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

Proceeding	92068992
Party	Plaintiff Prime Direct Brands, LLC
Correspondence Address	MICHAEL J HICKEY LEWIS RICE LLC 600 WASHINGTON AVE STE 2500, BOX IP DEPT ST. LOUIS, MO 63101 UNITED STATES ipdept@lewisrice.com 314-444-7600
Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Michael J. Hickey
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Signature	/Michael J. Hickey/
Date	02/01/2019
Attachments	Prime_Direct _Motion_to_Compel.pdf(248959 bytes) Exhibit A- Petitioners Document Requests to Registrant.pdf(769150 bytes) Exhibit B - Registrants Response to Petitioners First Set Of Document Requests.pdf(631817 bytes) Exhibit C - Registrants Initial Disclosures Final.pdf(581316 bytes) Exhibit D - 1-18-19 Email from Counsel for Registrant.pdf(1325025 bytes)

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

PRIME DIRECT BRANDS, LLC, Petitioner, v. IQ PRODUCTS COMPANY, Registrant.	)	Cancellation No. 92068992 Registration No. 4,152,902 Mark: ENVI

Commissioner for Trademarks
P.O. Box 1451
Alexandria, VA 22313-1451

PETITIONER'S MOTION TO COMPEL DISCOVERY

Pursuant to TBMP § 523 and 37 C.F.R. § 2.120(f), Petitioner Prime Direct Brands, LLC ("Petitioner") moves for an order compelling Registrant IQ Products Company ("Registrant") to produce documents in response to Petitioner's First Set of Document Requests (a true and accurate copy submitted as Exhibit A herewith) and simultaneously moves to stay all testimony periods pending a resolution of the discovery motion. Incredibly, Registrant has refused to produce any documents whatsoever in response to Petitioner's requests, asserting that the Requests improperly seek privileged and confidential information and are unduly burdensome on Registrant. See Registrant's Responses and Objections to Petitioner's First Set of Document Requests (a true and accurate copy submitted herewith as Exhibit B). However, Registrant has not produced a privileged log for any assertions of privilege, the default Protective Order provides for marking of documents that are claimed as confidential, and nearly all of the requests are directed to the very same types of documents Registrant identified in its own Initial

Disclosures (a true and accurate copy submitted herewith as Exhibit C), such that the claim of burden is untenable.

The Board should reject Registrant's specious objections and require that Registrant immediately produce all documents responsive to Petitioner's narrowly tailored requests.

MEMORANDUM

Petitioner filed for cancellation of U.S. Trademark Reg. No. 4,152,902 for "ENVI" ("the Mark") on grounds that Registrant did not use the Mark continuously in interstate commerce over the five years prior to its renewal in May 2018. In fact, when contacted in both 2017 and 2018, Registrant's employee told Petitioner that the products in question ("hair care products, namely, hair conditioners, hair shampoo, hair shampoos and conditioners, and hair sprays; nail care preparations, namely nail polish enamel driers; shaving preparations, namely shaving creams and shaving gels") were no longer being sold under the Mark, had not been sold for years, and could not be found in any retail stores. See Petition, ¶¶15-16. For these reasons and those set forth in detail in the Petition, Petitioner maintains that the Mark should be canceled for non-use and abandonment of the Mark, as well as for Registrant's misrepresentations about such use in connection with the 2018 renewal of the Mark.

Respondent denied the merits of Petitioner's cancellation petition and served Initial Disclosures identifying the categories of documents that it intends to use to support its claims, including:

- "documents related to the selection of . . . IQ's registered mark"
- "documents related to the bona fide intent to use and/or use . . . of IQ's registered mark"
- "documents related to the renewal of IQ's registered mark"
- "documents related to the use of IQ's trademark"

- "documents related to the relevant channels of trade"
- "documents related to the sophistication of Petitioner's customers and IQ's customers"
- "documents related to businesses other than Petitioner and Respondent that use and have used formatives of 'ENVY' and 'ENVI' in their trademarks and trade names"
- "documents related to other evidence of likelihood of confusion or lack thereof"
- "documents related to the pleadings and discovery in this cancellation proceeding".

See Exhibit C, Registrant's Initial Disclosures, at p. 4. Registrant did not produce any documents with its Initial Disclosures.[1]

Petitioner therefore served a First Set of Document Requests seeking information about the bases for Respondent's denials. See Exhibit A submitted herewith, Petitioner's First Set of Document Requests, dated December 18, 2018. Specifically, Petitioner sought the following categories of documents:

- All documents related to Registrant's selection, use, intended use, and renewal of its Mark, including as identified in Registrant's Initial Disclosures (Request Nos. 1-3, 8)
- All documents related to the relevant channels of trade, sophistication of customers, other businesses using formatives of "ENVY," "ENVIE," and "ENVY" in their trademarks and trade names, and any evidence of likelihood of

[1] In mid-October 2018, Registrant produced two redacted, one-page documents purported to be company bills of lading from 2013 and 2017. These documents contained no customer or purchase order information that might demonstrate sales in interstate commerce. Registrant has even refused to produce unredacted versions of these two pages, let alone documents responsive to Petitioner's Requests.

confusion or lack thereof, including as identified in Registrant's Initial Disclosures (Request Nos. 4-7, 28, 30, 33)

- Samples of products bearing the Mark from June 2012 to the present (Request Nos. 9-16)[2]
- Specimens of advertising for products used in connection with the Mark from June 2012 to the present, as well as documents relating to marketing of products bearing the Mark (Request Nos. 17-24, 27, 31-32)
- Documents relating to pricing, invoices, purchase orders, and sales of the products from June 2012 to May 30, 2018 (Request Nos. 25, 29, 34-35)
- Documents relating to licensing agreement and contracts for use of the Mark (Request No. 26)
- Files relating to Registrant's employee who told Petitioner that products bearing the Mark were no longer sold by Registrant (Request No. 36)

In response to Petitioner's Requests, Registrant refused to produce any documents whatsoever, principally asserting objections based on attorney-client privilege, confidentiality/trade secrets, and undue burden. See Exhibit B submitted herewith, Registrant IQ Products' Responses and Objections to Petitioner Prime Direct Brand's [sic] First Set of Document Requests, dated January 17, 2019. Registrant's objections are baseless.

