensor); (c) any recordal of such assignment or license in the United States Patent and Trademark Office or other public place; and the terms and conditions of the agreement.

DOCUMENT REQUEST NO.14

A sample, copy, photograph, illustration, sketch or other depiction of each label, tag, container, stencil, package, price list and display which are or have ever been used in connection with goods beating **Respondent's MARK**.

DOCUMENT REQUEST NO.15

All documents showing, concerning, evidencing, relating or referring to Respondent's knowledge of any third party's past or current use or registration of **Respondent's MARK** or a mark or use which Registrant considers an alleged imitation of any of **Respondent's MARK** on any goods or services.

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DOCUMENT REQUEST NO.16

All documents showing, concerning, evidencing, relating, or referring to any infringement action or other proceeding in the United States Patent and Trademark Office (or any court) which has ever been brought by or against the Appellant for the use of each or any of its **Respondent's MARK** or what it has asserted to be a colorable imitation thereof.

DOCUMENT REQUEST NO.17

All documents showing, concerning, evidencing, relating, or referring to any correspondence, email exchanges, discussions, negotiations or settlements entered into by Respondent with any other party in regard to the adoption, use, or registration of **Respondent's MARK** or any other mark which Respondent has asserted to be a colorable imitation thereof.

DOCUMENT REQUEST NO.18

Provide all documents identified by Respondent in Respondent's Initial Disclosures.

DOCUMENT REQUEST NO. 19

Provide all documents mentioning, referring to or relating to all prior owners, predecessors in interest or licensees of **Respondent's MARK**.

DOCUMENT REQUEST NO 20

Provide documents showing the names and titles of all employees of Respondent, and of all licensees or sales agents or employees of Respondent involved in sales of **Respondent's Goods**.

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DOCUMENT REQUEST NO.21

All documents showing, concerning, evidencing, relating, or referring to any instances of confusion which each or any of **Respondent's MARK** was mistaken for **Petitioner's MARK**, or instances in which Respondent was mistaken for Petitioner including, without limitation, all documentation identifying: (a) the place of such instance of confusion; (b) the date of such instance of confusion; (c) the identity of all persons involved; (d) how the instance of confusion came to the attention of Respondent; and (e) the nature of such confusion.

DOCUMENT REQUEST NO.22

Documents sufficient to show all the goods or services which have been sold, advertised, and/or distributed under each or any of **Respondent's MARK** and/or predecessors in interest of the Respondent and/or licensees of the Respondent including, where available specimens of such goods and literature describing the services.

DOCUMENT REQUEST NO.23

All documents showing, concerning, evidencing, relating, or referring to any market research conducted by Respondent on its goods, including, without limitation, all documentation identifying: (a) the location and date of such research; (b) the persons who conducted the research; (c) the persons to whom the results were reported and (d) the results of the research.

DOCUMENT REQUEST NO.24

All documents and things requested to be identified by "Petitioner's Interrogatories to Respondent" served concurrently herewith.

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RESPECTFULLY SUBMITTED this 10th day of February, 2017.

/s/ Stephen B. Mosier
Stephen B. Mosier, Esq.
Hayes Soloway PC
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Tucson, AZ 85718
520-882-7623 – Main
520-882-7643 – Facsimile

CERTIFICATE OF SERVICE

I, Stephen B. Mosier, counsel for Petitioner, hereby certify that a copy of the foregoing Petitioner's First Request to Respondent for Production of Documents was served upon counsel of record for the Registrant, via email on February 10, 2017 at the following address:

Robert E. Purcell, Esq.
The Law Office of Robert E. Purcell, PLLC
211 W. Jefferson St.
Syracuse, NY 13202
rpurcell@repurcelllaw.com

/s/ Stephen B. Mosier
Stephen B. Mosier

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

In the matter of Trademark Registration No.:	4099565
For the Mark:	"IBLEED"
Date of Registration:	February 14, 2012
Cancellation No.:	92064261

Michael Spitzbarth,
Petitioner,

v.

John Groat,
Registrant.

TRADEMARK TRIAL & APPEAL BOARD
Commissioner of Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

PETITIONER'S FIRST SET OF REQUESTS FOR ADMISSIONS DIRECTED TO RESPONDENT JOHN GROAT

Pursuant to Rule 2.120 of the Trademark Rules and Rule 36 of the Federal Rules of Civil Procedure, Petitioner, Michael Spitzbarth (hereinafter "Petitioner") requests that Respondent, John Groat (hereinafter "Respondent") answer each of the following requests for admissions within thirty (30) days of the date of service hereof.

Please note that pursuant to Rule 36, these matters are deemed admitted unless Respondent serves upon Petitioner a written answer or objection within thirty days after service. If objection is made, the Rules require that the reasons therefore be stated.

The Rules further require the reasons to be set forth in detail if Respondent contends that he cannot truthfully admit or deny any of the matters. When good faith requires that Respondent qualify his answer or deny only a part of the matter for which an admission is

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requested, Petitioner shall specify so much of the matter as is true and qualify or deny the remainder.

The Rules further require that a party who considers that the matter for which an admission has been requested presents a genuine issue for trial may not, on that ground alone, object to the Request, but instead must answer the Request.

DEFINITIONS

For the purposes of these requests:

1. The terms "Petitioner" or "Spitzbarth" refer to Michael Spitzbarth and his employees, agents, representatives, attorneys, predecessors in interest, successors, and assigns, and to persons and entities acting or purporting to act on his behalf.
2. The terms "Respondent", "Registrant" and "John Groat" refer to John Groat and his employees, agents, representatives, attorneys, predecessors in interest (including, without limitaiton, Dyke Marler), successors, and assigns, and to persons and entities acting or purporting to act his behalf.
3. The term "USPTO" means the United States Patent and Trademark Office.
4. Unless the context requires otherwise, use of the singular shall include the plural, and the present tense shall include the past tense, and vice versa.
5. The term "person" is defined as any natural person or business, legal or governmental entity or association.
6. The term "third party" shall mean any person or entity other than Respondent or Petitioner.
7. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.
8. Unless otherwise specified, the Territorial scope of these requests should be deemed and construed as limited to the United States, its Territories and Possessions, including any subpart of the United States.

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REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit that there is currently at least one "third party" (apart from Petitioner and Respondent) involved in the sale of clothing (namely, shirts) in the United States using the Respondent's Mark as shown in the registration or the words "I" and "Bleed" separated by a space.

ANSWER:

REQUEST FOR ADMISSION NO. 2:

Admit that prior to November 13, 2010, Respondent was aware of at least one other third party individual or company using the term IBLEED in a web address for a website engaged in the online sales of clothing (namely, shirts) in the United States.

