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

Proceeding	92067982
Party	Defendant Adam Summers
Correspondence Address	ALISA C SIMMONS FITCH EVEN TABIN & FLANNERY LLP 120 SOUTH LASALLE STREET SUITE 2100 CHICAGO, IL 60603 UNITED STATES trademark@fitcheven.com, asimmons@fitcheven.com 312-577-7000
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Alisa C. Simmons
Filer's email	trademark@fitcheven.com, asimmons@fitcheven.com
Signature	/Alisa C. Simmons/
Date	06/07/2019
Attachments	Registrant Motion to Compel Discovery Responses.pdf(223298 bytes ) Exhibit A - Registrant First Set Interrogatories to Petitioner 92067982.pdf(142851 bytes ) Exhibit B - Registrant First Set Requests for Production to Petitioner 92067982.pdf(138814 bytes ) Exhibit C - Registrant First Set Request for Admission to Petitioner 92067982.pdf(108543 bytes ) Exhibit D - Emails to Petitioner - US Cancellation No. 92067982.pdf(706897 bytes )

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

PARADISE INTERNATIONAL INC.,

Petitioner,

v.

ADAM SUMMERS

Registrant.

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Reg. No.: 4423790  
Reg Date: October 29, 2013  
Mark: TRUERATINGS

Cancellation No. 92067982

**REGISTRANT'S MOTION TO COMPEL PETITIONER'S DISCOVERY RESPONSES**

Registrant Adam Summers, by and through his counsel Fitch Even Tabin & Flannery LLP, requests leave pursuant to 37 C.F.R. 2.120(e) and §523 of the Trademark Trial and Appeal Board Manual of Procedure for an order compelling Petitioner, Paradise International Inc., to answer and respond substantively and without objection on the merits to the Registrant's propounded interrogatories nos. 1-45 and requests for production nos. 1-60 and deeming as admitted the Registrant's propounded requests for admission nos. 1-41.

I. Background

In this cancellation, the Petitioner seeks cancellation of the Registrant's Registration No. 4423790 for the mark TRUERATINGS on the grounds that the Registrant did not use its mark on the goods and services listed in its registration. The Registrant filed an answer to the First Amended Petition to Cancel and has also filed a June 7, 2019 Motion for leave to amend its original answer to the First Amended Petition to Cancel denying the Petitioner's material allegations and

asserting affirmative defenses. As required by 37 C.F.R. §2.120, the parties conducted and participated in a discovery conference on October 24, 2018.

On March 26, 2019, the Registrant served on the Petitioner its Initial Disclosures<sup>1</sup>, its First Set of Interrogatories to Petitioner (“Interrogatories”), its First Set of Requests for Production of Documents and Things to Petitioner (“Document Requests”), and its First Set of Requests for Admission to Petitioner (“Requests for Admission”). The Petitioner attaches copies of its Interrogatories, Document Requests, and Requests for Admission as Exhibits A, B, and C, respectively. The Petitioner’s answers and responses to the Interrogatories, Document Requests, and Requests for Admission were due by April 25, 2019. To date, the Petitioner has unfortunately not responded or objected in any manner to the Interrogatories, Document Requests, or Requests for Admission and has provided no communication to the Registrant about whether it intends to respond, despite the Registrant’s good faith efforts to contact the Petitioner.

On May 13, 2019, the Registrant emailed counsel for the Petitioner using the email address of record, informing counsel that responses to the Interrogatories and Document Requests were overdue and inviting counsel to advise whether the Petitioner would be responding or to confirm that it would not be. The Registrant attempted to follow up again with the Petitioner on June 3, 2019, by email to the email address of record, asking whether the Petitioner would be responding to the discovery requests and asking counsel for Petitioner to please share whether and when the Petitioner would be responding to the Registrant’s discovery requests. Copies of the May 13, 2019, and June 3, 2019, emails to the Petitioner are attached as Exhibit D. The Petitioner did not and has not responded to date to the Registrant’s May 13 and June 3, 2019 emails.

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<sup>1</sup> TBMP §403.02 states that “[w]ritten discovery may be served concurrently with initial disclosures.” See *Luster Products Inc. v. Van Zandt*, 104 USPQ2d 1877, 1879 n.2 (TTAB 2012) (initial disclosures may be served concurrently with discovery requests).

The Petitioner also failed to provide any response to date or explanation for why it has not yet responded to the Registrant's Requests for Admission. Fed. R. Civ. P. 36(a) and TBMP §411.03 provide a party with thirty days to respond to requests for admission, and a matter is deemed admitted if not answered within the permitted time period. Because the time period for responding has now passed, the Registrant's Requests for Admission should be deemed admitted pursuant to Fed. R. Civ. P. 36(a) and TBMP §411.03.

Under the current schedule the Petitioner's pretrial disclosures would be due June 9, 2019, making this motion timely. The information sought by the Registrant through its Interrogatories and Document Requests is relevant and necessary for the Registrant to prepare for trial, and the Registrant therefore respectfully requests that the Petitioner be ordered to provide substantive responses to the Registrant's discovery requests.

## II. Argument

The Board directs that parties in a cancellation make a good faith effort to satisfy the discovery needs of their adversaries and to seek only such discovery as is proper and relevant to the issues involved in the proceeding. TBMP §402. When a party in a proceeding fails to answer interrogatories or respond to document requests, the Trademark Rules permit the propounding party to file a motion to compel responses to its discovery after making a good faith effort by conference or correspondence to resolve with the other party the issues presented in the motion. 37 C.F.R. 2.120(f). Prior Board decisions have found emails and telephone calls to the counsel for the uncooperative party to be sufficient to demonstrate this good faith effort to resolve the failure to respond to discovery requests. *Hot Tamale Mama...and More, LLC v. SF Investments, Inc.*, 110 USPQ2d 1080, 1081-82 (TTAB 2014); *Envirotech Corp. v. Compagnie Des Lampes,*

219 USPQ 448, 450 (TTAB 1979) (good faith effort is required where there has been a complete failure to respond to discovery; telephone call to counsel sufficient).