First, Registrant produced no privilege log identifying any specific documents withheld on privilege grounds, despite an instruction to produce such a privilege log in Petitioner's Requests. See Exhibit A, at p. 3. Moreover, such a privilege assertion cannot be grounds for

[2] Request Nos. 11-14 contained a typographical error that Petitioner clarified upon receipt of Registrant's objections, but Registrant has refused to withdrawn its objection to the same. See Email from Registrant's counsel (J. Mark Gilbreth) to Petitioner's counsel (Michael J. Hickey), dated January 18, 2019 (a true and accurate copy submitted herewith as Exhibit D), at p. 1.

producing no documents. Purchase orders, invoices, samples of products, marketing documents, and the like are clearly not privileged, and Registrant is being recalcitrant and obstructionist to the extent it makes such an assertion.

Second, Registrant's refusal to produce documents on confidentiality/trade secret grounds is specious. The Board automatically imposed its Standard Protective Order in these proceedings, thereby providing a mechanism for Registrant to mark confidential and trade secret documents. See Notice of Institution, dated July 19, 2018, at p. 4 (noting availability at https://www.uspto.gov/trademarks-application-process/appealing-trademark-decisions/standard-documents-and-guidelines-0). Further, Petitioner's counsel made repeated efforts to inquire whether Registrant wanted to make any changes to this default order, but Registrant never indicated any changes were necessary. See Exhibit D, at p. 2 ("Two additional questions that you can also ask your client is (1) whether your client will agree to the default protective order that we first sent to you on September 27, 2018, more than 3 ½ months ago; and (2) whether, pursuant to this Protective Order, your client is willing to produce any documents responsive to my client's document requests. In other words, the Protective Order should resolve any confidentiality, proprietary, or trade secret objections, and thereby make those documents available to produce, unless your client is going to continue to rely upon on other objections and refuse to produce anyway.").

Finally, Registrant's claims of undue burden are groundless. Petitioner is seeking documents specifically called out in Registrant's own Initial Disclosures and highly relevant to Registrant's denials of nearly each and every paragraph of the Petition. Registrant cannot claim that it is relying upon documents, identify those documents, and then refuse to produce the very same documents. Registrant even forbade its counsel from discussing its objections with counsel for Petitioner. See Exhibit D, at pp. 1-2 (Petitioner's counsel: "Let me know if your client does

not want you to talk with me. Otherwise, I will plan on calling you at 2pm tomorrow on your cell." Respondent's counsel: "IQ does not see a reason for us to talk today." Petitioner's counsel: "Thanks for the email notice that your client does not want you to discuss the merits of their objections to our document requests." This constitutes such a fundamental refusal to cooperate in basic discovery that Petitioner strongly urges the Board to consider appropriate sanctions, including striking Registrant's Answer, for such unjustified defiance of legitimate discovery requests from Petitioner. At a minimum, the Board should order Registrant to produce all responsive documents immediately.

STATEMENT BY COUNSEL IN AN ATTEMPT TO RESOLVE

On January 17 and 18, 2019, counsel for Petitioner (Michael J. Hickey) made repeated attempts by e-mail to set up a time to discuss the objections to Petitioner's First Set of Document Requests with counsel for Registrant (J. Mark Gilbreth). Counsel for Registrant advised by e-mail that his client had instructed him not to speak with counsel for Petitioner and refused to discuss the merits of Registrant's objections to Petitioner's requests for production. See Exhibit D, at pp. 1-4.

Dated: February 1, 2019

Respectfully submitted,

LEWIS RICE LLC

By: _____

Michael J. Hickey, Missouri Bar #47136
Box IP Department
600 Washington Avenue, Suite 2500
St. Louis, Missouri 63101
(314) 444-7600

Attorneys for Petitioner Prime Direct Brands, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Initial Disclosures have been served this day of February 1, 2019, via electronic mail to Registrant's Attorney of Record:

J.M. (Mark) Gilbreth
GILBRETH ROEBUCK, P.C.
P.O. Box 2428
Bellaire, TX 77401
jmark@gilbreth.org
Attorneys for Registrant

_____

EXHIBIT A

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

PRIME DIRECT BRANDS, LLC, Opposer, v. IQ PRODUCTS COMPANY, Registrant.	)	Cancellation No. 92068992 Registration No. 4,152,902 Mark: ENVI

PETITIONER PRIME DIRECT BRANDS, LLC'S
FIRST SET OF DOCUMENT REQUESTS

Pursuant to 37 C.F.R. § 2.120 and Rule 34 of the Federal Rules of Civil Procedure, Petitioner Prime Direct Brands, LLC ("Petitioner") hereby requests IQ Products Company ("Registrant") to produce to Petitioner and to permit Petitioner, or its representatives, to inspect and copy the following documents and things within thirty (30) days hereof.

DEFINITIONS

As used herein,

A. "Registrant" shall mean IQ Products Company and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates, and all other persons acting or purporting to act on its behalf; and includes, without limitation, any predecessor-in-interest, as well as any identity under which Registrant does business. The words "you" and "your" also refer to Registrant.

B. "Petitioner" shall mean Prime Direct Brands, LLC and, where applicable, its officers, directors, employees, partners, corporate parent, subsidiaries, or affiliates, and all other persons acting or purporting to act on its behalf; and includes, without limitation, any predecessor-in-interest, as well as any identity under which Petitioner does business.