ANSWER:

REQUEST FOR ADMISSION NO. 3:

Admit that in connection with Respondent's application for registration of the word mark "IBLEED" on the Principal Register, on or about June 22, 2011, a declaration was filed with USPTO on behalf of Dyke Marler to the effect that he was the senior user of the mark "IBLEED" and that no third-party had the right to use the mark in commerce.

ANSWER:

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REQUEST FOR ADMISSION NO. 4:

Admit that as of June 22, 2011, Respondent was not the sole person or entity which had used the mark in connection with the advertising and sale of clothing (namely, shirts).

ANSWER:

REQUEST FOR ADMISSION NO. 5:

Admit that as of June 22, 2011, Respondent did not own the mark "IBLEED", insofar as there were other third-party users of the mark in connection with clothing (namely, shirts).

ANSWER:

REQUEST FOR ADMISSION NO. 6:

Admit that the Registrant did not disclose to the United States Patent and Trademark Office that he was aware of at least one other third-party using the term "IBLEED" in a web address for a website engaged in the online sales of clothing (namely, shirts), Registrant having thereby purposely withheld that information from the PTO Examiner.

ANSWER:

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REQUEST FOR ADMISSION NO. 7:

Admit that Registrant obtained registration to its mark "IBLEED" from the USPTO by means of material misrepresentations.

ANSWER:

REQUEST FOR ADMISSION NO. 8:

Admit that Petitioner has sent one or more "cease and desist" letters to third-party entities alleging that the use of the mark "IBLEED" or domain names containing or encompassing that term or offering for sale goods encompassing that term violated Respondent's rights to the mark "IBLEED".

ANSWER:

REQUEST FOR ADMISSION NO. 9:

Admit that Petitioner has instituted one or more arbitration, litigation or administrative proceedings against third-party persons or entities alleging that the use of the mark "IBLEED" or domain name containing or encompassing that term or offering for sale goods encompassing that term violated Respondent's rights to the mark "IBLEED".

ANSWER:

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REQUEST FOR ADMISSION NO. 10:

Admit that Dyke Marler, the Registrant at the time the mark "IBLEED" was placed on the principal Register, has assigned his rights in the mark to Mr. John Groat.

ANSWER:

REQUEST FOR ADMISSION NO. 11:

Admit that Dyke Marler has been adjudicated to have misrepresented himself, misrepresented material facts about himself, and otherwise to have perpetrated a fraud on at least two separate occasions to at least two separate United States Bankruptcy Courts.

ANSWER:

REQUEST FOR ADMISSION NO. 12:

Admit that the "Dyke Marler" referenced in the attached Exhibits 1 and 2, respectively, was the original Registrant of the "IBLEED" mark.

ANSWER:

REQUEST FOR ADMISSION NO. 13:

Admit that the term "IBLEED", USPTO registration number 4,099,565 on the Principal Register, has not acquired secondary meaning.

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FAX. 603.668.8567

ANSWER:

REQUEST FOR ADMISSION NO. 14:

Admit that the term "IBLEED" is merely descriptive.

ANSWER:

REQUEST FOR ADMISSION NO. 15:

Admit that Plaintiff's mark "IBLEED" is not distinctive.

ANSWER:

REQUEST FOR ADMISSION NO. 16:

Admit that Petitioner's registration and use of its mark "IBLEED" would not create a likelihood of confusion with Respondent's mark "IBLEED".

ANSWER:

REQUEST FOR ADMISSION NO. 17:

Admit that Respondent, as of the date of this request, had not provided to Petitioner copies of any of the documents Respondent in his Initial Disclosures has stated an intent to rely upon and to use in this proceeding.

HAYES SOLOWAY P.C.
4640 E. SKYLINE DRIVE
TUCSON, AZ 85718
TEL. 520.882.7623
FAX. 520.882.7643

175 CANAL STREET
MANCHESTER, NH 03101
TEL. 603.668.1400
FAX. 603.668.8567

ANSWER:

REQUEST FOR ADMISSION NO. 18:

Admit that Respondent has never derived revenue from sales of shirts branded "IBLEED" sold by Dyke Marler or any third-party entity.

ANSWER:

REQUEST FOR ADMISSION NO. 19:

Admit that Respondent's sole or predominate use of the Respondent's Mark from and after the date on which Respondent acquired ownership of the mark by assignment from Dyke Marler, is with a "space" between the "I and the "B".

ANSWER:

REQUEST FOR ADMISSION NO. 20:

Admit that Respondent will not sustain any damages related to Petitioner's proposed registration.

ANSWER:

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REQUEST FOR ADMISSION NO. 21:

Admit that Respondent has not sustained any damages related to Petitioner's conduct with respect to the term "IBLEED".

ANSWER:

REQUEST FOR ADMISSION NO. 22:

Admit that Respondent has not sustained any damages related to Petitioner's use or registration of the term "IBLEED".

ANSWER:

REQUEST FOR ADMISSION NO. 23:

Admit that Respondent has not sustained any loss of sales related to Petitioner's conduct.

ANSWER:

REQUEST FOR ADMISSION NO. 24:

Admit that Respondent to date has not exercised managerial or supervisory responsibility encompassing quality control over any third-party's sale of shirts branded with the "IBLEED" mark, or otherwise policed the use of the mark "IBLEED" or shirts sold by Dyke Marler or by any third-party.

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ANSWER:

REQUEST FOR ADMISSION NO. 25:

Admit that Respondent to date has neither retained nor exercised quality control over third-party uses of the "IBLEED" mark in connection with sales of clothing (including shirts).

ANSWER:

REQUEST FOR ADMISSION NO. 26:

Admit that Respondent has no control, by ownership, contract or license, over any of the third party that currently use the word "IBLEED" in the course of their sales of shirts in their commercial business within the United States.

ANSWER:

RESPECTFULLY SUBMITTED this 10th day of February, 2017.

/s/ Stephen B. Mosier

Stephen B. Mosier, Esq.
Hayes Soloway PC
4640 E. Skyline Dr.
Tucson, AZ 85718
520-882-7623 – Main
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CERTIFICATE OF SERVICE

I, Stephen B. Mosier, counsel for Petitioner, hereby certify that a copy of the foregoing Petitioner's First Set of Requests for Admissions Directed to Respondent John Groat was served upon counsel of record for the Registrant, via email on February 10, 2017 at the following address:

Robert E. Purcell, Esq.
The Law Office of Robert E. Purcell, PLLC
211 W. Jefferson St.
Syracuse, NY 13202
rpurcell@repurcelllaw.com

/s/ Stephen B. Mosier
Stephen B. Mosier

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EXHIBIT 1

UNITED STATES BANKRUPTCY COURT
MIDDLE DISTRICT OF GEORGIA
MACON DIVISION

IN RE:	)	CHAPTER 7
	)	CASE NO. 08-50235-JDW
JESSICA BULLOCK,	)	
	)	
DEBTOR.	)	

BEFORE

JAMES D. WALKER, JR.