After the Petitioner failed to respond or object to the Registrant's timely served Interrogatories and Document Requests, the counsel for the Registrant emailed the counsel for Petitioner on May 14, 2019, to inform that discovery responses were overdue, to inquire whether the Petitioner had responded, to ask whether the Petitioner would be responding or for confirmation that it would not be responding. The Registrant included copies of the Interrogatories, Document Requests, and Requests for Admission with the May 14, 2019, email. After not receiving a response from Petitioner to the May 14, 2019 email, the counsel for the Registrant emailed the Petitioner again on June 3, 2019, to repeat that responses to the discovery requests were overdue, to ask whether and when the Petitioner would be responding, and to confirm if the Petitioner would not be responding. With the June 3, 2019, email, the counsel for the Registrant again included copies of the Interrogatories, Document Requests, and Requests for Admission. The specific purpose of these emails was to try and resolve the Petitioner's failure to respond to the Registrant's discovery requests and to confirm whether or not the Petitioner would be cooperative and provide late responses. Despite the Registrant's repeat efforts to confer about its discovery requests, the Petitioner never responded to the Registrant. The Registrant notes that the Petitioner did not serve discovery requests on the Registrant in this proceeding or take any discovery, so it is possible that the Petitioner no longer intends to prosecute this case.

The Registrant respectfully submits that its May 14 and June 3, 2019, emails to Petitioner comply with the requirement to make a good faith effort to resolve the dispute before filing this Motion and that the Petitioner's failure to respond to those emails demonstrates that the parties cannot come to an accord about these discovery requests without the intervention of the Board.

Further, the Registrant submits that its Interrogatories and Discovery Requests are proper and comply with Fed. R. Civ. P. 26(b)(1) in that they seek relevant, discoverable matter concerning the disputed issues in this proceeding and are therefore permissible for at least the following reasons. The Registrant has alleged in the petition to cancel that the Petitioner will be damaged by the Registrant's continued registration of the TRUERATINGS mark, that it owns and uses the trademark TruRatings for a mobile application and proprietary software as a service services for point-of-sale consumer ratings and market research and analysis, that it uses the domain name and operates a website at trurating.com, and that the Registrant has not used its TRUERATINGS trademark. The Registrant's discovery requests seek information related to these facts and allegations that will be at issue at trial.

Because the Petitioner failed to make any timely objections to the Registrant's Interrogatories and Document Requests, the Petitioner has waived its rights to object on the merits to the Registrant's Interrogatories as served. The Registrant respectfully requests that the Petitioner be ordered to answer the Registrant's Interrogatories substantively, without making objections on the merits.

### III. Conclusion

The Petitioner's failure to provide any response to the Registrant's Interrogatories, Document requests, and email communications about not responding to these discovery requests demonstrates disregard for the discovery rules. Because the Petitioner has failed to cooperate on a good faith basis with the discovery process in this proceeding, the Registrant therefore respectfully requests that the Board order the Petitioner to provide full and complete responses to the Registrant's Interrogatories and Document Requests, without objections on the merits, so that the Registrant may adequately prepare for trial. Additionally, because the Petitioner has failed to

respond to the Registrant's Requests for Admission within the permissible time period for doing so, the Registrant respectfully requests that the Board order that the Registrant's Requests for Admission stand as admitted.

Respectfully submitted,  
ADAM SUMMERS

June 7, 2019

s/Alisa C. Simmons/  
Alisa C. Simmons  
Sherri N. Blount  
FITCH, EVEN, TABIN & FLANNERY LLP  
120 South LaSalle Street, Suite 2100  
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Telephone: 312.577.7000  
Facsimile: 312.577.7007

*Attorneys for Registrant*

**CERTIFICATE OF SERVICE**

I, Alisa C. Simmons, one of the attorneys for the Registrant, hereby certify that a copy of the foregoing REGISTRANT'S MOTION TO COMPEL PETITIONER'S DISCOVERY RESPONSES was served by email upon Petitioner at its address of record set forth below:

Adam E. Engel  
THE ENGEL LAW GROUP, PLLC  
280 Madison Avenue – Suite 705  
New York, NY 10016  
aee@elgpllc.com  
*Attorney for Petitioner*

on this 7th day of June, 2019.

s/Alisa C. Simmons/  
Alisa C. Simmons  
Sherri N. Blount  
FITCH, EVEN, TABIN & FLANNERY LLP  
120 South LaSalle Street, Suite 2100  
Chicago, IL 60603-3406  
Telephone: 312.577.7000  
Facsimile: 312.577.7007

*Attorneys for Registrant*



# **Exhibit A**

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

Paradise International Inc.	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92067982
	)	
Adam Summers,	)	
Registrant	)	
_____	)	
Reg. No.      4423790	)	
Issued:      October 29, 2013	)	
Mark:        TrueRatings	)	

REGISTRANT’S FIRST SET OF INTERROGATORIES TO PETITIONER

Registrant, Adam Summers (“Registrant”), requests that Petitioner, Paradise International Inc. (“Petitioner”), answer the following interrogatories, pursuant to the provisions of Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademarks Rules of Practice under oath and within thirty (30) days of service hereof.

These Interrogatories are intended to be continuing in nature in accordance with Rule 26 of the Federal Rules of Civil Procedure. Any information which is discovered after timely production should be brought to the attention of Registrant’s counsel through supplemental production within a reasonable time thereafter.

**I. INSTRUCTIONS AND DEFINITIONS**

A. As used herein, the term “document” is used in its broadest possible sense under the Federal Rules of Civil Procedure and includes, without limitation, all notes, notations, correspondence, memoranda, invoices, contracts, purchase orders, pamphlets, publications, studies, reports, labels, packaging, books, writings, e-mails, instant messages, displays, photographs, drawings, artwork, tear sheets, proofs, sketches, illustrative materials, video tapes,

models, films, data files, magnetic recording tapes, microfilms, optical disks, and other storage means by which information is retained in retrievable form and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by any mechanical, electronic or magnetic process.

B. The term “Registrant” as used herein shall mean collectively Dr. Adam Summers and any parent, division, subsidiary or affiliate thereof and any predecessor or successor thereof.

C. The term “Petitioner” as used herein shall mean Paradise International Inc., and any parent, division, subsidiary, or affiliate thereof and any predecessor or successor thereof and officers, directors, employee, agents and representatives thereof.