C. "Document(s)" is defined as all "writings," "recording," and "photographs," as those terms are defined in Rule 1001 of the Federal Rules of Evidence, which are in your possession, custody or control, or that of your attorneys or agents and whether or not claimed to be privileged against discovery on any ground, and should be construed in the broadest sense permissible. "Document" is also intended to include all that within and defined by Fed. R. Civ. P. 34(a)(1)(A) and (B), including Comments to the Rule and case law interpreting the Rule. Without limiting the foregoing, "document(s)" includes the original and any non-identical copy and also every draft and version of a document.

D. "Person" or "persons" is defined as any natural person or any legal entity, including, without limitation, any business, governmental entity, or association.

E. "Advertising" is defined as any activity which attracts attention to Registrant or its products/services, in any form and including all Documents, as defined above, related thereto.

F. The "Mark" shall mean ENVI as identified in Registration No. 4,152,902 and the Petition for Cancellation.

G. "Products" refers to "hair care products, namely, hair conditioners, hair shampoo, hair shampoos and conditioners, and hair sprays; nail care preparations, namely nail polish enamel driers; shaving preparations, namely shaving creams and shaving gels," as set forth in Registrant's description of goods for the Mark.

H. The terms "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

INSTRUCTIONS

A. No part of any discovery request should be left unanswered merely because an objection is made to another part of the request.

B. When an objection is made to any discovery request, or sub-part thereof, state with specificity all grounds for objection.

C. Where the Documents responsive to a specific discovery request are voluminous, Registrant should state as such and identify a representative sample of the documents which are most responsive to the request.

D. If any response or information is withheld by you on the basis of privilege or word product, you must identify the privilege being claimed and provide the following:

(i) The general subject matter of the response or information being withheld;

(ii) The type of response or information;

(iii) The date of the response or information;

(iv) The author, addressee(s) and recipient(s) of the response or information, and the relationship of these persons; and

(v) The location of the original and each copy of the response or information.

REQUESTS FOR DOCUMENTS

1. All documents related to the selection of Registrant's Mark, including as identified in Registrant's Initial Disclosures.

2. All documents related to the use of Registrant's Mark, including as identified in Registrant's Initial Disclosures.

3. All documents related to the renewal of Registrant's Mark, including as identified in Registrant's Initial Disclosures.

4. All documents related to the relevant channels of trade in which Registrant's Mark is used, including as identified in Registrant's Initial Disclosures.

5. All documents related to the sophistication of Petitioner's customers and Registrant's customers, including as identified in Registrant's Initial Disclosures.

6. All documents related to businesses other than Petitioner and Registrant that use and have used formatives of "ENVY," "ENVIE," and "ENVI" in their trademarks and trade names, including as identified in Registrant's Initial Disclosures.

7. All documents related to other evidence of likelihood of confusion or lack thereof, including as identified in Registrant's Initial Disclosures.

8. All documents relating to the use or intended use of the Mark in connection with Registrant's business in interstate commerce or any other use of the Mark.

9. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce between June 6, 2012, and December 31, 2012.

10. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce in 2013.

11. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce between 2014.

12. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce between 2015.

13. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce between 2016.

14. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce between 2017.

15. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce between January 1, 2018, to May 30, 2018.

16. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce between May 31, 2018 and the present.

17. Specimens of advertising for the Products used in connection with the Mark that were offered for sale or sold in interstate commerce between June 6, 2012, and December 31, 2012.

18. Specimens of advertising for the Products used in connection with the Mark that were offered for sale or sold in interstate commerce in 2013.

19. Specimens of advertising for the Products used in connection with the Mark that were offered for sale or sold in interstate commerce in 2014.

20. Specimens of advertising for the Products used in connection with the Mark that were offered for sale or sold in interstate commerce in 2015.

21. Specimens of advertising for the Products used in connection with the Mark that were offered for sale or sold in interstate commerce in 2016.

22. Specimens of advertising for the Products used in connection with the Mark that were offered for sale or sold in interstate commerce in 2017.

23. Specimens of advertising for the Products used in connection with the Mark that were offered for sale or sold in interstate commerce between January 1, 2018, to May 30, 2018.

24. Specimens of advertising for the Products used in connection with the Mark that were offered for sale or sold in interstate commerce between May 31, 2018, and the present.

25. Copies of price lists or other Documents showing the price of the Products used in connection with the Mark from June 6, 2012, to May 30, 2018.

26. Documents relating or referring to, or comprising, any assignments, licensing agreements, consent agreements, or other contractual agreements between Registrant and third parties which relate to the use, registration, or ownership of the Mark.

27. Documents and things relating or referring to Registrant's marketing and promotion of its Products bearing the Mark from June 6, 2012, to May 30, 2018.

28. Documents sufficient to show the types and classes of consumers to which Registrant marketed and sold the Products bearing the Mark from June 6, 2012, to May 30, 2018.

29. All invoices, purchase orders, or documents showing the sale of Products bearing the Mark from June 6, 2012, to May 30, 2018.

30. Documents relating or referring to the channels of trade for Registrant's Products bearing the Mark, including without limitation documents indicating the chain of distribution from Registrant through any intermediary, the marketing of the Products bearing the Mark and ultimate sale to the consumer from June 6, 2012, to May 30, 2018.

31. Documents relating or referring to trade shows, exhibitions, and similar events that Registrant exhibited at or participated in between June 6, 2012, to May 30, 2018, and at which Registrant promoted the Products bearing the Mark.

32. Documents sufficient to identify all sales and marketing personnel who were responsible for sales and marketing of Products bearing the Mark from June 2012 to May 30, 2018.

33. Documents relating or referring to instances of actual confusion between Registrant's use of the Mark and Petitioner's use of its ENVIE mark.

34. Documents sufficient to identify all stores and retail establishments (whether on-line or brick-and-mortar) that sold Registrant's Products bearing the Mark from June 6, 2012, to May 30, 2018.

35. Documents sufficient to identify all stores and retail establishments (whether on-line or brick-and-mortar) that sold Registrant's Products bearing the Mark from May 31, 2018, to the present.

