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Filing date: **03/06/2018**

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

Proceeding	92066377
Party	Defendant Poly-Gel L.L.C.
Correspondence Address	EDWIN D. SCHINDLER EDWIN D. SCHINDLER, PATENT ATTORNEY 4 HIGH OAKS COURT, P. O. BOX 4259 HUNTINGTON, NY 11743-0777 UNITED STATES Email: edschindler@optonline.net, EDSchindler@att.net, EdwinSchindler@gmail.com, EdwinSchindler@yahoo.com
Submission	Motion for Discovery Sanctions
Filer's Name	Edwin D. Schindler
Filer's email	EDSchindler@att.net, EDSchindler@optonline.net, EdwinSchindler@gmail.com, EdwinSchindler@yahoo.com, larryk@polygel.com
Signature	/Edwin D. Schindler/
Date	03/06/2018
Attachments	Respondent Poly Gel Motion for Entry of Default Judgment 03062018.pdf(782090 bytes)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of: Trademark Registration No. 4,539,507

For the Trademark: “FLEXI-KOLD” (International Class 10)

Registered: May 27, 2014

CRAMER PRODUCTS, INC.,	:	Cancellation No. 92066377
 Petitioner,	:	
 v.	:	
POLY-GEL LLC	:	
 Respondent.	:	

**RESPONDENT POLY-GEL’S MOTION FOR ENTRY OF DEFAULT
JUDGMENT AGAINST PETITIONER CRAMER PRODUCTS, INC.
DUE TO PETITIONER’S COMPLETE REFUSAL TO PARTICIPATE
IN DISCOVERY BY REFUSING TO RESPOND TO RESPONDENT’S
OUTSTANDING DISCOVERY REQUESTS, PURSUANT TO 37 C.F.R. 2.120(h)**

Respondent, Poly-Gel, LLC (“Poly-Gel”), hereby respectfully moves the Trademark Trial and Appeal Board, pursuant to 37 C.F.R. §2.120(h), for entry of a default judgment against Petitioner Cramer Products, Inc. (“Cramer Products”) arising from the complete, willful and outright refusal of Cramer Products to respond to Poly-Gel’s written discovery responses, served December 27, 2017, and originally due January 26, 2018.

In support of Poly-Gel’s motion for entry of a default judgment, Poly-Gel includes a copy of the written discovery requests electronically served by Poly-Gel’s

counsel on December 27, 2017, and a supporting Declaration of counsel for Poly-Gel. The gist of Cramer Products' refusal to respond in any manner whatsoever to Poly-Gel's discovery is that Poly-Gel's discovery is too burdensome in its entirety and, if Cramer Products, the party which filed the Petition for Cancellation initiating this proceeding, is compelled to respond to discovery, then Cramer Products might as well initiate federal judicial litigation against Poly-Gel.

“If a party fails to comply with an order of the Board relating to discovery, including an order compelling discovery, the Board may order appropriate sanctions,” *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1854 (T.T.A.B. 2000), and a default judgment “is justified where no less drastic remedy would be effective and there is a strong showing of willful evasion,” *Unicut Corporation v. Unicut, Inc.*, 222 USPQ 341, 344 (T.T.A.B. 1984).

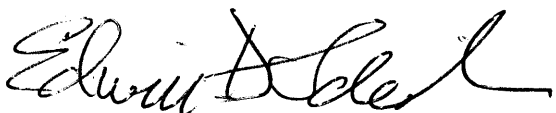
In this cancellation proceeding, counsel for Cramer Products telephoned Poly-Gel's counsel on January 18, 2018, to advise that Cramer Products did not see why it should be required to respond to Poly-Gel's written discovery requests, rather than simply head into litigation if responding to such discovery was to be required. Cramer Products initiated this proceeding and Cramer Products, in the position of a “Plaintiff,” should not now be heard to complain that it does not wish to respond to discovery because Poly-Gel had the audacity to exercise its procedural right to probe the alleged strength of the merits of Cramer Products' case via validly served discovery. The Board should be advised that Cramer Products' objection to participating in discovery is not

limited to any particular manner of discovery or that certain questions are proper, while others are not, but that Cramer Products cannot be bothered responding to any discovery sought by Respondent Poly-Gel. The parties had sought to settle their dispute, but when Cramer Products demanded, in effect, total capitulation of Poly-Gel, and gave every indication that no discovery would be forthcoming under any circumstance, regardless of the complete breakdown in efforts to reach settlement, Poly-Gel found itself compelled to file this motion for entry of a default judgment against the party initiating this proceeding but entirely refusing to then participate in discovery. Under the circumstances, it is submitted that no sanction short of the entry of a default judgment will suffice since, quite literally, the “Plaintiff” does not want to participate in the discovery process of the case that it initiated!