D. As used herein, the term “person” includes any corporation, division, partnership, association, agency or other entity, as well as any individual.

E. Whenever an Interrogatory inquires about a person, and that person is an individual, the information requested includes:

1. The person’s full name;
2. The person’s employer;
3. The person’s present position or title;
4. The person’s past employers and positions or titles at all times relevant to the Interrogatory, if other than the person’s present employer, position or title; and
5. The person’s last known address and telephone number.

F. Whenever an interrogatory inquires about the identity of a person, not an individual, the information requested should include:

1. The full name and current address of each such business entity or organization;
2. The name of its executive officer or equivalent authority;
3. The person’s principal place of business; and

4. The nature of the person's business or function and its relationship to Registrant's and/or to Petitioner's operations and products.

G. Whenever an interrogatory inquires about documents, please furnish the following information as to each:

1. The date of the document;
2. A general description of the document;
3. A general description of the subject matter to which the document pertains;
4. The names and addresses of the addressor, addressee, and all persons receiving or shown the document or copies thereof;
5. The names and addresses of the persons in whose custody, possession or control the document is presently maintained;
6. If a privileged or work product exception is claimed as to a document, identify each such document in the foregoing manner and state the nature of the privilege or exception claimed.

H. "Registrant's Mark" shall mean the mark as shown in Registration Number 4423790, for the mark TrueRatings and any similar or related marks.

I. "Petitioner's Mark" as used herein shall mean the Petitioner's TrueRating.com mark, as well as design marks incorporating that term, including the marks in U.S. Application Serial No. 87470035 for TRUERATING.COM, as that mark is described in the Petition for Cancellation in this matter.

J. "TrueRating.com Application" as used herein shall mean Petitioner's U.S. Application Serial No. 87470035 and as described in the Petition for Cancellation in this matter.

K. As used herein, "and," as well as "or," shall be construed disjunctively or conjunctively as necessary to bring within the scope of the Interrogatory all responses which might otherwise be construed to be outside its scope.

L. The terms “relate to,” “refer to,” “comprise,” “identifying,” “supporting,” “relating to,” “referring to,” “regarding,” “associated with,” and “with respect to” shall be interpreted so as to encompass the liberal scope of discovery set forth in Rule 26(b) of the Federal Rules of Civil Procedure.

M. As used herein, the singular shall include the plural, and the present tense shall include the past tense, and vice versa.

N. As used herein, the terms “use in commerce” or “in commerce” shall have the same meaning as these terms are used in Section 45 of the Trademark Act, 15 U.S.C. Section 1127.

O. For any term used herein which is not otherwise specifically defined, the common and usual meaning of such term is intended.

P. No interrogatory or subpart thereof shall be construed as a limitation on any other interrogatory or subpart thereof.

Q. If Petitioner objects to all or any portion of any Interrogatory, state the specific grounds for the objection and provide all information responsive to the interrogatory which is outside the scope of the objection.

R. If Petitioner asserts privilege or work product as the basis for withholding information or materials, identify the privilege or work product asserted and identify all information and material for which Petitioner alleges the privilege or work product and provide all information responsive to the Interrogatory which is not subject to the asserted privilege.

## II. INTERROGATORIES

1. Identify all persons who have provided information used to prepare the answers to these interrogatories and state specifically, with reference to Interrogatory numbers, the area of participation of each person.

Answer:

2. Identify all documents (including, but not limited to, emails, memoranda, correspondence, brochures, photographs, surveys, audits, publications, and reports) upon which you relied on in answering these interrogatories.

Answer:

3. Identify the present and all past owners of the Petitioner's Mark.

Answer:

4. Describe how the Petitioner acquired its claimed rights in the Petitioner's Mark.

Answer:

5. Identify each and every good or service that is provided by the Petitioner in connection with the Petitioner's Mark.

Answer:

6. State the earliest date or dates on which the Petitioner will rely as to the first use of the Petitioner's Mark in connection with the sale or distribution of each good and/or service specified in response to Interrogatory No. 5 and fully describe the circumstances surrounding such first use including the name and address to whom such goods or services were shipped or provided.

Answer:

7. Fully describe the dates and circumstances surrounding the Petitioner's first use of the Petitioner's Mark on or in connection with any product or service other than those listed in U.S. Application No. 87470035.

Answer:

8. Identify any and all earlier marks or names other than the Petitioner's Mark used by the Petitioner in connection with offering any of the goods or services specified in response to Interrogatory No. 5. For any earlier identified mark(s) or name(s), indicate when such mark or name was used and the dates of and reason(s) for the change(s).

Answer:

9. For each and every good and service identified in response to Interrogatory No. 5, state the annual sales of each by units and dollars for the last five (5) years.

Answer:

10. For each type of good identified in response to Interrogatory No. 5, state the average suggested pricing for each type of good distributed or sold during each of the last five (5) years in connection with the Petitioner's Mark.

Answer:

11. For each type of service identified in response to Interrogatory No. 5, state the average suggested pricing for each type of service offered or sold during each of the last five (5) years in connection with the Petitioner's Mark.

Answer:

12. For each and every good and service identified in response to Interrogatory No. 5, state the annual dollar amount that the Petitioner has spent in connection with advertising or promoting each such service or product.

Answer:

13. For each good and service identified in response to Interrogatory No. 5, state the total number of customers of each such service or product sold under, in connection with, or bearing Petitioner's Mark since the date of first use in commerce.

Answer:

14. Identify all purchasers of each product or service of Petitioner identified in response to Interrogatory No. 5 since the date of first use in commerce, indicating whether the purchaser is a current or former purchaser of each product or service.

Answer:

15. Identify Petitioner's known competitors in the marketplace for the goods and services that the Petitioner offers in connection with the Petitioner's Mark.

Answer:

16. Identify all persons having information concerning Petitioner's selection and adoption of the Petitioner's Mark, and for each person identified, identify with specificity that person's involvement or participation in the selection and adoption of the Petitioner's Mark.

Answer:



17. Identify all trademark searches that the Petitioner has conducted or caused to be conducted involving the Petitioner's Mark.