36. All files relating to Lynn Carlson, including any records relating to Ms. Carlson kept by Registrant and including any human resources files, personnel files, disciplinary files, or employment review files.

Dated: December 18, 2018

Respectfully submitted,

LEWIS RICE LLC

By:

Michael J. Hickey, Missouri Bar # 47136
Bridget G. Hoy, Missouri Bar # 50733
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bhoy@lewisrice.com

Attorneys for the Petitioner, Prime Direct Brands, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing Initial Disclosures have been served this day of December 18, 2018, via electronic mail to Registrant's Attorney of Record:

J.M. (Mark) Gilbreth
GILBRETH ROEBUCK, P.C.
P.O. Box 2428
Bellaire, TX 77401
jmark@gilbreth.org
Attorneys for Registrant

_____

EXHIBIT B

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

In the matter of Registration Number 4152902 Registered June 5, 2012, for the mark "ENVI"		
Prime Direct Brands, LLC, Petitioner/Plaintiff	§	Cancellation No. 92068992
v.	§	
IQ Products Company, Registrant/Defendant	§	

REGISTRANT IQ PRODUCTS'RESPONSES AND OBJECTIONS TO PETITIONER PRIME DIRECT BRAND'S FIRST SET OF DOCUMENT REQUESTS

Pursuant to the Code of Federal Regulations, including 37 C.F.R. § 2.120, and the Federal Rules of Civil Procedure, including Rule 34 thereof, IQ Products Company ("Registrant") hereby responds to Prime Direct Brands' ("Petitioner") First Set of Document Requests. Registrant reserves the right to supplement these responses should additional or different information become known to it, whether through discovery, further investigation, or otherwise.

GENERAL OBJECTIONS

Registrant makes the following general objections to Petitioner's First Set of Requests for Production of Documents, whether or not separately set forth in response to each Production Request:

1. Registrant objects to each of Petitioner's document requests to the extent they call for documents or things which do not relate to matters materially necessary to the prosecution and defense of this action and which are not reasonably calculated to lead to the discovery of admissible evidence.

2. Registrant objects to each of Petitioner's definitions, instructions and document requests to the extent that they may be construed as calling for information and/or documents that are not in Registrant's possession, custody or control on the ground that such instructions, definitions, or Production Requests seek to require more of Registrant than any obligation imposed by law, would subject Registrant to unreasonable and undue burden and expense, and seek to impose an obligation on Registrant to investigate or discover information or materials from third parties that are equally accessible to Petitioners.

3. Registrant objects to the extent that any definition, instruction or document request is vague, ambiguous, or overly broad, and unreasonably requires Registrant to speculate as to the nature and scope of the documents sought. In each instance, where possible, Registrant will interpret the request to require only the documents reasonably related in time and subject matter to the issues in this litigation.

4. Registrant's responses to Petitioner's document requests are not admissions or acknowledgements that the requests call for documents that are relevant to the subject matter of this action. Each response is without prejudice to Registrant's right to contest at trial or any other proceeding in this action that such response (or the document produced in response) to the request is inadmissible, irrelevant or immaterial. Further, each response is without prejudice to, and does not constitute a waiver of, any objection Registrant may make to any future use of any document produced in response to any request.

5. Registrant objects to Petitioner's definitions, instructions and Requests to the extent they request the discovery or disclosure of information that is immune from discovery, protected by the attorney-client privilege, and/or constitute trial preparation materials prepared in anticipation of

litigation by or for Registrant or by or for any representatives of Registrant, including its attorney(s), consultant(s), employee(s), or agent(s), or which are otherwise protected from discovery pursuant to the Federal Rules of Civil Procedure or any other privilege or immunity. Such information shall not be provided in response to the Production Requests and any inadvertent disclosure thereof shall not be deemed a waiver of any privilege or immunity with respect to such information. Further, Registrant reserves the right to redact irrelevant or privileged material from documents that may also contain responsive material. Registrant also objects to the requests, as unduly burdensome, to the extent they call for documents created after the inception of Registrant's relationship with its outside counsel and thus would require a document-by-document scheduling of each such immune or privileged document. Unless agreed or ordered to the contrary, Registrant will withhold, without scheduling, as protected from discovery under the work-product doctrine and/or attorney-client privilege all protected documents created or prepared by Registrant, Registrant's attorneys or other agents on or after the inception of Registrant's relationship with its outside counsel related to the claims, issues, and/or trademarks that are the subject of this lawsuit. Additionally, confidential communications for the above-referenced time period seeking or providing of legal advice between Registrant (or its agents) and its attorneys and/or their agents representing Registrant in connection with such representation are also withheld, without scheduling, as subject to the attorney-client privilege. The categorical identification of these documents is considered sufficient to satisfy any identification requirements necessary to properly assert privilege for these documents. Still further, Registrant objects to Petitioner's instructions regarding privilege to the extent such instructions attempt to require additional information or action beyond that necessary to properly assert a claim of privilege or other limitation from discovery.

6. Registrant objects to the Requests as premature to the extent that they seek discovery of

documents relating to expert opinions prior to any procedural obligation to procure or disclose any such opinions.

7. Registrant's response to any of Petitioner's document requests that it will produce documents means that Registrant will conduct a diligent search through the files or records in its possession or control that are believed to contain responsive documents or documents reasonably responsive to the request, subject to and without waiving the objections and limitations as stated herein. Accordingly, Registrant's response that it will produce responsive documents does not mean that such documents exist.

8. Registrant objects to Petitioner's document requests as being unduly burdensome and oppressive to the extent they request the production of documents containing confidential, proprietary, or trade secret information and to the extent that they call for documents protected under the terms of a confidentiality agreement, protective order, or other restriction on disclosure.

9. Registrant further objects to the Requests to the extent they seek discovery of evidence that is irrelevant to any claim or defense in this action and not being proportional to the needs of this action considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit. See F.R.C.P. 26(b)(1).