Accordingly, Respondent Poly-Gel LLC respectfully submits that the entry of a judgment of default, on the merits, against Petitioner Cramer Products, Inc. is appropriate and should be entered because no lesser sanction would seem to suffice when the party initiating the proceeding cannot be bothered participating in discovery.

Respectfully submitted,

POLY-GEL LLC

By 

Edwin D. Schindler
Attorney for Respondent
Reg. No. 31,459

4 High Oaks Court
P. O. Box 4259
Huntington, New York 11743-0777
(631)474-5373
E-mail: EDSchindler@att.net
EDSchindler@optonline.net
March 6, 2018

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the Matter of: Trademark Registration No. 4,539,507

For the Trademark: “FLEXI-KOLD” (International Class 10)

Registered: May 27, 2014

CRAMER PRODUCTS, INC.,	:	Cancellation No. 92066377
 Petitioner,	:	
 v.	:	
POLY-GEL LLC	:	
 Respondent.	:	

**DECLARATION OF EDWIN D. SCHINDLER IN SUPPORT OF RESPONDENT
POLY-GEL LLC’S MOTION FOR ENTRY OF DEFAULT JUDGMENT
AGAINST PETITIONER CRAMER PRODUCTS, INC. DUE TO PETITIONER’S
COMPLETE REFUSAL TO PARTICIPATE IN DISCOVERY BY RESPONDING
TO RESPONDENT’S OUTSTANDING DISCOVERY REQUESTS**

I, EDWIN D. SCHINDLER, hereby declare under penalty of perjury that:

1. I am the attorney-of-record for Respondent Poly-Gel LLC (“Poly-Gel”) in the above-identified cancellation proceeding and render this Declaration in support of Poly-Gel’s motion for the entry of a default judgment against Petitioner Cramer Products, Inc. (“Cramer Products”) arising Cramer Products’ complete and willful refusal to participate in any discovery.

2. "Schindler Declaration Exhibit 1" is a true and accurate copy of the e-mail and discovery served by Poly-Gel upon counsel for Cramer Products on December 27, 2017.

3. On January 18, 2018, undersigned counsel for Poly-Gel spoke via telephone with lead counsel for Cramer Products, Christina J. Moser, who informed Poly-Gel's counsel that Cramer Products did not see a why it should be compelled to respond to any discovery served by Poly-Gel and that, if forced to respond to discovery in the cancellation proceeding initiated by Cramer Products, that Cramer Products would simply prefer litigating its dispute with Poly-Gel in a federal judicial forum.

4. On January 18, 2018, Ms. Moser, counsel for Cramer Products, indicated that her client wished to seek a possible settlement of the parties' dispute and, it was agreed, that Poly-Gel would provide a settlement proposal to counsel for Cramer Products and, further, that Poly-Gel agreed to extend Cramer Products' deadline for responding to the discovery served by Poly-Gel through February 9, 2018; the agreement to extend the deadline for response to Poly-Gel's outstanding discovery requests through February 9, 2018, was subsequently confirmed by counsel in an exchange of e-mails on January 22, 2018.

5. During the week of February 5, 2018, Poly-Gel transmitted a settlement proposal to counsel for Cramer Products via e-mail and indicated that Cramer Products could have until March 2, 2018, to respond to Poly-Gel's outstanding discovery requests, as confirmed in a series of e-mail correspondence.

6. "Schindler Declaration Exhibit 2" presents the e-mail correspondence referenced in the preceding two paragraphs, but omits the parties' respective settlement

proposals, each expressly rendered under Federal Rule of Evidence 408.

7. On February 26, 2018, counsel for Cramer Products replied to Poly-Gel's settlement offer under Federal Rule of Evidence 408, which can best be described as demanding of Poly-Gel total and complete capitulation, notwithstanding that Poly-Gel is the only party having a federally-registered trademark pertinent to this proceeding; the counter-offer for settlement transmitted by Cramer Products on February 26, 2018, made no mention that discovery would be forthcoming or sought any extension of the agreed upon deadline for responding to Poly-Gel's outstanding discovery requests.

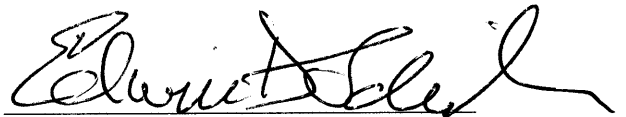
8. On March 2, 2018, Poly-Gel responded to Cramer Products' "drop dead" offer of February 26, 2018, in accordance with Federal Rule of Evidence 408, and advised that Poly-Gel expected Cramer Products' discovery responses by Monday, March 5, 2018.