Answer:

18. Describe all market studies (including but not limited to surveys, polls, questionnaires, and focus groups) which the Petitioner conducted or caused to be conducted relating to the Petitioner's Mark.

Answer:

19. Identify each state where the Petitioner has actually distributed advertising or promotional material for the goods and services identified in response to Interrogatory No. 5.

Answer:

20. Identify the channels of trade through which the Petitioner has marketed, promoted, advertised, distributed, offered, provided or sold goods or services in connection with the Petitioner's Mark for the past five (5) years.

Answer:

21. Identify each person who is presently, or has previously been responsible, for the advertising and promotion of the Petitioner's goods and services in connection with the Petitioner's Mark.

Answer:

22. Identify all forms of media and publications that the Petitioner has used in marketing in connection with the Petitioner's Mark (including, but not limited to, print, video, audio, electronic, websites, and online media).

Answer:

23. Identify all publications that the Petitioner has used for the last five (5) years or intends to use in marketing in connection with the Petitioner's Mark (including but not limited to websites, newspapers, periodicals, brochures, press releases and other print media).

Answer:

24. For each publication identified in answer to Interrogatory No. 23, identify the date of publication, name of publication, or other information to identify the specific issue or event in which the Petitioner's Mark appeared.

Answer:

25. Identify each place (including, but not limited to, companies, trade shows, professional meetings, or conventions) where the Petitioner has marketed the goods and services identified in answer to Interrogatory No. 5.

Answer:

26. Indicate the geographic area(s) of sales where the Petitioner has sold or offered for sale under, in connection with, or bearing Petitioner's Mark the goods and services identified in answer to Interrogatory No. 5.

Answer:

27. Identify the demographics of consumers of goods or services provided in connection with the Petitioner's Mark, including but not limited to the age, gender and ethnicity of consumers and their average household income.

Answer:

28. Describe all occasions on which the Petitioner has received any inquiries as to whether its goods or services are associated with, sponsored by, approved by or are in any other manner connected with Registrant.

Answer:

29. Identify all instances of actual confusion that have occurred between the Petitioner's goods or services and Registrant's goods or services.

Answer:

30. Identify all instances of actual confusion that have occurred involving the Petitioner's Mark.

Answer:

31. Identify any person who uses the Petitioner's Mark or similar such marks other than the Petitioner, their dates of first use and their qualifications to use Petitioner's Mark.

Answer:

32. Identify all places where someone can purchase goods or services bearing or in connection with the Petitioner's Mark.

Answer:

33. Identify all websites and/or domain names used or intended to be used by the Petitioner in connection with the advertising or sale of goods or services offered in connection with the Petitioner's Mark.

Answer:

34. Identify the date(s) and describe the circumstances surrounding when the Petitioner first became aware of Registrant and Registrant's Mark.

Answer:

35. Identify all marks or source identifiers other than the Petitioner's Mark that the Petitioner has used in connection with any of the goods and/or services specified in response to Interrogatory Number 5.

Answer:

36. Identify each officer, manager, or executive of the Petitioner, including job titles and responsibilities.

Answer:

37. Identify all affiliates, subsidiaries, or parent corporations of the Petitioner and the corresponding principals of such businesses, including their job titles and responsibilities.

Answer:

38. Identify State, municipalities or other governmental entities to which the Petitioner or any of its affiliates has applied for licenses or other authorization to distribute or provide the goods and services offered in connection with the Petitioner's Mark.

Answer:

39. Identify any and all federal, state, regional, international and foreign trademark registration(s) and application(s), whether current or dead, for Petitioner's Mark or any mark that resembles or incorporates Petitioner's Mark.

Answer:

40. Identify all agreements concerning Petitioner's Mark, including, but not limited to, any licenses, by date, parties to the agreement, and the subject matter of the agreement.

Answer:

41. State the total dollar amount that Petitioner has received in licensing, partnership, or other similar fees for or involving Petitioner's Mark since the date of first use in commerce, breaking down the figures for each year since the date of first use in commerce.

Answer:

42. State the total number of licensees of and partners or persons with interest in Petitioner's Mark since the date of first use in commerce.

Answer:

43. Identify each person that the Petitioner intends to call as a witness, including, but not limited to, expert witnesses, and describe the nature of each witness' expected testimony.

Answer:

44. Identify all experts which have at any time been retained by the Petitioner for this Opposition.

Answer:

45. For each document which is produced by the Petitioner in this proceeding, identify the Interrogatory and/or Document Request to which the document responds.

Answer:

Respectfully submitted,  
DR. ADAM SUMMERS

March 26, 2019

s/Alisa C. Simmons/  
Alisa C. Simmons  
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*Attorneys for Registrant*

CERTIFICATE OF SERVICE

The hereby certifies that a true and correct copy of the foregoing REGISTRANT'S FIRST SET OF INTERROGATORIES TO PETITIONER was served on Petitioner by transmitting by email an electronic copy of the same pursuant to 37 C.F.R. Section 2.119(b), to Petitioner's attorney of record, at the following email addresses:

Adam E. Engel  
The Engel Law Group PLLC  
280 Madison Avenue Suite 705  
New York, NY 10016  
aee@elgpllc.com

*Attorneys for Petitioner*

on this 26<sup>th</sup> day of March, 2019.

s/Alisa C. Simmons/  
Alisa C. Simmons  
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Facsimile 312.577.7007

*Attorneys for Registrant*

# **Exhibit B**



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

Paradise International Inc.	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92067982
	)	
Adam Summers,	)	
Registrant	)	
<hr/>		
Reg. No.	)	4423790
Issued:	)	October 29, 2013
Mark:	)	TrueRatings

**REGISTRANT’S FIRST SET OF REQUESTS  
FOR PRODUCTION OF DOCUMENTS AND THINGS TO PETITIONER**

Registrant, Adam Summers, requests that Petitioner, Paradise International Inc., by an officer or agent thereof, and in accordance with Rule 34 of the Federal Rules of Civil Procedure, produce within thirty (30) days, the documents requested herein for inspection and copying at the offices of Fitch, Even, Tabin & Flannery LLP 120 South LaSalle Street, Suite 2100, Chicago, Illinois 60603.

These Document Requests are intended to be continuing in nature. Any information that is discovered after timely production should be brought to the attention of Registrant’s counsel through supplemental production within a reasonable time thereafter.