10. Registrant objects to the requests as overlapping and redundant to the extent that a single document may be responsive to many different requests.

11. Registrant will provide its responses without prejudice to its right to produce additional documents that it may later discover.

EXHIBIT B

EXHIBIT B

PLAINTIFF'S SPECIFIC RESPONSES AND OBJECTIONS TO DEFENDANT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS

Without waiving or limiting in any manner any of the foregoing General Objections, but incorporating them into each of the following responses, Plaintiff responds to each of the specific requests as follows:

1. All documents related to the selection of Registrant's Mark, including as identified in Registrant's Initial Disclosures.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. Registrant further objects to this request to the extent it calls for documents or things which do not relate to matters materially necessary to the prosecution and defense of this action and which are not reasonably calculated to lead to the discovery of admissible evidence. No documents will be produced responsive to this Request.

2. All documents related to the use of Registrant's Mark, including as identified

in Registrant's Initial Disclosures.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request insofar as it seeks discovery of documents that Petitioner may easily and readily obtain from public sources, including www.uspto.gov. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. No documents will be produced responsive to this Request.

3. All documents related to the renewal of Registrant's Mark, including as identified in Registrant's Initial Disclosures.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request insofar as it seeks discovery of documents that Petitioner may easily and readily obtain from public sources, including www.uspto.gov. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. No documents will be produced responsive to this Request.

4. All documents related to the relevant channels of trade in which Registrant's Mark is used, including as identified in Registrant's Initial Disclosures.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. No documents will be produced responsive to this Request.

5. All documents related to the sophistication of Petitioner's customers and Registrant's customers, including as identified in Registrant's Initial Disclosures.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. No documents will be produced responsive to this Request.

6. All documents related to businesses other than Petitioner and Registrant that use and have used formatives of "ENVY," "ENVIE," and "ENVI" in their trademarks and

trade names, including as identified in Registrant's Initial Disclosures.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. Registrant further objects to this Request to the extent that it may be construed as calling for information and/or documents that are not in Registrant's possession, custody or control on the ground that such Request seeks to require more of Registrant than any obligation imposed by law, would subject Registrant to unreasonable and undue burden and expense, and seek to impose an obligation on Registrant to investigate or discover information or materials from third parties that are equally accessible to Petitioner. Registrant further objects to this Request as not being proportional to the needs of this case in light of the factors set forth in Fed. R. Civ. P. 26(b)(1). No documents will be produced responsive to this Request.

7. All documents related to other evidence of likelihood of confusion or lack thereof, including as identified in Registrant's Initial Disclosures.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request as being unduly

burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. No documents will be produced responsive to this Request.

8. All documents relating to the use or intended use of the Mark in connection with Registrant's business in interstate commerce or any other use of the Mark.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this Request as being duplicative of Request No. 2 above, and therefore Registrant incorporates herein by reference its above objections to Request No. 2. Registrant further objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. No documents will be produced responsive to this Request.

9. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce between June 6, 2012, and December 31, 2012.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, regarding products "sold" in interstate commerce, Registrant objects to this request to the extent that it may be construed as calling for products that are not in Registrant's possession, custody or control. No documents will be produced responsive to this Request.

.

10. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce in 2013.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, regarding products "sold" in interstate commerce, Registrant objects to this request to the extent that it may be construed as calling for products that are not in Registrant's possession, custody or control. No documents will be produced responsive to this Request.

11. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce between 2014.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request because the phrase "between 2014" is vague, indefinite, and/or ambiguous, and unreasonably requires Registrant to speculate as to the nature and scope of the documents sought. No products will be produced.

12. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce between 2015.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request because the phrase "between 2015" is vague, indefinite, and/or ambiguous, and unreasonably requires Registrant to speculate

as to the nature and scope of the documents sought. No products will be produced.

13. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce between 2016.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request because the phrase "between 2016" is vague, indefinite, and/or ambiguous, and unreasonably requires Registrant to speculate as to the nature and scope of the documents sought. No products will be produced.

14. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce between 2017.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request because the phrase "between 2017" is vague, indefinite, and/or ambiguous, and unreasonably requires Registrant to speculate as to the nature and scope of the documents sought. No products will be produced.

15. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce between January 1, 2018, to May 30, 2018.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, regarding products "sold" in interstate commerce, Registrant objects to this request to the extent that it may be construed as calling for products that are not in Registrant's possession, custody or

control. No products will be produced.

16. Samples of the Products bearing the Mark that were offered for sale or sold in interstate commerce between May 31, 2018 and the present.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, regarding products "sold" in interstate commerce, Registrant objects to this request to the extent that it may be construed as calling for products that are not in Registrant's possession, custody or control. No products will be produced.

17. Specimens of advertising for the Products used in connection with the Mark that were offered for sale or sold in interstate commerce between June 6, 2012, and December 31, 2012.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this Request as being duplicative of Request No. 27 below, and therefore Registrant incorporates herein by reference its above objections to Request No. 27. No specimens will be produced.

18. Specimens of advertising for the Products used in connection with the Mark that were offered for sale or sold in interstate commerce in 2013.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by

reference, and for the avoidance of any doubt, Registrant objects to this Request as being duplicative of Request No. 27 below, and therefore Registrant incorporates herein by reference its above objections to Request No. 27. No specimens will be produced.

19. Specimens of advertising for the Products used in connection with the Mark that were offered for sale or sold in interstate commerce in 2014.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this Request as being duplicative of Request No. 27 below, and therefore Registrant incorporates herein by reference its above objections to Request No. 27. No specimens will be produced.

20. Specimens of advertising for the Products used in connection with the Mark that were offered for sale or sold in interstate commerce in 2015.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this Request as being duplicative of Request No. 27 below, and therefore Registrant incorporates herein by reference its above objections to Request No. 27. No specimens will be produced.