9. As of the filing of this motion for the entry of a default judgment, Cramer Products has neither served upon counsel for Poly-Gel its discovery responses in reply to Poly-Gel's discovery requests, served December 27, 2017, nor has counsel for Poly-Gel received any further word from Cramer Products' counsel indicating when the outstanding discovery responses from Cramer Products might reasonably be forthcoming.

10. In view of counsel for Cramer Products informing counsel for Poly-Gel on January 18, 2018, that Cramer Products did not wish to be burdened with having to respond to any discovery propounded in any manner by Poly-Gel, it is submitted that further attempts to seek Cramer Products' discovery responses to Poly-Gel's discovery, served December 27, 2017, would constitute a futile act and should not be required.

The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. §1001, and that such willful false statements and the like may jeopardize the validity of Respondent's registration at issue, declares that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.

Dated: March 6, 2018



Edwin D. Schindler

Attorney for Respondent

Reg. No. 31,459

4 High Oaks Court

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Telephone: (631)474-5373

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SCHINDLER DECLARATION

EXHIBIT 1

Cramer Products, Inc. v. Poly-Gel LLC, Cancellation No. 92066377 - Poly-Gel's First Set of Interrogatories & First Request for Production of Documents (12/27/2017) Wednesday, December 27, 2017 11:01 AM

From: "Edwin Schindler" <edschindler@att.net>

To: cmoser@bakerlaw.com

Cc: nsamad@bakerlaw.com cldocketing@bakerlaw.com

2 Files 65KB Download All

PDF 35KB PDF 30KB

Cramer Products, Inc. v.	Cramer Products, Inc. v.
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Save

Save

Dear Christina,

Please find, as attached to this e-mail, Poly-Gel's First Set of Interrogatories and First Request for Production of Documents in furtherance of the pending cancellation proceeding initiated by your client, Cramer Products, Inc.

Please feel free to contact me with any questions.

Sincerely,

Ed

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

In the Matter of: Trademark Registration No. 4,539,507

For the Trademark: “FLEXI-KOLD” (International Class 10)

Registered: May 27, 2014

CRAMER PRODUCTS, INC.,	:	
Petitioner,	:	Cancellation No. 92066377
v.	:	
POLY-GEL LLC	:	
Respondent.	:	

RESPONDENT POLY-GEL LLC’s FIRST SET OF INTERROGATORIES

Respondent Poly-Gel LLC (“Poly-Gel”), by and through its attorney, hereby submits to Petitioner Cramer Products, Inc. (“Cramer”), the following First Set of Interrogatories and demands that separate and full answers to said interrogatories, under oath, be made within thirty (30) days from service hereof, upon Poly-Gel’s attorney, Edwin D. Schindler, 4 High Oaks Court, P. O. Box 4259, Huntington, New York 11743-0777, E-Mail: EDSchindler@att.net and EDSchindler@optonline.net, in accordance with Rules 26 and 33 of the Federal Rules of Civil Procedure.

Introduction and Definitions

A. These interrogatories are submitted for the purpose of discovery and are not to be taken as waiving any objections, which may be made at the trial to the introduction of evidence by Cramer on subjects covered by these interrogatories or as an admission at the trial of the relevance or materiality of any of the matters covered by these interrogatories.

B. These interrogatories shall be deemed to seek answers as of the date hereof, but shall be deemed to be continuing so that any additional information relating in any way to these interrogatories which Cramer acquires, or which becomes known to Cramer, up to and including the time of trial, shall be furnished to Poly-Gel promptly after such information is acquired or becomes known.

Definitions

A. Words used herein, such as “communication,” “document,” “concern,” “all” and the like, are defined to be synonymous in meaning and equal in scope to the usage of the term in Rule 33 of the Federal Rules of Civil Procedure.