**I. INSTRUCTIONS AND DEFINITIONS**

A. As used herein, the term “document” is used in its broadest possible sense under the Federal Rules of Civil Procedure and includes, without limitation, all notes, notations, correspondence, memoranda, invoices, contracts, purchase orders, pamphlets, publications, studies, reports, labels, packaging, books, writings, e-mails, instant messages, displays,

photographs, drawings, artwork, tear sheets, proofs, sketches, illustrative materials, video tapes, models, films, data files, magnetic recording tapes, microfilms, optical disks, and other storage means by which information is retained in retrievable form and all other materials, whether printed, typewritten, handwritten, recorded or reproduced by any mechanical, electronic or magnetic process.

B. The term “Registrant” as used herein shall mean collectively Dr. Adam Summers and any parent, division, subsidiary or affiliate thereof and any predecessor or successor thereof.

C. The term “Petitioner” as used herein shall mean Paradise International Inc., and any parent, division, subsidiary, or affiliate thereof and any predecessor or successor thereof and officers, directors, employee, agents and representatives thereof.

D. As used herein, the term “person” includes any corporation, division, partnership, association, agency or other entity, as well as any individual.

E. “Registrant’s Mark” shall mean Registrant’s TrueRatings mark, identified in Registration No. 4423790 and any similar or related marks.

F. “Petitioner’s Mark” shall mean Petitioner’s TrueRating.com mark, as well as design marks incorporating that term, including the marks in U.S. Application Serial No. TRUERATING.COM, as that mark is described in the Petition for Cancellation in this matter.

G. “TrueRating.com Application” as used herein shall mean Petitioner’s U.S. Application Serial No. 87470035 and as described in the Petition for Cancellation in this matter.

H. As used herein, “and,” as well as “or,” shall be construed disjunctively or conjunctively as necessary to bring within the scope of the Document Request all responses which might otherwise be construed to be outside its scope.

I. As used herein, the singular shall include the plural, and the present tense shall include the past tense, and vice versa.

J. As used herein, the terms “use in commerce” or “in commerce” shall have the same meaning as these terms are used in Section 45 of the Trademark Act, 15 U.S.C. Section 1127.

K. For any term used herein which is not otherwise specifically defined, the common and usual meaning of such term is intended.

L. If Petitioner asserts privilege or work product as the basis for withholding information or materials, identify the privilege or work product asserted and identify all information and material for which Petitioner alleges the privilege or work product and provide all information or documents responsive to the Document Request which is not subject to the asserted privilege.

M. Photocopies of documents may be produced in lieu of originals when necessary, but all versions of non-identical copies must be produced.

N. If Petitioner is aware of any document requested but is unable to produce it, state this fact, give particular reasons for Petitioner’s inability to produce the document and state, to the extent possible, the name and address of the person to whom the document was addressed or for whom it was created, the name and address of any and all recipients of the document, the name and address of each person Petitioner believes now has a copy or original of the document.

O. Regarding each document Petitioner contends is privileged or otherwise non-discoverable, state the basis for the privilege or exclusion from discovery, the name and address of the author, the document’s date, the name and address of the person whom the document was addressed or for whom it was created, the name and address of any and all recipients of the document, the name and address of each person Petitioner believes now has a copy or original of the document, and identify the files and the file location where the original and any copies are normally kept, including any computer files.

P. The request for production of a document is a request for production of the entire document, including any attachments, exhibits, appendices and the like.

## II. DOCUMENTS REQUESTED

1. All documents that are, or should have been, identified in Petitioner's response to Registrant's First Set of Interrogatories to Petitioner.
2. All documents referring or relating to Petitioner's creation, consideration, selection, and/or decision to adopt Petitioner's Mark.
3. All documents used or considered by Petitioner in selecting, conceiving, creating, or adopting Petitioner's Mark.
4. All documents concerning any legal or equitable right, title, or interest Petitioner allegedly has or had in Petitioner's Mark.
5. All documents relating to the TrueRating.com Application as that term is defined in the Petition for Cancellation.
6. All documents relating to Petitioner's decision to file U.S. Application Serial No. 87470035.
7. All documents referring or relating to marketing studies, market surveys, focus groups, business plans, advertising plans, advertising creation work, likelihood of confusion surveys or investigations conducted in connection with Petitioner's use of Petitioner's Mark, including documents that identify persons who participated in the activities.
8. All documents referring or relating to artwork considered in connection with Petitioner's use of Petitioner's Mark, including documents that identify persons who participated in the activities.
9. All documents referring or relating to the actual date and manner of first use of Petitioner's Mark anywhere.

10. All documents referring or relating to the actual date and manner of first use in commerce of Petitioner's Mark with each of the services listed in U.S. Application Serial No. 87470035.

11. All documents which evidence any use of Petitioner's Mark in connection with electronic commerce services in the United States in 2017.

12. All documents which evidence any use of Petitioner's Mark in connection with electronic commerce services in the United States in 2018.

13. All documents which evidence any use of Petitioner's Mark in connection with electronic commerce services in the United States in 2019.

14. All documents which evidence any use of Petitioner's Mark in connection with promoting the goods and services of others in the United States for each year from 2017 until present day.

15. All documents, including trademark searches and anti-dilution searches, conducted or caused to be conducted relating to Petitioner's Mark, or any marks incorporating the terms "True" and "Rating."

16. All business plans or strategies used or prepared by Petitioner that relate to or mention Petitioner's Mark.

17. All documents referring or relating to proposed or actual marketing, distribution, sale, advertising, or promotion of goods or services bearing Petitioner's Mark.

18. All documents referring or relating to the consideration of sales venues for goods or services in connection with Petitioner's Mark.

19. All documents referring or relating to any person having, or having had, any right to use Petitioner's Mark.

20. All documents referring or relating to any person who, through which or under which, Petitioner claims any rights in Petitioner's Mark.

21. All documents referring or relating to the transfer or assignment of any rights in Petitioner's Mark from or to any persons, entities, or predecessors in interest.