UNITED STATES BANKRUPTCY JUDGE

COUNSEL

For Movant: Rob Fenimore
440 Martin Luther King Blvd., Suite 302
Macon, Georgia 31201

For Respondant: Dyke Marler, pro se
520 Killian Hill Road, SW
Lilburn, Georgia 30047

MEMORANDUM OPINION

This matter comes before the Court on the United States Trustee's motion for sanctions against a bankruptcy petition preparer. This is a core matter within the meaning of 28 U.S.C. § 157(b)(2)(A). After considering the pleadings, the evidence, and the applicable authorities, the Court enters the following findings of fact and conclusions of law in conformance with Federal Rule of Bankruptcy Procedure 7052.

Findings of Fact

The United States Trustee filed a motion against bankruptcy petition preparer Dyke Marler, d/b/a Paralegal Services, seeking a fine against him of $13,000, reimbursement to Debtor Jessica Bullock of $249 in fees, and an injunction preventing him from preparing documents for filing in any United States Bankruptcy Court. The Court held a hearing on the motion on March 24, 2008, and based on the evidence presented, finds the relevant facts to be as follows:

Debtor contacted Mr. Marler by phone and paid him $249 to prepare her bankruptcy petition. The payment was indicated on Debtor's statement of financial affairs. Mr. Marler prepared the petition, verification of schedules, statement of financial affairs, and statement of intent filed by Debtor. Mr. Marler failed to identify himself as a petition preparer on the documents. He did not sign the documents, nor did he provide his social security number on them.[1]

Mr. Marler did not provide Debtor with Official Form 19, Declaration and Signature of

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[1] The official forms include a section for the bankruptcy petition preparer to provide all the required information. None of the documents filed by Debtor included such a section. Consequently, the United States Trustee initially alleged that Mr. Marler altered the forms. However, the UST later abandoned that allegation.

Non-Attorney Bankruptcy Petition Preparer, nor did he obtain Debtor's signature on such a form prior to receiving payment from her and preparing documents for her. Although Mr. Marler never told Debtor he was an attorney, he never denied being an attorney. In fact, Debtor testified she believed Mr. Marler was an attorney. Her testimony is corroborated by her application to waive the filing fee, which Debtor prepared without Mr. Marler's assistance. Question 12 of the application asks: "Have you paid an **attorney** any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules?" (emphasis in original). Debtor indicated she paid an attorney $249. Question 14 asks: "Have you paid **anyone other than an attorney** (such as a bankruptcy petition preparer, paralegal, typing service, or another person) any money for services in connection with this case, including the completion of this form, the bankruptcy petition, or schedules?" (emphasis in original). Debtor indicated she had not.

Debtor's Schedule C listed various property claimed as exempt as well as corresponding Georgia Code sections that provide for the specific exemptions. Debtor did not supply those code sections to Mr. Marler. Instead, the computer program Mr. Marler used to create the petition automatically inserted the code sections.

The UST alleged Mr. Marler advised Debtor about which Chapter to file under and about seeking a waiver of the filing fee. However, Debtor's testimony on these points indicates she received assistance on these matters from a cousin; not from Mr. Marler.

Conclusions of Law

Mr. Marler concedes he is a bankruptcy petition preparer ("BPP") as defined by 11 U.S.C. § 110(a)(1). Therefore, he is subject to penalties for negligently or fraudulently preparing

a bankruptcy petition as set forth in § 110, which can be summarized in relevant part as follows:

- A BPP must sign and print his name and address on any document he prepares for filing. Id. § 110(b)(1).
- Before preparing any documents or accepting any fees, a BPP must provide the debtor with Official Form 19, which informs the debtor the BPP is not an attorney and cannot provide legal advice. The form must be signed by the debtor and the BPP and must be filed with any documents prepared by the BPP for filing. Id. § 110(b)(2).
- A BPP must place his social security number after his signature on any document he prepares for filing. Id. § 110(c)(1), (2).
- A BPP may not offer a potential bankruptcy debtor any legal advice. Id. § 110(e)(2)(A).
- The Court may order the BPP to turn over to the United States Trustee any fee exceeding the value of any services provided. Id. § 110(h)(3)(A).
- A BPP may forfeit all fees if he fails to comply with the requirements of § 110. Id. § 110(h)(3)(B).
- The Court may enjoin a BPP from engaging in conduct that violates § 110. Id. § 110(j)(2)(A).
- The Court may enjoin a BPP from preparing petitions if he has continually engaged in conduct that violates § 110 and an injunction of that conduct would be insufficient to prevent the BPP from interfering with administration of the Bankruptcy Code. Id. § 110(j)(2)(B).
- A BPP who fails to comply with the requirements of § 110 may be fined no more than $500 per violation. Id. § 110(l)(1).
- The court shall triple the fine if the BPP "prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy petition preparer." Id. § 110(l)(2)(D).

Violations

In this case, Mr. Marler violated § 110(b)(1) four times by failing to print and sign his name on the petition, the verification of schedules, the statement of financial affairs, and the

statement of intention.

Mr. Marler violated § 110(b)(2) by accepting fees from Debtor before providing her with Form 19.

Mr. Marler violated § 110(c) four times by failing to put his social security number on the petition, the verification of schedules, the statement of financial affairs, and the statement of intention.

Mr. Marler violated § 110(e)(2) by using software that made legal determinations regarding Debtor's exemptions.

Penalties

Turning to the penalty for Mr. Marler's violations of § 110, the United States Trustee has requested disgorgement of fees, an injunction against any further petition preparation, and the maximum fines allowed.

Mr. Marler uses a software program to prepare schedules for prospective debtors. The documents output by the program in this case did not include lines for the bankruptcy petition preparer's name, signature, and social security number. The Court concludes this omission was the result of Mr. Marler's negligent use of the software rather than fraud. While this explanation does not excuse Mr. Marler's violations of § 110(b) and (c), it is a mitigating factor in determining the amount of his fine.

Furthermore, Mr. Marler's use of the software is responsible for his violation of the prohibition on providing legal advice. Deciding whether a debtor is entitled to exemptions and the extent of those exemptions is a legal judgment. Debtor did not provide Mr. Marler with any information regarding exemptions. Instead, the software automatically elected the exemptions.

Even though Mr. Marler did not personally choose the exemptions, he provided Debtor with a finished product that incorporated legal determinations that were not made by Debtor. Thus, while the Court concludes Mr. Marler did not intend to provide legal advice, he effectively did so by using the software. The Court will not go so far to say that use of bankruptcy software is a per se violation of § 110. However, as this case demonstrates, it exposes BPPs to the possibility of inadvertently providing legal advice.