B. As used herein, the term “document” is used in its customary broad sense and includes, without being limited thereto, the following items, whether printed, or recorded, or filmed or reproduced by any other mechanical process, or written or produced by hand or by electronic means, and whether or not claimed to be privileged against discovery on any ground, and including all originals, masters and copies, namely: agreements, contracts and memoranda of understanding; assignments; licenses; correspondence and communications, including intra-company correspondence and communications; cable-grams, telex messages, radiograms, telegrams, e-mails and text messages; reports, notes and memoranda; summaries, minutes and records of telephone conversations, meetings or

conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations and interviews; books, manuals, publications, and diaries, technical, laboratory and engineering reports, data sheets and notebooks; charts; plans; sketches and drawings; photographs; motion pictures; audio and video tapes and discs; models and mockups; reports and/or summaries of investigations; opinions and reports of experts and consultants; patents, registrations of trademarks and service marks, copyrights, and applications for any of them; patent appraisals and infringement; patent-ability and validity searches and studies; opinions of counsel; sales records, including purchase orders, order acknowledgments and invoices, books of account; statements, bill checks and vouchers; reports and summaries of negotiations; brochures; pamphlets; catalogs and catalog sheets; sales and literature and sales promotion materials; advertisements; press, publicity, trade and product releases; drafts of originals of, or preliminary notes on, and marginal comments appearing on any document; or other reports and records; and any other information containing paper, writing or physical thing.

C. As used herein, to “identify” or to give the “identity of” means:

1. in the case of a person, to state:

- (a) name;
- (b) last known residence address;
- (c) employer or business address; and,
- (d) occupation and business position held.

2. in the case of a company or any type of business organization, to state:

- (a) name;
- (b) place and date of incorporation or place of domicile;

(c) address of executive offices and principal place of business;
and,

(d) “identity” of officers or other persons having knowledge of the matter with respect to which company is named.

3. in the case of a “document,” to state:

(a) “identity” of person originating and preparing it, by whom the person was employed by at the time, and the sender;

(b) its general type (*i.e.*, letter, memo, report, invoices, etc.);

(c) the “identity” of the addressees and distributees, if any;

(d) its date of preparation;

(e) its dates and manner of transmission, distribution and publication;

(f) location of each copy (including title, index number and location of the file from which it is removed) and “identity” of the present custodian or person responsible for its filing or other disposition;
and,

(g) “identity” of persons who can authenticate or “identify” it.

4. in the case of a product, device, component or material to state the manufacturer, catalog, stock, model or like number of designation, the trademark, name, type, grade and any other designation customarily used by the party concerned and the trade to designate such product or device and distinguish it from others made by the same or different producers.

D. As used herein, “Petitioner” and “Cramer” mean and include the named “Petitioner” Cramer Products, Inc., and any of its predecessors-in-interest and all divisions and/or subsidiaries, its respective shareholders, directors, agents, officers, employees, representatives, servants and attorneys, to the fullest extent the context permits.

The First Set of Interrogatories

1. Identify all predecessors-in-interest of Cramer Products, Inc.
2. Identify all states of the United States in which Cramer is alleging to have established common law rights to the use of the “FLEX-I-COLD” trademark for “therapeutic cold therapy packs.”
3. For each state in which Cramer is alleging to have established common law rights to the use of the “FLEX-I-COLD” trademark for “therapeutic cold therapy packs,” indicate the date of first use for each state so identified.
4. Identify all states of the United States in which Cramer is alleging to have established common law rights to the use of the “FLEX-I-COLD” trademark for “therapeutic hot therapy packs.”
5. For each state in which Cramer is alleging to have established common law rights to the use of the “FLEX-I-COLD” trademark for “therapeutic hot therapy packs,” indicate the date of first use for each state so identified.
6. Explain how a “therapeutic hot therapy pack” can be cold.
7. Indicate the meaning, if any, of “FLEX” in the “FLEX-I-COLD” trademark of which Cramer alleges ownership.

8. Indicate the meaning, if any, of “COLD” in the “FLEX-I-COLD” trademark of which Cramer alleges ownership.

9. Identify all states of the United States in which Cramer is alleging to have established common law rights to the use of the “FLEX-I-COLD” trademark for cold compression bandages.

10. For each state in which Cramer is alleging to have established common law rights to the use of the “FLEX-I-COLD” trademark for cold compression bandages, indicate the date of first use for each state so identified.

11. Identify all states of the United States in which Cramer is alleging to have established common law rights to the use of the “FLEX-I-COLD” trademark for cold supports for any portion of the human body.

12. For each state in which Cramer is alleging to have established common law rights to the use of the “FLEX-I-COLD” trademark for cold supports for any portion of the human body, indicate the date of first use for each state so identified.

13. Identify all states of the United States in which Cramer is alleging to have established common law rights to the use of the “FLEX-I-COLD” trademark for cold wraps for any portion of the human body.

14. For each state in which Cramer is alleging to have established common law rights to the use of the “FLEX-I-COLD” trademark for cold wraps for any portion of the human body, indicate the date of first use for each state so identified.