22. All documents referring or relating to Petitioner's knowledge of the Registrant.

23. All documents referring or relating to Petitioner's knowledge of Registrant's use of Registrant's Marks.

24. All documents referring or relating to instances of likelihood of confusion or actual confusion in connection with Petitioner's Mark, or any of Petitioner's marks incorporating the terms "true" (or its phonetic equivalent) and "rating."

25. All documents referring or relating to any state, federal or foreign application to register Petitioner's Mark ever granted to, considered, applied for, sought, acquired, denied or abandoned by Petitioner.

26. All documents referring or relating to each cease and desist letter, correspondence, complaint, objection, opposition, administrative proceeding, legal opinion, hearing, civil or criminal action brought by a third party involving Petitioner's Mark or Petitioner's use of Petitioner's Mark.

27. All documents referring or relating to each cease and desist letter, correspondence, complaint, decision, objection, opposition, administrative proceeding, legal opinion, hearing, civil or criminal action filed by, instituted by or sent by Petitioner against any third party related to or involving Petitioner's Mark or Petitioner's use of Petitioner's Mark.

28. All documents referring or relating to any inquiry or complaint Petitioner has received related in any way to Registrant or Registrant's use of Registrant's Marks.

29. Documents in the possession, custody, or control of Petitioner that refer to or relate to Registrant or Registrant's Mark.

30. All documents summarizing or memorializing Petitioner's sales and/or Petitioner's projected sales of goods and services sold in connection with Petitioner's Mark.

31. All documents summarizing or memorializing Petitioner's geographic provision and Petitioner's projected geographic provision of services sold in connection with Petitioner's Mark.

32. All documents summarizing or memorializing Petitioner's geographic distribution and Petitioner's projected geographic distribution of marketing and promotional material in connection with Petitioner's Mark.

33. All documents referring or relating to any instance or possibility of confusion, deception, or mistake regarding the source, sponsorship, or approval of Registrant's goods and services and Petitioner's goods or services.

34. All documents referring or relating to Petitioner's consideration of or grant of the right to use Petitioner's Mark or any similar mark, or the right to market goods or services under Petitioner's Mark to another person.

35. All documents referring or relating to State, municipalities or other governmental entities to which Petitioner has applied for licenses or other authorization to provide goods or services for the business in connection with the Petitioner's Mark.

36. Representative specimens of each label, brochure, advertising, sell sheet, price list, press release, publicity piece, business card, introduction card, certificate, tag, trade dress, package, box, website, Internet banner ad, Internet promotional material or advertising or the like ever planned, ordered, or used by Petitioner or any third party in connection with the sale, plans for sales, offer for sale, distribution of goods, or offer of services bearing Petitioner's Mark.



37. All documents referring or relating to the creation, design, production and preparation of copy of each item of advertising, promotional or publicity material using Petitioner's Mark.

38. Documents sufficient to identify all of the media (including but not limited to websites, newspapers, periodicals, brochures, press releases, user guides, and other print or electronic media, television advertising, radio advertising, trade show or otherwise) where the Petitioner has used Petitioner's Mark.

39. Documents sufficient to identify Petitioner's channels of trade used in connection with selling or offering for sale its services provided in connection with Petitioner's Mark.

40. Documents sufficient to identify all geographic area(s) of sales of the goods and services that have been provided in connection with Petitioner's Mark.

41. Documents sufficient to identify all current and intended uses of Petitioner's Mark.

42. Documents sufficient to identify the products or services Petitioner promotes, advertises, publicizes, offers to sell, or sells in connection with Petitioner's Mark.

43. Documents sufficient to identify the types of products or services Petitioner intends to promote, advertise, publicize, offer to sell, or sell in connection with Petitioner's Mark.

44. Documents sufficient to show any plans for development or expansion of the products or services Petitioner promotes, advertises, publicizes, offers to sell, or sells in connection with Petitioner's Mark.

45. Documents sufficient to identify all websites through which Petitioner has provided goods and services in connection with Petitioner's Mark.

46. Documents that Petitioner uses, has used, or intends to use to promote, advertise, publicize, or sell products and/or services under, in connection with, or bearing Petitioner's Mark.

47. Documents sufficient to identify the types or categories of customers for the services provided or intended to be provided in connection with Petitioner's Mark.

48. Documents sufficient to show the total number of customers of all of Petitioner's products or services provided or sold under, in connection with, or bearing Petitioner's Mark since the date of first use in commerce.

49. Documents sufficient to show all purchasers of each product or service sold or offered for sale by Petitioner under, in connection with, or bearing Petitioner's Mark since the date of first use in commerce.

50. All documents referring or relating to websites, newspapers, periodicals, brochures, press releases and other print media, radio and television programs, or any other media in which Petitioner's Mark is mentioned, discussed or otherwise appears.

51. Documents sufficient to identify all persons employed, retained, or engaged by Petitioner to advertise or promote Petitioner's Mark or any products or services under or in connection with Petitioner's Mark.

52. Documents sufficient to show the volume (in dollars and units) of sales of all of Petitioner's products or services sold under, in connection with, or bearing Petitioner's Mark from date of first use of Petitioner's Mark to present day.

53. Documents sufficient to show each price at which products or services sold under, in connection with, or bearing Petitioner's Mark, have been sold, offered, distributed, or licensed.

54. Documents sufficient to show the amount of total dollar licensing, partnership, or other similar fees of all of Petitioner's products or services sold under, in connection with, or bearing Petitioner's Mark.

55. Documents sufficient to show the total number of licensees and partners or persons with interest in Petitioner's Mark since the date of first use in commerce.

56. Documents sufficient to show all licensees of, partners with interest in, or other persons with interest in Petitioner's Mark since the date of first use in commerce.

57. Documents sufficient to show all costs and amounts expended by Petitioner to promote, market, and advertise products and services provided or sold under, in connection with, or bearing Petitioner's Mark, since the date of first use in commerce.

58. All evidence that Petitioner plans to introduce in support of its claims in this proceeding.

59. For each of Registrant's interrogatories in this proceeding, all documents, other than those documents already produced, used to prepare Petitioner's responses.

60. For each of Registrant's requests for production of documents in this proceeding, all documents, other than those documents produced, used to prepare Petitioner's responses.