Fees: The Bankruptcy Code authorizes the Court to order full disgorgement of fees for a violation of § 110 or the disgorgement of excessive fees. In this case, the Court has listed numerous violations by Mr. Marler under subsections (b), (c), and (e). Therefore, the Court can and will require him to forfeit the full $249 he received from Debtor, without regard to its excessiveness.[2]

Injunction: The majority of the violations in this case were due to Mr. Marler's incorrect use of his software program rather than any intentional noncompliance. The Court is persuaded the violations were unintentional and can be remedied without resort to an injunction. The UST has indicated it has requested sanctions against Mr. Marler in several other cases pending in this district. However, those cases have not been resolved and their facts have not been established. Therefore, they can offer no support as to the necessity of imposing an injunction in this case.

Fines: Although an injunction is not appropriate in this case, fines are. First, with regard to Mr. Marler's failure to put his social security number on the required documents, the Court will fine him $50 for each of the four violations, for a total of $200. Second, with regard to Mr.

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[2] When excessiveness is at issue, the UST may have the initial burden of proof. However, because the Court has other grounds for ordering disgorgement, it need not determine where the burden lies for proving excessiveness of fees.

Marler's failure to place his name and signature on the required documents, the Court will fine him $50 for each of the four violations. Because these violations resulted in him preparing documents that failed to reveal his identity, the fines must be tripled, for a total of $600. Third, with regard to providing Debtor with legal advice as to her exemptions, the Court will fine Mr. Marler $50.

Fourth, the Court finds Mr. Marler's failure to provide Debtor with Form 19 to be his most egregious violation of § 110 and will, therefore, impose the maximum fine of $500. Form 19 "is intended to make clear to the debtor that a bankruptcy petition preparer cannot provide the same services as an attorney." 2 Collier on Bankruptcy ¶ 110.03[3] (15th ed. rev'd 2008). Bankruptcy is a complex arena, filled with potential legal pitfalls for the pro se debtor. Therefore, a debtor needs to fully understand she is proceeding without the benefit of reliable legal advice. In this case, the Court is persuaded by Debtor's testimony and the information she provided on her motion to proceed in forma pauperis that she believed Mr. Marler was an attorney and that she had legal representation. Had Mr. Marler provided Debtor with Form 19, she would have had no basis for such a belief.

Conclusion

The Court finds Mr. Marler's conduct constitutes multiple violations of § 110. Consequently, the Court will require him to return his fee of $249 and to pay fines totaling $1,350 to the United States Trustee.

An Order in accordance with this Opinion will be entered on this date.

END OF DOCUMENT

EXHIBIT 2

IN RE MCGILL

MEMORANDUM ON UNITED STATES TRUSTEE'S MOTION FOR IMPOSITION OF FINES PURSUANT TO 11 U.S.C. § 110

RICHARD STAIR JR., Bankruptcy JudgePage 3
These contested matters are before the court on the consolidated Motion for Imposition of Fines Pursuant to 11 U.S.C. § 110(*l*)(1), (2)(D) and for Forfeiture of Compensation Pursuant to § 110(h) and Notice of Hearing (Motion) filed by the United States Trustee, Richard F. Clippard, in these two bankruptcy cases on February 7, 2007. By this Motion, the United States Trustee seeks the following: (1) an order in each case directing Dyke L. Marler (Marler) and J L Enterprises, Inc. (J L), to forfeit all compensation received from the Debtor for preparing the Voluntary Petition and related documents associated with the Debtor's filing of his two Chapter 13 bankruptcy cases; (2) that the court impose fines against Marler and J L in each case for violations of various provisions of 11 U.S.C. § 110(2005); and (3) that, where required by 11 U.S.C. § 110(*l*)(2)(D), fines imposed by the court be trebled. Marler and J L did not respond to the Motion nor did they appear at the hearing thereon on March 19, 2007.

The record before the court consists of the testimony of the Debtor, five exhibits admitted into evidence, and the post-trial Affidavit of Patricia C. Foster (Affidavit) filed by Patricia C. Foster, attorney for the United States Trustee, on March 23, 2007.

This is a core proceeding. 28 U.S.C. § 157(b)(2)(A) (2005).

I

The Debtor filed the Voluntary Petition commencing his first bankruptcy case under Chapter 13, No. 06-32029, *pro se,* on September 5, 2006. The petition was signed by the Debtor and does not disclose that it was prepared by a bankruptcy petition preparer. COLL. TRIAL Ex. 1. The Debtor paid the required $274.00 fee upon the filing of the petition. This case was dismissed on September 28, 2006, upon the Debtor's failure to timely file his Statement of Financial Affairs, schedules, and Chapter 13 plan. No bankruptcy petition preparer compensation disclosure statement accompanied the petition as required by 11 U.S.C. § 110(h)(2), nor was any other documentation filed in this case to evidence that the Voluntary Petition was prepared by a bankruptcy petition preparer.

The Debtor filed the Voluntary Petition commencing his second Chapter 13 case, No. 06-32784, *pro se,* on November 22, 2006. Contemporaneously therewith, the Debtor paid the required $274.00

filing fee and filed his Statement of Financial Affairs and schedules. COLL. TRIAL Ex. 2. None of the documents disclose that they were prepared by a bankruptcy petition preparer. This case was dismissed on January 3, 2007, upon the Debtor's failure to commence payments under his proposed plan within thirty days of the filing of the petition as required by 11 U.S.C. § 1326(a)(1) (2005). This petition was not accompanied by a bankruptcy petition preparer compensation disclosure statement required by 11 U.S.C. § 110(h)(2), nor was any other documentation filed evidencing that the Voluntary Petition, Statement of Financial Affairs, and schedules were prepared by a bankruptcy petition preparer.

The Debtor also filed his Chapter 13 Plan, but the record is devoid of any proof relative to the preparation of that document.