15. Identify all states of the United States in which Cramer is alleging to have established common law rights to the use of the “FLEX-I-COLD” trademark for “therapeutic hot and cold therapy packs.”

16. For each state in which Cramer is alleging to have established common law rights to the use of the “FLEX-I-COLD” trademark for “therapeutic hot and cold therapy packs,” indicate the date of first use for each state so identified.

17. State whether the “therapeutic hot and cold therapy packs” marketed by Cramer are intended to provide “compression” to any portion of the human body.

18. Explain what a “therapeutic hot and cold therapy pack” is.

19. Identify all trademark infringement/unfair competition civil actions in any and all courts (whether federal or state), without limitation, initiated by Cramer seeking to enforce its alleged rights to the “FLEX-I-COLD” trademark.

20. Identify all trademark infringement/unfair competition civil actions, without limitation, initiated against Cramer concerning the “FLEX-I-COLD” trademark.

21. Identify all cease-and-desist/notice letters sent by Cramer, without limitation, seeking to enforce its alleged rights to the “FLEX-I-COLD” trademark.

22. State whether the term “FLEX” is descriptive for body wraps (*e.g.*, bandages.)

23. State whether the term “FLEX” is descriptive for “therapeutic hot and cold therapeutic packs.”

24. State whether the term “FLEX” is descriptive for the “therapeutic hot and cold therapeutic packs” marketed by Cramer under its “FLEX-I-COLD” trademark.

25. State whether the term “COLD” is descriptive for “therapeutic hot and cold therapy packs.”

26. State whether the term “COLD” is descriptive for the “therapeutic hot and cold therapy packs” marketed by Cramer under its “FLEX-I-COLD” trademark.

27. Indicate when Cramer first learned of the “FLEXI-KOLD” trademark owned by Poly-Gel.

28. Indicate how Cramer first learned of the “FLEXI-KOLD” trademark owned by Poly-Gel.

29. Identify all channels of trade through which Cramer markets its “therapeutic hot and cold therapy packs” to the relevant purchasing public under its “FLEX-I-COLD” trademark.

30. State whether Cramer sells its “therapeutic hot and cold therapy packs” to wholesalers or directly to retail consumers, or both.

31. Identify all instance of actual confusion known to Cramer, without limitation, between the alleged rights to the “FLEX-I-COLD” trademark of Cramer and the “FLEXI-KOLD” registered trademark owned by Poly-Gel.

Respectfully submitted,

POLY-GEL LLC

By /s/Edwin D. Schindler

Edwin D. Schindler

Attorney for Respondent

Reg. No. 31,459

4 High Oaks Court
P. O. Box 4259
Huntington, New York 11743-0777

(631)474-5373

E-mail: EDSchindler@att.net
EDSchindler@optonline.net

December 27, 2017

CERTIFICATE OF SERVICE

I, EDWIN D. SCHINDLER, hereby certify that a true and accurate copy of *RESPONDENT POLY-GEL LLC's FIRST SET OF INTERROGATORIES* has been served, via e-mail, upon the following counsel for Petitioner Cramer Products, Inc.:

Christina J. Moser – E-Mail: cmoser@bakerlaw.com

nsamad@bakerlaw.com

clcketing@bakerlaw.com

on December 27, 2017.

/s/Edwin D. Schindler

Edwin D. Schindler

Attorney for Respondent Poly-Gel LLC

Reg. No. 31,459

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

In the Matter of: Trademark Registration No. 4,539,507

For the Trademark: “FLEXI-KOLD” (International Class 10)

Registered: May 27, 2014

CRAMER PRODUCTS, INC.,	:	
Petitioner,	:	Cancellation No. 92066377
v.	:	
POLY-GEL LLC	:	
Respondent.	:	

RESPONDENT POLY-GEL LLC’s FIRST REQUEST
FOR PRODUCTION OF DOCUMENTS

Respondent Poly-Gel LLC (“Poly-Gel”), by and through its attorney, hereby submits to Petitioner Cramer Products, Inc. (“Cramer”) the following Requests for Production of Documents and Things and demands that production be made within thirty (30) days from service hereof, at the office of Edwin D. Schindler, 4 High Oaks Court, P. O. Box 4259, Huntington, New York 11743-0777, E-Mail: EDSchindler@att.net, EDSchindler@optonline.net, in accordance with Rule 34 of the Federal Rules of Civil Procedure.

Introduction and Definitions

A. These requests for production included herein are submitted for the purpose of discovery and are not to be taken as waiving any objections, which may be made at the trial to the introduction of evidence by Petitioner as an admission at the trial of the relevance or materiality of any of the matters covered by this request for the production of documents and things.