21. Specimens of advertising for the Products used in connection with the Mark that

were offered for sale or sold in interstate commerce in 2016.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this Request as being duplicative of Request No. 27 below, and therefore Registrant incorporates herein by reference its above objections to Request No. 27. No specimens will be produced.

22. Specimens of advertising for the Products used in connection with the Mark that were offered for sale or sold in interstate commerce in 2017.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this Request as being duplicative of Request No. 27 below, and therefore Registrant incorporates herein by reference its above objections to Request No. 27. No specimens will be produced.

23. Specimens of advertising for the Products used in connection with the Mark that were offered for sale or sold in interstate commerce between January 1, 2018, to May 30, 2018.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this Request as being duplicative of Request No. 27 below, and therefore Registrant incorporates herein by reference its above objections to Request No. 27. No specimens will be produced.

24. Specimens of advertising for the Products used in connection with the Mark that were offered for sale or sold in interstate commerce between May 31, 2018, and the present.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this Request as being duplicative of Request No. 27 below, and therefore Registrant incorporates herein by reference its above objections to Request No. 27. No specimens will be produced.

25. Copies of price lists or other Documents showing the price of the Products used in connection with the Mark from June 6, 2012, to May 30, 2018.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request to the extent it calls for documents or things which do not relate to matters materially necessary to the prosecution and defense of this action and which are not reasonably calculated to lead to the discovery of admissible evidence. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. Registrant further objects to this request to the extent it seeks discovery of evidence (i.e., the price of Registrant's products) that is irrelevant to any claim or defense in this proceeding and not being

proportional to the needs of this proceeding. Registrant further objects to this Request as not being proportional to the needs of this case in light of the factors set forth in Fed. R. Civ. P. 26(b)(1). No documents will be produced.

26. Documents relating or referring to, or comprising, any assignments, licensing agreements, consent agreements, or other contractual agreements between Registrant and third parties which relate to the use, registration, or ownership of the Mark.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. No documents will be produced.

27. Documents and things relating or referring to Registrant's marketing and promotion of its Products bearing the Mark from June 6, 2012, to May 30, 2018.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. No documents will be produced.

28. Documents sufficient to show the types and classes of consumers to which Registrant marketed and sold the Products bearing the Mark from June 6, 2012, to May 30, 2018.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this Request as being duplicative of Request No. 5 above, and therefore Registrant incorporates herein by reference its above objections to Request No. 5. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. Subject to and without waiving its objections, Registrant will produce non-privileged documents in its possession, custody or control that are responsive to this Request, and under Protective Order if warranted by the particular document.

29. All invoices, purchase orders, or documents showing the sale of Products bearing the Mark from June 6, 2012, to May 30, 2018.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. No documents will be produced.

30. Documents relating or referring to the channels of trade for Registrant's Products bearing the Mark, including without limitation documents indicating the chain of distribution from

Registrant through any intermediary, the marketing of the Products bearing the Mark and ultimate sale to the consumer from June 6, 2012, to May 30, 2018.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this Request as being duplicative of Request No. 4 above, and therefore Registrant incorporates herein by reference its above objections to Request No. 4. Registrant further objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. No documents will be produced.

31. Documents relating or referring to trade shows, exhibitions, and similar events that Registrant exhibited at or participated in between June 6, 2012, to May 30, 2018, and at which Registrant promoted the Products bearing the Mark.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. Registrant further objects to this Request as not being proportional to the needs of this case in light of the factors set forth in Fed. R. Civ. P. 26(b)(1). No documents will be produced.

32. Documents sufficient to identify all sales and marketing personnel who were responsible for sales and marketing of Products bearing the Mark from June 2012 to May 30, 2018.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. Registrant further objects to this Request as not being proportional to the needs of this case in light of the factors set forth in Fed. R. Civ. P. 26(b)(1). No documents will be produced.

33. Documents relating or referring to instances of actual confusion between Registrant's use of the Mark and Petitioner's use of its ENVIE mark.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. No documents will be produced.

34. Documents sufficient to identify all stores and retail establishments (whether on-line or brick-and-mortar) that sold Registrant's Products bearing the Mark from June 6, 2012, to May 30, 2018.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. No documents will be produced.

35. Documents sufficient to identify all stores and retail establishments (whether on-line or brick-and-mortar) that sold Registrant's Products bearing the Mark from May 31, 2018, to the present.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. No documents will be produced.

36. All files relating to Lynn Carlson, including any records relating to Ms. Carlson

kept by Registrant and including any human resources files, personnel files, disciplinary files, or employment review files.

Response:

Subject to and without waiving its objections, each of which is incorporated herein by reference, and for the avoidance of any doubt, Registrant objects to this request insofar as it seeks discovery of documents that are immune from and/or protected from discovery by the attorney-client privilege and/or work product doctrine. Registrant further objects to this request as being unduly burdensome and oppressive to the extent it requests the production of documents containing confidential, proprietary, or trade secret information. Registrant further objects to this request as it constitutes an unwarranted intrusion into the privacy of Ms. Carlson. Registrant further objects to this request to the extent it seeks discovery of evidence that is irrelevant to any claim or defense in this proceeding and not being proportional to the needs of this proceeding. No documents will be produced responsive to this Request.