The Debtor testified that the mortgage encumbering his residence at 6707 Parklake Drive, Knoxville, Tennessee, was scheduled for foreclosure on September 6, 2006, and that prior to the foreclosure date, he received a solicitation from J L holding itself out as "an experienced foreclosure mitigation and prevention company that specializes in helping families save their homes." TRIAL EX. 3. This solicitation, while making no mention of bankruptcy, also states: "If you need help and want to save your home call us today" and "[l]et us assist you in creating a payment plan that will stop your foreclosure." *Id.*

In late August 2006, the Debtor, in response to its solicitation, contacted J L by telephone and talked with a representative named "Joe." The Debtor told "Joe" of his financial situation with regard to the foreclosure of the Parklake Drive residence. The Debtor was not seeking to file bankruptcy, nor did he solicit advice or information regarding bankruptcy from "Joe." "Joe" advised the Debtor that "there's ways to avoid [foreclosure]" and "what we need to do is get you credit counseling." He told the Debtor that the "only way" to stop the foreclosure is with a "Chapter 13 bankruptcy." "Joe" advised the Debtor that J L "has attorneys that will provide some things" and then sent the Debtor a letter dated August 29, 2006, advising him, *inter alia,* that J L would "take [his] case . . . as to the plan I described to you to stop the foreclosure" for a fee of $1,050.00. COLL. TRIAL Ex. 4. This letter also advised the Debtor that

[E]ither Thursday or Friday of this week we will be providing you with access so you can complete the credit counseling that will be required if you have to file. If the mitigations are unsuccessful on Tuesday, September 5, one of our associates will be forwarding you documents for filing in the court to stop the sale and you will have to file these documents either Tuesday afternoon or Wednesday morning.

. . . .

As previously stated we do not have much time to negotiate with the mortgage company and this may not be a successful endeavor but as stated we will continue working with the mortgage company until the last minute, if this is unsuccessful we will refer you to an associate either [sic] Atlanta, GA or in Chicago, IL who complete all necessary documents for you.

Id.

The August 29, 2006 letter was accompanied by other documents on J L letterhead, including a document headed "J L Enterprises, Inc. Disclaimer Notice," which states in material part:

One document, labeled "Consulting Agreement," contains the typewritten name of "E.A. (Joe) Brack, Jr." who is identified as the "Consultant" for J L.

I further understood and with the agreement and at no additional cost to the Client the Company may refer the client to other consultants, attorneys and/or Para-legal as the Company deems necessary to stop the foreclosure.

COLL. TRIAL. Ex. 4.

The Debtor remitted $525.00, representing one-half of the required $1,050.00, to J L on September 1, 2006. TRIAL EX. 5. He paid the balance at a later date.

The Debtor testified that "Joe" subsequently provided him with the telephone number for Marler, who the Debtor thereafter contacted. The Debtor testified that when he contacted Marler, Marler represented himself to be an attorney and "said he'd be the attorney representing me." The Debtor also testified that "Joe" told him that if he was asked who prepared his bankruptcy documentation he should state that he, the Debtor, prepared the documentation himself. Specifically, the attorney for the United States Trustee asked the Debtor the following question on direct examination:

So you were actually instructed not to tell anyone that J L Enterprises or Dyke Marler had prepared your bankruptcy.

The Debtor responded, "Exactly, yes," and further testified that "[i]t was Joe . . . from J L" who gave him that instruction.

The Debtor further testified that he received bankruptcy forms from J L by facsimile transmission, that he completed these forms by hand and sent them back to "Joe" at J L, that to the best of his knowledge, "Joe" sent the hand-written forms to Marler, and that J L, after receiving the typed forms back from Marler, transmitted them to him by fax.

With respect to his first case, No. 06-32029, the Debtor testified that J L did not immediately send him the typed Statement of Financial Affairs and schedules and that his failure to timely receive and file these documents resulted in the dismissal of this case. The Debtor testified that he received all the required typed forms from J L prior to the filing of his second case, No. 06-32784, on November 22, 2006.

Patricia C. Foster, the attorney prosecuting the Motion for the United States Trustee, states the following through her Affidavit:

2. To the best of my recollection, on or about the 24th of January, 2007, I telephoned J L Enterprises, Inc., which is located at 7729 Ridge Estates Drive, Glen St. Mary, Florida. I used the telephone number of (888) 778-6880, which was listed on a letter sent by J L Enterprises, Inc., to Ralph McGill, Jr., who was then a debtor in bankruptcy, case number 06-32784.

3. I personally spoke with E. A. (Joe) Brack, Jr., who identified himself as a consultant and "owner" of J L Enterprises, Inc.

4. Mr. Brack told me that Ralph McGill, Jr., entered into a contract with J L Enterprises, Inc., to stop a foreclosure sale on Mr. McGill's home.

5. Mr. Brack told me that he was not able to negotiate with Mr. McGill's mortgage holder and that he had personally referred Mr. McGill to a bankruptcy petition preparer by the name of Dyke Marler, with whom he regularly consults for purposes of preparing bankruptcy petitions, for the preparation of a Chapter 13 bankruptcy petition to be filed in order to stop a foreclosure sale.

6. Mr. Brack provided me with the phone number and address of Dyke Marler, who is a resident of Georgia. The address given to me was 603 Dorsey Cr., Lilburn, GA.

7. I personally called and talked with a man who identified himself as Dyke Marler to discuss with him his participation in the preparation of two bankruptcy cases for Ralph McGill, Jr. Mr. Marler told me that he had prepared both of the petitions, statements of affairs and schedules for Mr. McGill to file. He told me that he was paid by J L Enterprises, Inc., $199 for this work.

8. I asked Mr. Marler why he failed to identified [sic] himself on the petition and comply with the requirements of 11 U.S.C. § 110, and he told me that he believed he had, in fact, mailed the properly signed documents to Mr. McGill for filing. He claimed that he believed he had only provided him with unsigned documents by mistake. He could not explain why he had provided unsigned documents to Mr. McGill for both bankruptcy cases he prepared.

9. I asked Mr. Marler to send me copies of the documents he prepared by mail and he agreed to do so on the following Monday, which was, to the best of my recollection, on or about January 29, 2007. I never received them. I made several unsuccessful efforts to contact Mr. Marler before filing a Motion For Imposition of Fines and for Forfeiture of Compensation on February 2, 2007.

Appended to the United States Trustee's Motion as an exhibit is a copy of a Consent Order entered on January 30, 2006, in the Superior Court of Gwinnett County, Georgia, in the case of *State Bar of Georgia v. Joy Marler, individually, and d/b/a Paralegal Service, and Dyke L. Marler, individually, and d/b/a Paralegal Service,* Civil Action No. 05A-13844-6. The Consent Order, which was signed and "Consented to" by Marler, states in material part:

This number is not wholly legible and may be incorrectly cited by the court.

CONSENT ORDER

It appearing that the parties have reached an agreement concerning Plaintiff's Complaint for Injunctive Relief, as indicated by their signatures below.

IT IS HEREBY ORDERED, ADJUDGED DECREED that Defendants be permanently forbidden, restrained and enjoined from engaging in the practice of law within the State of Georgia.

IT IS FURTHER ORDERED that Defendants shall not provide to any person or entity in the State of Georgia, other than themselves, any legal services, any legal advice, or in any other way conduct or perform any activity deemed to be the practice of law as defined by O.C.G.A. § 15-19-50, or which would be deemed unlawful under O.C.G.A. § 15-19-51. In particular, Defendants henceforth shall not, with regard to anyone other than themselves:

. . . .