B. These requests for production shall be deemed to seek production of documents and things as of the date hereof, but shall be deemed to be continuing so that any additional material relating in any way to this request for production, which Cramer acquires, or which becomes known to Cramer, up to and including the time of trial shall be furnished to Poly-Gel promptly after such material is acquired or becomes known to Cramer up to and including the time of trial shall be furnished to Poly-Gel promptly after such information is acquired or becomes known.

Definitions

A. Words used herein, such as “communication,” “document,” “concern,” “all” and the like, are defined to be synonymous in meaning and equal in scope to the usage of the term in Rule 34 of the Federal Rules of Civil Procedure.

B. As used herein, the term “document” is used in its customary broad sense and includes, without being limited thereto, the following items, whether printed, or recorded, or filmed or reproduced by any other mechanical process, or written or produced by hand or by electronic means, and whether or not claimed to be privileged against discovery on any ground, and including all originals, masters and copies, namely: agreements, contracts and memoranda of understanding; assignments; licenses; correspondence and

communications, including intra-company correspondence and communications; cablegrams, telex messages, radiograms, telegrams, e-mails and text messages; reports, notes and memoranda; summaries, minutes and records of telephone conversations, meetings or conferences, including lists of persons attending meetings or conferences; summaries and records of personal conversations and interviews; books, manuals, publications, and diaries, technical, laboratory and engineering reports, data sheets and notebooks; charts; plans; sketches and drawings; photographs; motion pictures; audio and video tapes and discs; models and mockups; reports and/or summaries of investigations; opinions and reports of experts and consultants; patents, registrations of trademarks and service marks, copyrights, and applications for any of them; patent appraisals and infringement; patentability and validity searches and studies; opinions of counsel; sales records, including purchase orders, order acknowledgments and invoices, books of account; statements, bill checks and vouchers; reports and summaries of negotiations; brochures; pamphlets; catalogs and catalog sheets; sales and literature and sales promotion materials; advertisements; press, publicity, trade and product releases; drafts of originals of, or preliminary notes on, and marginal comments appearing on any document; or other reports and records; and any other information containing paper, writing or physical thing.

C. As used herein, "Petitioner" and "Cramer Products, Inc." mean and include the named "Petitioner," Cramer Products, Inc., and its predecessors-in-interest, including, but not limited to, and all divisions and/or subsidiaries, its respective shareholders, directors, agents, officers, employees, representatives, servants and attorneys, to the fullest extent the context permits.

The Requests to Produce Documents and Things

1. All documents establishing common law rights for each state in which Cramer is alleging ownership of common law rights to the “FLEX-I-COLD” trademark.

2. All documents sufficient for proving a first date of use of the “FLEX-I-COLD” trademark for each state in which Cramer is alleging ownership of common law rights to the “FLEX-I-COLD” trademark.

3. All documents sufficient for proving continuous use of the “FLEX-I-COLD” trademark in each state in which Cramer is alleging ownership of common law rights to the “FLEX-I-COLD” trademark from the date of first use for each state through to the present date.

4. All assignment documents pertaining to the “FLEX-I-COLD” trademark.

5. All documents pertaining to the adoption of the “FLEX-I-COLD” trademark by Cramer.

6. All trademark searches conducted by, or on behalf of, Cramer pertaining to the “FLEX-I-COLD” trademark.

7. All non-privileged litigation documents pertaining to the “FLEX-I-COLD” trademark, whether or not filed in any court or administrative agency.

8. All cease-and-desist/notice letters sent by Cramer pertaining to the “FLEX-I-COLD” trademark.

9. All cease-and-desist letters/notice received by Cramer pertaining to the “FLEX-I-COLD” trademark.

10. All documents evidencing actual confusion between the alleged rights to the “FLEX-I-COLD” trademark of Cramer and the “FLEXI-KOLD” registered trademark owned by Poly-Gel.

11. All consent-to-use agreements between Cramer and any and all other entities pertaining, in any way, to the alleged rights to the “FLEX-I-COLD” trademark owned by Cramer.

12. All settlement agreements between Cramer and any and all other entities pertaining, in any way, to the alleged rights to the “FLEX-I-COLD” trademark owned by Cramer.

13. All agreements of any kind between Cramer and any and all other entities pertaining, in any way, to the alleged rights to the “FLEX-I-COLD” trademark owned by Cramer.

14. All documents sufficient for establishing or proving the channels of trade through which Cramer markets its goods sold, or otherwise offered to the public, in association with the “FLEX-I-COLD” trademark.