Respectfully submitted,

Date: January 17, 2019

/J. M. (MARK) GILBRETH/
J. M. (Mark) Gilbreth
Attorney for Registrant
Member of Texas Bar

CORRESPONDENCE ADDRESS:
GILBRETH ROEBUCK, PC
P. O. Box 2428
Bellaire, TX 77402-2428
(T) 713 667 1200 x 102
(F) 713 667 4424
jmark@gilbreth.org

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing REGISTRANT IQ PRODUCTS'RESPONSES AND OBJECTIONS TO PETITIONER PRIME DIRECT BRAND'S FIRST SET OF DOCUMENT REQUESTS has been served on all attorneys of record for Petitioner, including Mr. Michael J. Hickey, as well as on the Lewis Rice "IP Dept" email, by forwarding said copy on January 17, 2019, via email as shown:

mhickey@lewisrice.com
ipdept@lewisrice.com
fjanoski@lewisrice.com
kdamman@lewisrice.com
bhoy@lewisrice.com
bsiders@lewisrice.com
mdurbin@lewisrice.com

LEWIS RICE LLC
600 Washington Ave Ste 2500, Box IP Dept
St. Louis, MO 63101

/J. M. (MARK) GILBRETH/
J. M. (Mark) Gilbreth

EXHIBIT C

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

In the matter of Registration Number 4152902 Registered June 5, 2012, for the mark "ENVI"		
Prime Direct Brands, LLC, Petitioner/Plaintiff	§	Cancellation No. 92068992
v.	§	
IQ Products Company, Registrant/Defendant	§	

REGISTRANT IQ PRODUCTS COMPANY'S INITIAL DISCLOSURES

Registrant IQ Products Company ("IQ"), submits the following initial disclosures pursuant to Trademark Rule 2.120(a).

REMARKS AND DISCLAIMER

Without the benefit of discovery, IQ is providing representations of fact and law in good faith. For that reason, IQ's initial disclosures do not limit the ability of IQ to introduce testimony, facts or the identity of relevant documents as such facts, witnesses or documents that become known through discovery. IQ expressly reserves the right to modify, amend, correct, change and/or supplement these disclosures. Further, IQ reserves the right to rely upon any of the witnesses and/or documents identified in the initial disclosures of Petitioner.

EXHIBIT C

DISCLOSURES

A. Individuals likely to have discoverable information that Petitioner may use to support its claims or defenses.

Yohanne Gupta IQ Products Company 16212 State Highway 249 Houston, TX 77086-1014	Knowledgeable about IQ's trademarks, use of IQ's trademarks on IQ's various goods, the channels of trade in which IQ markets and sells its applicable products, the sophistication of IQ's applicable customers, the commercial impression of IQ's mark, as well as other factors that may relate to IQ's trademarks and goods.
John Brogan IQ Products Company 16212 State Highway 249 Houston, TX 77086-1014	Knowledgeable about IQ's trademarks, use of IQ's trademarks on IQ's various goods, the channels of trade in which IQ markets and sells its applicable products, the sophistication of IQ's applicable customers, the commercial impression of IQ's mark, as well as other factors that may relate to IQ's trademarks and goods.

IQ also identifies Mr. Robert George and Mr. Simon George of Petitioner for at least the areas cited in Petitioner's Initial Disclosure, as well as for knowledge relating to diligence or lack of diligence under FRCP 11 as it relates to the bringing of this Cancellation Proceeding.

IQ further identifies employees of Petitioner responsible for the use of Petitioner's mark ENVIE, the due diligence exercised in selection and adoption of Petitioner's mark ENVIE, communications with any of IQ's employees, the channels of trade in which Petitioner markets and sells its products, the sophistication of Petitioners customers, the commercial impression of Petitioner's mark ENVIE, actual confusion between IQ's mark ENVI and Petitioner's mark ENVIE, sales and marketing of goods bearing Petitioner's mark.

B. A description of potentially relevant documents by category.

Petitioner intends to use at least the following categories of documents to support its claims:

(i) documents related to the selection of Petitioner's applied-for mark and IQ's registered mark;

(ii) documents relating to Petitioner's due diligence under FRCP 11 relating to the bringing of this Cancellation Proceeding;

(iii) documents related to the bona fide intent to use and/or use of Petitioner's applied-for mark and use of use of IQ's registered mark;

(iv) documents related to the application of Petitioner's applied-for mark;

(v) documents related to the renewal of IQ's registered mark;

(vi) documents related to the use of IQ's trademark;

(vii) documents related to the relevant channels of trade;

(viii) documents related to the sophistication of Petitioner's customers and IQ'scustomers;

(ix) documents related to businesses other than Petitioner and Respondent that use and have used formatives of "ENVY" and "ENVI" in their trademarks and trade names;

(x) documents related to other evidence of likelihood of confusion or lack thereof; and

(xi) documents related to the pleadings and discovery in this cancellation proceeding.

By listing certain categories of documents, IQ does not intend to waive, and expressly preserves, any applicable privilege(s) and/or confidentiality as to specific documents within such categories.

C. Computation of damages

Not applicable.

D. Insurance Agreements

IQ is unaware of any potentially relevant insurance agreements.

EXHIBIT C

Respectfully submitted,

Date: November 5, 2018

/J. M. (MARK) GILBRETH/
J. M. (Mark) Gilbreth
Attorney for Registrant
Member of Texas Bar

CORRESPONDENCE ADDRESS:
GILBRETH ROEBUCK, PC
P. O. Box 2428
Bellaire, TX 77402-2428
(T) 713 667 1200 x 102
(F) 713 667 4424
jmark@gilbreth.org

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing REGISTRANT IQ PRODUCTS COMPANY'S INITIAL DISCLOSURES has been served on all attorneys of record for Petitioner, including Mr. Michael J. Hickey, as well as on the Lewis Rice "IP Dept" email, by forwarding said copy on November 5, 2018, via email as shown:

mhickey@lewisrice.com
ipdept@lewisrice.com
fjanoski@lewisrice.com
kdamman@lewisrice.com
bhoy@lewisrice.com
bsiders@lewisrice.com
mdurbin@lewisrice.com

LEWIS RICE LLC
600 Washington Ave Ste 2500, Box IP Dept
St. Louis, MO 63101

/J. M. (MARK) GILBRETH/
J. M. (Mark) Gilbreth

EXHIBIT D

Hickey, Michael J.

From: Mark Gilbreth <jmark@gilbreth.org>
Sent: Friday, January 18, 2019 3:06 PM
To: Hickey, Michael J.
Cc: Hoy, Bridget
Subject: Re: IQ's Response to First Set of Document Requests

Michael,

Good afternoon.