DR. ADAM SUMMERS

March 26, 2019

s/Alisa C. Simmons/  
Alisa C. Simmons  
Sherri N. Blount  
FITCH, EVEN, TABIN & FLANNERY LLP  
120 South LaSalle Street, Suite 2100  
Chicago, Illinois 60603  
Telephone 312.577.7000

*Attorneys for Registrant*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing REGISTRANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS TO PETITIONER was served on Petitioner by transmitting by email an electronic copy of the same pursuant to 37 C.F.R. Section 2.119(b), to Petitioner's attorney of record, at the following email addresses:

Adam E. Engel  
The Engel Law Group PLLC  
280 Madison Avenue Suite 705  
New York, NY 10016  
aee@elgpllc.com

*Attorneys for Petitioner*

on this 26<sup>th</sup> day of March, 2019.

s/Alisa C. Simmons/  
Alisa C. Simmons  
FITCH, EVEN, TABIN & FLANNERY LLP  
120 South LaSalle Street, Suite 2100  
Chicago, Illinois 60603  
Telephone 312.577.7000  
Facsimile 312.577.7007

*Attorneys for Registrant*

# **Exhibit C**

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

Paradise International Inc.	)	
Petitioner,	)	
	)	
v.	)	Cancellation No. 92067982
	)	
Adam Summers	)	
Registrant	)	
	)	
-----	)	
Reg. No.      4423790	)	
Issued:      October 29, 2013	)	
Mark:        TrueRatings	)	

**REGISTRANT’S FIRST SET OF  
REQUESTS FOR ADMISSIONS TO PETITIONER**

Registrant, Adam Summers, (“Registrant”) requests the Petitioner, Paradise International Inc., to answer the following requests pursuant to the provisions of Rule 36 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice under oath and within the thirty (30) days of service hereof.

INSTRUCTIONS AND DEFINITIONS

Registrant incorporates by reference the Instructions and Definitions from Registrant’s First Set of Interrogatories to Petitioner, Paradise International Inc. Unless the terms of a particular request specifically indicate otherwise, the following additional definitions and instructions are applicable through these requests and are incorporated into each specific request:

S.       Answers to the following requests must specifically admit or deny the matter set forth in the request or set forth in detail the reasons why you cannot truthfully admit or deny the matter.

T. If any of the following requests cannot be answered in full, they should be answered to the extent possible, specifying the reason for the inability to answer the remainder and stating any information or knowledge which the party answering has concerning the unanswered portion. When good faith requires you to qualify an answer or deny only part of the matter in a request, you must specify which part is true and qualify or deny the remainder.

U. Lack of information or knowledge may not be given as a reason for failure to admit or deny, unless you state that you have made reasonable inquiries and that the information known or readily obtainable by you is insufficient to enable you to admit or deny the request.

V. All objections shall be set forth with specificity and shall include a brief statement of the grounds for such objections.

W. The following requests shall be deemed to be continuing and, in the event the Petitioner secures or discovers any documents responsive to these requests subsequent to answering these interrogatories which would tend to enlarge, diminish, or otherwise modify the answers, the Petitioner has a duty to serve and file promptly supplemental answers reflecting such information pursuant to the Federal Rules of Civil Procedure.

#### REQUESTS FOR ADMISSION

1. Admit that the documents and things produced by Petitioner in response to Registrant's First Set of Requests for Production of Documents and Things to Petitioner in this Cancellation are authentic.

2. Admit that the documents and things produced by Petitioner in response to Registrant's First Set of Interrogatories in this Cancellation are authentic.

3. Admit that Registration No. 4423790 is valid.

4. Admit that Registrant owns common law trademark rights in Registrant's Mark.

5. Admit that Registrant owns common law trademark rights in the mark TrueRatings.

6. Admit that Petitioner's Mark is similar to the Registrant's Mark.

7. Admit that TrueRating.com sounds similar to TrueRatings.

8. Admit that TrueRating.com is similar in appearance to TrueRatings.

9. Admit that Petitioner's Mark is similar in connotation to Registrant's Mark.

10. Admit that purchasers and prospective purchasers encountering Petitioner's Mark are likely to believe that such mark is associated with the Registrant.

11. Admit that purchasers and prospective purchasers encountering Petitioner's Mark are likely to believe that such mark is sponsored by the Registrant.

12. Admit that purchasers encountering product information offered in connection with Petitioner's Mark are likely to believe that such services are affiliated with Registrant.

13. Admit that purchasers encountering product information offered in connection with Petitioner's Mark are likely to believe that such services are sponsored by Registrant.

14. Admit that purchasers encountering electronic commerce services offered in connection with Petitioner's Mark are likely to believe that such services are affiliated with Registrant.

15. Admit that purchasers encountering electronic commerce services offered in connection with Petitioner's Mark are likely to believe that such services are sponsored by Registrant.

16. Admit that Petitioner is aware of instances of actual confusion that have occurred, or are occurring, between Petitioner's Mark and the Registrant's Mark.

17. Admit that the Petitioner first used Petitioner's Mark in United States commerce after the Registrant first used Registrant's Mark.



18. Admit that the services offered in connection with Petitioner's Mark are offered for use in connection with advertising and sales.

19. Admit that the services offered in connection with Petitioner's Mark are offered for use in connection with advertising and sales.

20. Admit that the services offered in connection with Petitioner's Mark are offered for use in connection with promoting the goods and services of others.

21. Admit that the goods offered in connection with Petitioner's Mark are offered in the same channels of trade as the goods and services offered by the Registrant.

22. Admit that the services offered in connection with Petitioner's Mark are offered in the same channels of trade as the goods and services offered by the Registrant.

23. Admit that the goods offered in connection with Petitioner's Mark are similar to the goods offered by the Registrant.

24. Admit that the services offered in connection with Petitioner's Mark are similar to the services offered by the Registrant.

25. Admit that the services offered in connection with Registrant's Mark are offered for use in connection with consumer ratings of businesses.

26. Admit that the services offered in connection with Registrant's Mark are offered for use in connection with publishing of reviews.

27. Admit that the services offered in connection with Registrant's Mark are offered for use in connection with promoting the goods and services of others.