15. All trademark applications seeking registration of “FLEX-I-COLD” filed by Cramer in the United States.

16. All documents, communications and correspondence, without limitation, between Cramer and the owner (or agents acting on behalf of the owner) of the “COLDFLEX” trademark of U.S. Trademark Registration No. 2,539,983.

17. All non-privileged documents pertaining to the “FLEXI-KOLD” trademark of Poly-Gel.

18. All documents Cramer intends to rely upon for seeking to prove its claim for cancellation of U.S. Trademark Registration No. 4,539,507 for the “FLEXI-KOLD” trademark owned by Poly-Gel in the pending cancellation proceeding.

Respectfully submitted,

POLY-GEL LLC

By */s/Edwin D. Schindler*

Edwin D. Schindler

Attorney for Respondent

Reg. No. 31,459

4 High Oaks Court
P. O. Box 4259
Huntington, New York 11743-0777

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E-mail: EDSchindler@att.net
EDSchindler@optonline.net

December 27, 2017

CERTIFICATE OF SERVICE

I, EDWIN D. SCHINDLER, hereby certify that a true and accurate copy of
RESPONDENT POLY-GEL LLC's FIRST REQUEST FOR PRODUCTION OF
DOCUMENTS has been served, via e-mail, upon the following counsel for Petitioner
Cramer Products, Inc.:

Christina J. Moser – E-Mail: cmoser@bakerlaw.com

nsamad@bakerlaw.com

cldocketing@bakerlaw.com

on December 27, 2017.

/s/Edwin D. Schindler

Edwin D. Schindler

Attorney for Respondent Poly-Gel LLC

Reg. No. 31,459

SCHINDLER DECLARATION

EXHIBIT 2

RE: Cramer Products, Inc. v. Poly-Gel LLC, Cancellation No. 92066377 - Poly-Gel's First Set of Interrogatories & First Request for Production of Documents (12/27/2017)

Monday, January 22, 2018 5:35 PM

From: "Moser Christina J." <cmoser@bakerlaw.com>
To: "Edwin Schindler" <edschindler@att.net>
Cc: "Samad Naimi" <nsamad@bakerlaw.com> "Cleveland Docketing" <CLDocketing@bakerlaw.com>

Ed,

Per our discussion last Thursday, this confirms that we agreed to extend Cramer's deadline to respond to discovery until February 9, so that the parties can determine whether we will be able to resolve this dispute.

Best,
Christina

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

From: Edwin Schindler [mailto:edschindler@att.net]
Sent: Wednesday, December 27, 2017 11:01 AM
To: Moser, Christina J. <cmoser@bakerlaw.com>
Cc: Samad, Naimi <nsamad@bakerlaw.com>; Cleveland Docketing <CLDocketing@bakerlaw.com>
Subject: Cramer Products, Inc. v. Poly-Gel LLC, Cancellation No. 92066377 - Poly-Gel's First Set of Interrogatories & First Request for Production of Documents (12/27/2017)

Dear Christina,

Please find, as attached to this e-mail, Poly-Gel's First Set of Interrogatories and First Request for Production of Documents in furtherance of the pending cancellation proceeding initiated by your client, Cramer Products, Inc.

Please feel free to contact me with any questions.

Sincerely,

Ed

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RE: Cramer Products, Inc. v. Poly-Gel LLC, Cancellation No. 92066377 - Poly-Gel's Proposed Settlement Letter Thursday, February 8, 2018 10:05 PM

From: "EDSchindler" <EDSchindler@att.net>
To: "Moser Christina J." <cmoser@bakerlaw.com>
Cc: "Samad Naimi" <nsamad@bakerlaw.com> "Cleveland Docketing" <CLDocketing@bakerlaw.com>

OK, thanks, Christina!

Sent from my Verizon, Samsung Galaxy smartphone

----- Original message -----

From: "Moser, Christina J." <cmoser@bakerlaw.com>
Date: 2/8/18 9:24 PM (GMT-05:00)
To: Edwin Schindler <edschindler@att.net>
Cc: "Samad, Naimi" <nsamad@bakerlaw.com>, Cleveland Docketing <CLDocketing@bakerlaw.com>
Subject: RE: Cramer Products, Inc. v. Poly-Gel LLC, Cancellation No. 92066377 - Poly-Gel's Proposed Settlement Letter

Ed,

I confirm the extension and will let you know my client's thoughts regarding the proposal.