IQ does not acquiesce to the suggested amendments.

IQ does not confirm your assumption of how IQ would respond if Requests 11-14 had been worded differently.

IQ awaits any new requests that might be presented in a second set of requests and will respond at that time.

On Fri, Jan 18, 2019, 9:55 AM Hickey, Michael J. <MHickey@lewisrice.com wrote:

> Mark,
>
> Thanks for the email notice that your client does not want you to discuss the merits of their objections to our document requests.
>
> I note that Requests No. 11-14 incorrectly use the word "between" instead of "in" and that IQ has, in part, objected to these Requests on this basis. We hereby amend our requests to replace "between" with "in." I assume that IQ will still refuse to produce documents for these four requests even with this change. Please confirm.
>
> Thanks,
>
> Michael
>
> LEWIS RICE Michael J. Hickey
> mhickey@lewisrice.com

EXHIBIT D

600 Washington Avenue
Suite 2500
St. Louis, Missouri 63101-1311
314.444.7630 (direct)
314.612.7630 (fax)
www.lewisrice.com

From: Mark Gilbreth <jmark@gilbreth.org>
Sent: Friday, January 18, 2019 9:10 AM
To: Hickey, Michael J. <MHickey@lewisrice.com>
Cc: Hoy, Bridget <bhoy@lewisrice.com>
Subject: Re: IQ's Response to First Set of Document Requests

Michael,

IQ does not see a reason for us to talk today.

On Thu, Jan 17, 2019, 8:13 PM Hickey, Michael J. <MHickey@lewisrice.com wrote:

> Mark,
>
> Let me know if your client does not want you to talk with me. Otherwise, I will plan on calling you at 2pm tomorrow on your cell.
>
> Two additional questions that you can also ask your client is (1) whether your client will agree to the default protective order that we first sent to you on September 27, 2018, more than 3 ½ months ago; and (2) whether, pursuant to this Protective Order, your client is willing to produce any documents responsive to my client's document requests. In other words, the Protective Order should resolve any confidentiality, proprietary, or trade secret objections, and thereby make those documents available to produce, unless your client is going to continue to rely upon on other objections and refuse to produce anyway.
>
> You might also advise your client that its recalcitrance and refusal to cooperate in basic discovery will only make my client more suspicious of your client's purported continuous use over the 5 year period in question. If your client is truly able to prove its continuous use, they should simply produce the documents requested.
>
> LEWIS RICE Michael J. Hickey
> mhickey@lewisrice.com

600 Washington Avenue
Suite 2500
St. Louis, Missouri 63101-1311
314.444.7630 (direct)
314.612.7630 (fax)
www.lewisrice.com

From: Mark Gilbreth <jmark@gilbreth.org>
Sent: Thursday, January 17, 2019 8:01 PM
To: Hickey, Michael J. <MHickey@lewisrice.com>
Cc: Hoy, Bridget <bhoy@lewisrice.com>
Subject: Re: IQ's Response to First Set of Document Requests

Michael,

I fully understand you question. You are correct.

However I will need to confirm that they want me to speak with you.

I will speak with them in the morning. Unless they instruct me otherwise you/I can talk at 2pm.

On Thu, Jan 17, 2019, 7:52 PM Hickey, Michael J. <MHickey@lewisrice.com wrote:

> Mark,
>
> What do you need to discuss with your client? I'm asking for your availability to discuss your client's responses. When are you available? You don't need to talk to your client to check your own schedule.
>
> LEWIS RICE
> Michael J. Hickey
> mhickey@lewisrice.com
> 600 Washington Avenue
> Suite 2500
> St. Louis, Missouri 63101-1311
> 314.444.7630 (direct)
> 314.612.7630 (fax)
> www.lewisrice.com

From: Mark Gilbreth <jmark@gilbreth.org>
Sent: Thursday, January 17, 2019 7:51 PM
To: Hickey, Michael J. <MHickey@lewisrice.com>
Cc: Hoy, Bridget <bhoy@lewisrice.com>
Subject: Re: IQ's Response to First Set of Document Requests

Michael,

I will discuss with my client and let you know.

On Thu, Jan 17, 2019, 7:40 PM Hickey, Michael J. <MHickey@lewisrice.com wrote:

> Mark,
>
> Since your client is refusing to produce any documents responsive to my client's document requests, please let me know when you are available for a meet and confer regarding these requests. If we are unable to resolve our differences, we will be forced to file a motion to compel.
>
> Regards,
>
> Michael

LEWIS RICE
Michael J. Hickey
mhickey@lewisrice.com
600 Washington Avenue
Suite 2500
St. Louis, Missouri 63101-1311
314.444.7630 (direct)
314.612.7630 (fax)
www.lewisrice.com

From: Mark Gilbreth <jmark@gilbreth.org>
Sent: Thursday, January 17, 2019 7:26 PM
To: Hickey, Michael J. <MHickey@lewisrice.com>; IPDEPT <IDept@lewisrice.com>; Janoski, Frank B. <fjanoski@lewisrice.com>; Damman, Kirk A. <KDamman@lewisrice.com>; Hoy, Bridget <bhoy@lewisrice.com>; Siders, Benjamin J. <bsiders@lewisrice.com>; Durbin, Michael H. <MDurbin@lewisrice.com>
Subject: IQ's Response to First Set of Document Requests

EXHIBIT D

Michael,

Attached please find REGISTRANT IQ PRODUCTS'RESPONSES AND OBJECTIONS TO PETITIONER PRIME DIRECT BRAND'S FIRST SET OF DOCUMENT REQUESTS.

J. M. (Mark) Gilbreth

Gilbreth Roebuck, P.C.

6750 West Loop South, Suite 920

Bellaire, TX 77401

Offc: 713 667 1200 x 102

Cell: 713 503 5051

Secretary: joann.garcia@gilbreth.org

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EXHIBIT D

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