28. Admit that Petitioner's website resides at the web address [www.truerating.com](http://www.truerating.com).

29. Admit that the Registrant used Registrant's Marks in United States commerce prior to the Petitioner's use of Petitioner's Mark in United States commerce.

30. Admit that any use by Petitioner of the TrueRating.com mark has been for the benefit of Petitioner.
31. Admit that Petitioner is not the owner of the TrueRating.com mark.
32. Admit that Registrant has provided TrueRatings brand review services to customers in the United States.
33. Admit that Petitioner knew of Registrant prior to adopting Petitioner's Mark.
34. Admit that Petitioner knew of Registrant's use of Registrant's Mark prior to adopting Petitioner's Mark.
35. Admit that Petitioner knew of Registrant prior to filing Application No. 87470035.
36. Admit that Petitioner knew of Registrant's Mark prior to filing Application No. 87470035.
37. Admit that Registrant has not authorized Petitioner to file Application No. 87470035.
38. Admit that Registrant has not authorized Petitioner to use Petitioner's Mark.
39. Admit that Registrant has not authorized Petitioner to use TrueRating.com.
40. Admit that Registrant's Mark has acquired distinctiveness through use by Registrant.
41. Admit that Petitioner does not own U.S. federal registrations for Petitioner's Mark.

DR. ADAM SUMMERS

March 26, 2019

s/Alisa C. Simmons/  
Alisa C. Simmons  
Sherri N. Blount  
FITCH, EVEN, TABIN & FLANNERY LLP  
120 South LaSalle Street, Suite 2100  
Chicago, IL 60603-3406  
Telephone: 312.577.7000  
Facsimile: 312.577.7007

*Attorneys for Registrant*

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and correct copy of the foregoing REGISTRANT'S FIRST SET OF REQUESTS FOR ADMISSIONS TO PETITIONER was served on Petitioner by transmitting by email an electronic copy of the same pursuant to 37 C.F.R. Section 2.119(b), to Petitioner's attorney of record, at the following email addresses:

Adam E Engel  
The Engel Law Group PLLC  
280 Madison Avenue Suite 705  
New York, NY 10016  
aee@elgpllc.com

*Attorneys for Petitioner*

on this 26<sup>th</sup> day of March, 2019.

s/Alisa C. Simmons/  
Alisa C. Simmons  
FITCH, EVEN, TABIN & FLANNERY LLP  
120 South LaSalle Street, Suite 2100  
Chicago, Illinois 60603  
Telephone 312.577.7000  
Facsimile 312.577.7007

*Attorneys for Registrant*

# **Exhibit D**

**From:** [Alisa C. Simmons](#)  
**To:** [aee@elgpllc.com](mailto:aee@elgpllc.com)  
**Cc:** [Sherri N. Blount](#); [Elizabeth Serrano](#); [Porsche Palmer](#)  
**Subject:** FW: US Cancellation No. 92067982 between Paradise International Inc. and Dr. Adam Summers - Our ref. no. 20937-143024  
**Date:** Monday, June 3, 2019 11:18:00 AM  
**Attachments:** [2019 03 26 Service Copy Initial Disclosures in Cancellation No. 92067982.pdf](#)  
[Registrant First Set Interrogatories to Petitioner 92067982.pdf](#)  
[Registrant First Set Requests for Production to Petitioner 92067982.pdf](#)  
[Registrant First Set Request for Admission to Petitioner 92067982.pdf](#)

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Dear Mr. Engel,

We write to follow up on our May 13 email to you (included below) asking about whether your client will be providing responses to the interrogatories and documents requests that we served on your client in this cancellation. As we shared before, to date we have not received responses or heard more from you. Please update us on when we may expect to receive responses to the interrogatories and document requests or confirm for us that Paradise International will not be responding. We will look forward to hearing from you.

Kind regards, Alisa

Alisa C. Simmons  
(312) 629-7947

---

**From:** Alisa C. Simmons  
**Sent:** Monday, May 13, 2019 5:01 PM  
**To:** Adam Engel <aee@elgpllc.com>  
**Cc:** Sherri N. Blount <SBlount@fitcheven.com>; Elizabeth Serrano <ESerrano@fitcheven.com>  
**Subject:** FW: US Cancellation No. 92067982 between Paradise International Inc. and Dr. Adam Summers - Our ref. no. 20937-143024

Dear Mr. Engel,

We write to follow up on Paradise International's responses to the discovery requests of Dr. Summers. We note that the deadline to respond to the discovery requests passed on April 25, 2019, without our receiving responses from you to those discovery requests. Please let us know if we missed communications from you providing responses. While Paradise International has now waived the right to object to the discovery requests, we would still like to know whether Paradise International will be responding to the interrogatories and document requests. Please update us on when we may expect to receive responses to the interrogatories and document requests or confirm for us that Paradise International will not be responding. We will look forward to hearing from you.

Kind regards,  
Alisa

[Alisa C. Simmons](#) | Partner

**FITCH EVEN**

Fitch, Even, Tabin & Flannery LLP

120 South LaSalle Street, Suite 2100 | Chicago, Illinois 60603  
P 312.629.7947 | F 312.577.7007  
[asimmons@fitcheven.com](mailto:asimmons@fitcheven.com) | [www.fitcheven.com](http://www.fitcheven.com)

---

**From:** Alisa C. Simmons

**Sent:** Tuesday, March 26, 2019 10:02 PM

**To:** 'Adam Engel' <[aee@elgpllc.com](mailto:aee@elgpllc.com)>

**Cc:** Sherri N. Blount <[SBlount@fitcheven.com](mailto:SBlount@fitcheven.com)>; Elizabeth Serrano <[ESerrano@fitcheven.com](mailto:ESerrano@fitcheven.com)>

**Subject:** US Cancellation No. 92067982 between Paradise International Inc. and Dr. Adam Summers -  
Our ref. no. 20937-143024

Dear Counsel,

On behalf of our client, Dr. Adam Summers, we serve first sets of interrogatories, requests for production of documents and things, and requests for admissions in this cancellation. We also include again the initial disclosures under Rule 26 on behalf of Dr. Summers.

Please let us know if you should have questions.

Kind regards,  
Alisa

Alisa C. Simmons | Partner

## FITCH EVEN

Fitch, Even, Tabin & Flannery LLP

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