I. Hold themselves out to the public or otherwise to any person as being entitled to practice law within Georgia;

. . . .

L. Assume or use or advertise the title of "lawyer," "attorney," "attorney at law," or equivalent terms in any language in such manner as to convey the impression that they are entitled to practice law or are entitled to furnish legal advice, services, or counsel in Georgia; or

M. Advertise that either alone or together with, by, or through any person, whether a duly and regularly admitted attorney at law or not, they have, own, conduct, or maintain an office for the practice of law or for furnishing legal advice, services, or counsel to Georgia residents.

II

The court finds that Marler represented himself to the Debtor to be an attorney, but that, in fact, he is not an attorney authorized to practice law in the State of Georgia. Marler and J L are bankruptcy petition preparers as defined by 11 U.S.C. § 110(a) who acted in concert in preparing the Voluntary Petition filed by the Debtor in Case No. 06-32029 and in preparing the Voluntary Petition, Statement of Financial Affairs, and schedules filed by the Debtor in Case No. 06-32784.

(a) In this section —

(1) "bankruptcy petition preparer" means a person, other than an attorney for the debtor or an employee of such attorney under the direct supervision of such attorney, who prepares for compensation a document for filing; and

(2) "document for filing" means a petition or any other document prepared for filing by a debtor in a United States bankruptcy court or a United States district court in connection with a case under this title.

11 U.S.C. § 110.

III Section 110(b)(1), (2)(A)

The United States Trustee contends that Marler and J L violated subsections (b)(1) and (2)(A) of § 110 which require a bankruptcy petition preparer to sign a document prepared for filing by a debtor and to provide the debtor with a written notice informing him or her of the requirements of 11 U.S.C. § 110(b)(2)(B) prior to preparing any document for filing or accepting any fee from the debtor. Specifically, these subsections provide:

(b)(1) A bankruptcy petition preparer who prepares a document for filing shall sign the document and print on the document the preparer's name and address. If a bankruptcy petition preparer is not an individual, then an officer, principal, responsible person, or partner of the bankruptcy petition preparer shall be required to —

(A) sign the document for filing; and

(B) print on the document the name and address of that officer, principal, responsible person, or partner;

(2)(A) Before preparing any document for filing or accepting any fees from a debtor, the bankruptcy petition preparer shall provide to the debtor a written notice which shall be on an official form prescribed by the Judicial Conference of the United States in accordance with rule 9009 of the Federal Rules of Bankruptcy Procedure.

11 U.S.C. § 110(b)(1), (2)(A).
The Debtor filed the Voluntary Petition commencing Case No. 06-32029 on September 5, 2006. Marler prepared the Voluntary Petition for filing by the Debtor in concert with J L. The Voluntary Petition was not signed by Marler and/or J L and contained no information that would lead the court, the United States Trustee, or any party in interest to conclude that it had been prepared by them as bankruptcy petition preparers. Additionally, Marler and J L did not provide the Debtor with Official Form 19B — Notice to Debtor by Non-Attorney Bankruptcy Petition Preparer prior to preparing the Voluntary Petition.

The Debtor filed Case No. 06-32784 on November 22, 2006. Marler, again in conjunction with J L, prepared the Voluntary Petition, Statement of Financial Affairs, and schedules for filing by the Debtor. The Voluntary Petition was not signed by Marler and/or J L as bankruptcy petition preparers, nor did the Statement of Financial Affairs and schedules contain the required Declaration and Signature of Non-Attorney Bankruptcy Petition Preparer signed by Marler and/or J L. Again, Marler and J L did not provide the Debtor with Official Form 19B — Notice to Debtor By Non-Attorney Bankruptcy Petition Preparer prior to preparing the Voluntary Petition, Statement of Financial Affairs, and schedules for filing.

Section 110(c)(1)

Subsection (c)(1) of § 110 requires a bankruptcy petition preparer to place an identifying number on any document prepared for filing by a Debtor.Specifically, § 110(c)(1) provides:

Pursuant to § 110(c)(2), the identifying number of an individual bankruptcy petition preparer is his or her social security number while the identifying number of a non-individual bankruptcy petition preparer is the social security number of the "officer, principal, responsible person, or partner of the bankruptcy petition preparer." 11 U.S.C. § 110(c)(2).

(c)(1) A bankruptcy petition preparer who prepares a document for filing shall place on the document, after the preparer's signature, an identifying number that identifies individuals who prepared the document.

11 U.S.C. § 110(c)(1).
The Voluntary Petition prepared by Marler in concert with J L filed by the Debtor on September 5, 2006, commencing Case No. 06-32029, does not contain an identifying number from Marler, individually, or as a representative of J L. Neither the Voluntary Petition, Statement of Financial Affairs, or schedules filed by the Debtor on November 22, 2006, commencing Case No. 06-32784, contain identifying numbers for Marler, individually, or as a representative of J L.

Section 110(h)(2)

Subsection (h)(2) of § 110 requires a bankruptcy petition preparer to file a compensation disclosure statement contemporaneously with the filing by the debtor of a bankruptcy petition. Specifically, § 110(h)(2) provides:

(h)(2) A declaration under penalty of perjury by the bankruptcy petition preparer shall be filed together with the petition, disclosing any fee received from or on behalf of the debtor within 12 months immediately prior to the filing of the case, and any unpaid fee charged to the debtor. If rules or guidelines setting a maximum fee for services have been promulgated or prescribed under paragraph (1), the declaration under this paragraph shall include a certification that the bankruptcy petition preparer complied with the notification requirement under paragraph (1).

11 U.S.C. § 110(h)(2).

Neither the Voluntary Petition filed by the Debtor on September 5, 2006, commencing Case No. 06-32029, nor the Voluntary Petition filed on November 22, 2006, commencing Case No. 06-32784, was accompanied by the required compensation disclosure statement evidencing the Debtor's payment to J L of $1,050.00. Because Marler and J L worked in concert in the preparation of the documents filed in both of the Debtor's Chapter 13 bankruptcy cases, the court deems the compensation paid by the Debtor to have been received by both of them jointly.

Section 110(e)(2)(B)(iii)

The United States Trustee contends that J L violated subsection (e)(2)(B)(iii) of § 110 by offering to assist the Debtor in retaining his 6707 Parklake Drive residence by avoiding foreclosure through bankruptcy. Section 110(e)(2)(B)(iii) provides in material part:

(e)(2)(A) A bankruptcy petition preparer may not offer a potential bankruptcy debtor any legal advice, including any legal advice described in subparagraph (B).

(B) The legal advice referred to in subparagraph (A) includes advising the debtor —

. . . .