Best,
Christina

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

From: Edwin Schindler [mailto:edschindler@att.net]
Sent: Wednesday, February 07, 2018 4:26 PM
To: Moser, Christina J. <cmoser@bakerlaw.com>
Cc: Samad, Naimi <nsamad@bakerlaw.com>; Cleveland Docketing <CLDocketing@bakerlaw.com>
Subject: RE: Cramer Products, Inc. v. Poly-Gel LLC, Cancellation No. 92066377 - Poly-Gel's Proposed Settlement Letter

Hi Christina,

Please find, as attached, a proposal for settlement by Poly-Gel.

The letter extends the current discovery deadline from this Friday until March 2, 2018, unless another arrangement or proposal is made.

Please review with your client and please inform me of your client's position in due course.

Sincerely,

Ed

On Wed, 2/7/18, Moser, Christina J. <cmoser@bakerlaw.com> wrote:

Subject: RE: Cramer Products, Inc. v. Poly-Gel LLC, Cancellation No. 92066377 - Poly-Gel's First Set of Interrogatories & First Request for Production of Documents (12/27/2017)
To: "Edwin Schindler" <edschindler@att.net>
Cc: "Samad, Naimi" <nsamad@bakerlaw.com>, "Cleveland Docketing" <CLDocketing@bakerlaw.com>
Date: Wednesday, February 7, 2018, 9:45 AM

Ed,

Given our upcoming deadline, I need to know today where your client is in terms of settlement.

Thanks,
Christina

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

From: Edwin Schindler [mailto:edschindler@att.net]
Sent: Monday, January 22, 2018 5:38 PM
To: Moser, Christina J. <cmoser@bakerlaw.com>
Cc: Samad, Naimi <nsamad@bakerlaw.com>; Cleveland Docketing <CLDocketing@bakerlaw.com>
Subject: RE: Cramer Products, Inc. v. Poly-Gel LLC, Cancellation No. 92066377 - Poly-Gel's First Set of Interrogatories & First Request for Production of Documents (12/27/2017)

Hi
Christina,

Agreed . . . I

will let you know if Poly-Gel requires more time, but for now, it is February 9th.

Ed

On Mon, 1/22/18, Moser, Christina J. <cmoser@bakerlaw.com> wrote:

Subject: RE: Cramer Products, Inc. v. Poly-Gel LLC, Cancellation No. 92066377 - Poly-Gel's First Set of Interrogatories & First Request for Production of Documents (12/27/2017)
To: "Edwin Schindler" <edschindler@att.net>
Cc: "Samad, Naimi" <nsamad@bakerlaw.com>, "Cleveland Docketing" <CLDocketing@bakerlaw.com>
Date: Monday, January 22, 2018, 5:35 PM

Ed,

Per our discussion last Thursday, this confirms that we agreed to extend Cramer's deadline to respond to

discovery until February 9, so that the parties can determine whether we will be able to resolve this dispute.

Best,
Christina

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

From: Edwin Schindler [mailto:edschindler@att.net]
Sent: Wednesday, December 27, 2017 11:01 AM
To: Moser, Christina J. <cmoser@bakerlaw.com>
Cc: Samad, Naimi <nsamad@bakerlaw.com>; Cleveland Docketing <CLDocketing@bakerlaw.com>
Subject: Cramer Products, Inc. v. Poly-Gel LLC, Cancellation No. 92066377 - Poly-Gel's First Set of Interrogatories & First Request for Production of Documents (12/27/2017)

Dear Christina,

Please find, as attached to this e-mail, Poly-Gel's First Set of

Interrogatories and First Request for Production of Documents in furtherance of the pending cancellation proceeding initiated by your client, Cramer Products, Inc.

Please feel free to contact me with any questions.

Sincerely,

Ed

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CERTIFICATE OF SERVICE

I, EDWIN D. SCHINDLER, hereby certify that a true, complete and accurate copy of *RESPONDENT POLY-GEL 'S MOTION FOR ENTRY OF DEFAULT JUDGMENT AGAINST PETITIONER CRAMER PRODUCTS, INC. DUE TO PETITIONER'S COMPLETE REFUSAL TO PARTICIPATE IN DISCOVERY BY REFUSING TO RESPOND TO RESPONDENT'S OUTSTANDING DISCOVERY REQUESTS, PURSUANT TO 37 C.F.R. 2.120(h)* has been served, via e-mail, upon the following counsel for Petitioner Cramer Products, Inc.:

Christina J. Moser – E-Mail: cmoser@bakerlaw.com

nsamad@bakerlaw.com

cldocketing@bakerlaw.com

on March 6, 2018.



Edwin D. Schindler
Attorney for Respondent Poly-Gel LLC
Reg. No. 31,459