(iii) whether the debtor will be able to retain the debtor's home, car, or other property after commencing a case under this title[.]

11 U.S.C. § 110(e)(2)(B)(iii)

As previously discussed, the Debtor testified that J L's representative, "Joe," advised him that "what we need to do is get you credit counseling" and instructed the Debtor that the "only way to stop the foreclosure is with a bankruptcy." Additionally, J L advised the Debtor, in its August 29, 2006 letter, that if it was unsuccessful in negotiating a stay of the foreclosure of the Debtor's 6707 Parklake Drive residence "one of our associates will be forwarding you documents for filing in the court to stop the sale." COLL. TRIAL EX. 4. Thereafter, J L forwarded the Debtor the Official Forms necessary for the Debtor to file his bankruptcy cases. Clearly, J L and Marler were proffering "legal advice" to the effect that bankruptcy would stay the September 6, 2006 foreclosure and allow the Debtor to retain his residence. The court accordingly finds that J L has violated § 110(e)(2)(B)(iii) as to both Case No. 06-32029 and Case No. 06-32784.

The court is satisfied that representations made to the Debtor by J L also violated other provisions of § 110(e)(2)(B), including subsection (i) which prohibits a bankruptcy petition preparer from advising the debtor whether to file a petition under title 11 or whether it is appropriate for a debtor to commence a case under Chapter 7, 11, 12, or 13. *See* 11 U.S.C. § 110(e)(2)(B)(i). However, because these violations were not raised by the United States Trustee in his Motion, they will not be considered by the court.

IV

Having determined that Marler and J L violated §§ 110(b)(1), (b)(2)(A), (c)(1), and (h)(2) in connection with the preparation of the Debtor's filing of documents in both Case No. 06-32029 and Case No. 06-32784, 11 U.S.C. §§ 110(i)(1) and *(l)*(1) mandate the imposition of sanctions.

Section 110(i)(1)

This section requires the imposition of sanctions by the court for violations of § 110 if the violation is brought to the court's attention on motion of the United States Trustee. Specifically, § 110(i)(1) provides:

(i)(1) If a bankruptcy petition preparer violates this section or commits any act that the court finds to be fraudulent, unfair, or deceptive, on the motion of the debtor, trustee, United States trustee (or the bankruptcy administrator, if any), and after notice and a hearing, the court shall order the bankruptcy petition preparer to pay to the debtor —

(A) the debtor's actual damages;

(B) the greater of —

(i) $2,000; or

(ii) twice the amount paid by the debtor to the bankruptcy petition preparer for the preparer's services; and

(C) reasonable attorneys' fees and costs in moving for damages under this subsection.

11 U.S.C. § 110(i)(1).

The language of this section is mandatory and cumulative. With respect to Case No. 06-32039, the Debtor's actual damages consist of the $274.00 filing fee and the $1,050.00 paid to J L, totaling $1,324.00. This amount, plus $2,100.00, representing the greater of $2,000.00 or twice the amount paid to J L, equals $3,424.00. Because there are no attorneys' fees and costs associated with the filing of the Motion by the United States Trustee, the court will, in compliance with § 110(i)(1), direct Marler and J L, jointly and severally, to pay the Debtor a total of $3,424.00 for their violations of § 110 with respect to Case No. 06-32029.

With respect to Case No. 06-32784, the Debtor incurred actual damages of $274.00 for the filing fee paid in connection with the case. Because he did not pay J L any funds for filing the second case, pursuant to § 110(i)(1)(B), the court must add $2,000.00, for a total of $2,274.00. Again, as there have been no attorneys' fees and costs incurred in conjunction with the filing of the United States Trustee's Motion, the court will direct Marler and J L, jointly and severally, to pay the Debtor the sum of $2,274.00 for their violations of § 110 with respect to Case No. 06-32784.

Section 110(*l*)

Subsection (*l*) of § 110 requires the court to fine a bankruptcy petition preparer who fails to comply with the provisions of § 110, directs that such fines be trebled under certain circumstances, and directs payment of the fine to the United States Trustee. Specifically, § 110(*l*) provides, in material part:

(*l*)(1) A bankruptcy petition preparer who fails to comply with any provision of subsection (b), (c), (d), (e), (f), (g), or (h) may be fined not more than $500 for each such failure.

(2) The court shall triple the amount of a fine assessed under paragraph (1) in any case in which the court finds that a bankruptcy petition preparer —

. . . .

(D) prepared a document for filing in a manner that failed to disclose the identity of the bankruptcy preparer.

(3) A . . . United States trustee . . . may file a motion for an order imposing a fine on the bankruptcy petition preparer for any violation of this section.

(4)(A) Fines imposed under this subsection in judicial districts served by United States trustees shall be paid to the United States trustee[.]

11 U.S.C. § 110(*l*).

Case No. 06-32029

In the first case, Marler and J L failed to comply with the following provisions: (1) with § 110(b)(1) by failing to sign and print their names and addresses on the Voluntary Petition filed by the Debtor on September 5, 2006; (2) with § 110(b)(2)(A) by failing to provide the Debtor with written notice prior to preparing the Voluntary Petition on Official Form 19B; (3) with § 110(c)(1) by failing to place an identifying number on the Voluntary Petition; (4) with § 110(h)(2) by failing to file the required bankruptcy petition preparer compensation disclosure statement; and (5) with § 110(e)(2)(B)(iii) for proffering "legal advice" to the Debtor.

Because the court finds Marler's and J L's noncompliance to be willful, deceptive, and egregious, they will be fined the maximum of $500.00 for each violation for a total of $2,500.00. Additionally, because Marler and J L did not disclose their identities on the Voluntary Petition commencing this case filed by the Debtor on September 5, 2006, the court shall, in accordance with § 110(*l*)(2), triple the fine to $7,500.00. The fine imposed herein shall be payable by Marler and J L, jointly and severally, and, in accordance with § 110(*l*)(4)(A), shall be paid to the United States Trustee.

Case No. 06-32784

In the Debtor's second case, Marler and J L failed to comply with the following provisions: (1) with § 110(b)(1) by failing to sign and print their names and addresses on the Voluntary Petition, Statement of Financial Affairs, and the Declaration Concerning Debtor's Schedules, three separate and distinct documents prepared by Marler and J L which were filed by the Debtor in this case on November 22, 2006; (2) with § 110(b)(2)(A) by failing to provide the Debtor with the written notice set forth on Official Form 19B; (3) with § 110(c)(1) by failing to place an identifying number on each of the three separate and distinct documents filed by the Debtor on November 22, 2006, the Voluntary Petition, Statement of Financial Affairs, and Declaration Concerning Debtor's Schedules; (4) with § 110(h)(2) by failing to file the required bankruptcy petition compensation disclosure statement; and (5) with § 110(e)(2)(B)(iii) for proffering "legal advice" to the Debtor.

Again, because the court finds the noncompliance of Marler and J L to be egregious, willful, and deceptive, they will be fined $500.00 for each violation for a total of $4,500.00. Because Marler's and J L's identities were not disclosed on any of these documents, the court shall, in accordance with § 110(*l*)(2), triple the fine to $13,500.00. The fine imposed herein shall be assessed against Marler and J L, jointly and severally, and, in accordance with § 110(*l*)(4)(A), be paid to the United States Trustee.

V

In summary, an order will be entered in Case No. 06-32029 directing the bankruptcy petition preparers, Marler and J L, to pay the Debtor the sum of $3,424.00 and to pay the United States Trustee the sum of $7,500.00. An order will be entered in Case No. 06-32784 directing the bankruptcy petition preparers, Marler and J L, to pay the Debtor the sum of $2,274.00 and to pay the United States Trustee the sum of $13,500.00. Judgment for these amounts will be entered in both cases against Marler and J L, jointly and severally.

Finally, due to the implications associated with the representation by J L and Marler that Marler is an attorney, the court will direct that the clerk serve a certified copy of this Memorandum and the accompanying orders on the State Bar of Georgia.

IN RE ALLOWAY, 401 B.R. 43 (BANKR. D. MASS. 2009) • CITING 2 TIMES

... The Defendant is a bankruptcy petition preparer. See In re McGill, 2007 WL 1119939 (Bankr. E.D. Tenn. Apr. 13, 2007); In re Reynoso, 477 F.3d 1117, 1123 (CA9 2007); In re Springs, 358 B.R. 236, 241 n. 4 (Bankr. M.D.N.C. 2006); In re Hennerman, 351 B.R. 143, 148-49 (Bankr. D. Colo. 2006); In re Thomas, 315 B.R. 697, 703-04 (Bankr. N.D. Ohio 2004); In re Jolly, 313 B.R. at 301 (Bankr. S.D. Iowa 2004); In re Pillot, 286 B.R. 157 (Bankr. C.D. Cal. 2002); In re Willman, 1997 WL 781878 (Bankr. E.D. Pa. Dec. 18, 1997); Ferm v. United States (In re Crowe), 243 B.R. 43 (CA9 2000); In re Landry, 250 B.R. 441 (Bankr. M.D. Fla. 2000); In re Gaftick, 333 B.R. 177 (Bankr. E.D.N.Y. 2005); In re Moore, 290 B.R. 287, 293 (Bankr. E.D. 2003); In re Moffett, 263 B.R. 805 (Bankr. W.D. Ky. 2001); In re Farness, 244 B.R. 464 (Bankr. D. Idaho 2000). ...

EXHIBIT 7

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

In the Matter of Registration Serial No. 4,099,565

---x

Michael Spitzbarth,

Petitioner, Cancellation No. 92064261

-vs-

JOHN GROAT
D/B/A HOLY SHIRT!,

Registrant.

---x

REGISTRANT'S FIRST AMENDED INITIAL DISCLOSURES

Registrant, John Groat, hereby provides the following first amended initial disclosures pursuant to 37 C.F.R. § 2.120 and FED. R. CIV. P. 26(a)(1).

Registrant makes these disclosures based on his current knowledge, without the benefit of formal discovery in this action and without waiver of the attorney-client privilege, work-product protection, joint defenses and/or common interest privilege, or any other applicable privilege or protection.

Registrant's investigation is ongoing and Registrant expressly reserves the right to amend or to supplement these disclosures in accordance with Rule 26(e) based on additional information obtained through formal discovery, continued investigation, or other means. Registrant further reserves the right to object on any applicable basis to the production of documents and things from the categories identified herein or to the obtaining of testimony from witnesses identified herein.

Subject to the foregoing, Registrant provides the following information and disclosures in accordance with 37 C.F.R. § 2.120 and with subsections (i) through (iv) of Rule 26(a)(1)(A):

A. The following individuals likely have discoverable information that Registrant may use to support his claims and/or defenses:

1. John Groat
c/o Robert E. Purcell
Counsel of record for Registrant

Mr. Groat has knowledge regarding the nature of assignments, licenses, transactions, and uses respecting his registered trademark.

2. Dyke Marler
c/o Robert E. Purcell
Counsel of record for Registrant
7310 Manatee Street
Navarre, Florida 32566
(770) 658-9887

Mr. Marler has knowledge regarding the nature of assignments, licenses, transactions, and uses of Registrant's registered trademark and can produce, identify, and authenticate the various materials identified in Part B.5. herein.

3. Michael Spitzbarth
c/o Norman Soloway
Counsel of record for Petitioner

Mr. Spitzbarth has knowledge regarding the nature of use, non-use, intention to use, and lack of intention to use his trademark BLEED in the United States.

4. Any witnesses identified
by Petitioner as having
discoverable information

The witnesses have knowledge regarding the discoverable information.

5. Any witnesses whose
testimony Petitioner
uses or intends to use

The witnesses have knowledge regarding the testimony.

6. Any witnesses reasonably needed to rebut or impeach any testimony offered by Petitioner

The witnesses have knowledge regarding the testimony.

Registrant's investigation and discovery efforts are ongoing, and Registrant reserves the right to amend and/or supplement the foregoing list as this case progresses.

B. The following is a description and an identification of the location of categories of documents, data compilations and tangible things in the possession, custody or control of Registrant that Registrant may use to support his claims or defenses.

1. Settlement Agreement dated November 2, 2015. A copy of the document is located at Registrant's counsel's office.

2. Trademark Assignment And Exclusive License Agreement dated September 5, 2014. A copy of the document is located at Registrant's counsel's office.

3. Trademark Assignment dated September 5, 2014. A copy of the document is located at the USPTO.

4. Shipping labels and other labels bearing Registrant's registered trademark. Copies of the labels are located at Registrant's principal place of business in Syracuse, New York.

5. Labels, tags, shirts, photographs, invoices, and other materials bearing Registrant's registered trademark. The materials are located at Dyke Marler's residence in Navarre, Florida.

Registrant's investigation and discovery efforts are ongoing, and Registrant reserves the right to amend and/or supplement the foregoing list as this case progresses.

Dated: December 19, 2016

By: _____

Robert E. Purcell
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Attorneys for the Registrant, John Groat

CERTIFICATE OF SERVICE

I certify that on the 19 day of December, 2016 a copy of the foregoing REGISTRANT'S FIRST AMENDED INITIAL DISCLOSURES was sent via E-Mail and First Class U.S. Mail, postage pre-paid, to the following:

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/s/Allison Haines
Allison Haines