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

Proceeding	92071703
Party	Plaintiff Servi-Tek, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

Mark: SERV-TECH
Registration No. 5044774
Reg. Date: September 20, 2016

Servi-Tek, Inc.,	:	
	:	
Petitioner,	:	
	:	Cancellation No.: 92071703
v.	:	
	:	
Jimmy’s Contractor Services, Inc.,	:	
	:	
Respondent,	:	

**PETITIONER’S OPPOSITION TO JIMMY’S CONTRACTOR SERVICES, INC.’S
MOTION FOR SUMMARY JUDGMENT**

I. INTRODUCTION

Registrant Jimmy’s Contractor Services, Inc.’s (“Registrant”) Motion for Summary Judgment as to Count I-III (“Motion”) is based entirely on unsupported, false assertions that the SERV-TECH mark has been used in commerce continuously since 2015 Registrant has failed however to meet its burden on summary judgment to show there is no genuine issue of material fact as to Registrant’s use of the SERV-TECH mark. In fact, Registrant’s own evidence establishes that there has **not** been use in commerce of the SERV-TECH mark. As such, Registrant’s Motion should be denied in its entirety.

Registrant’s Motion only seeks summary judgment on three of Petitioner’s four grounds for cancellation. Therefore, contrary to Registrant’s assertion that granting its Motion would dismiss this action in its entirety, Petitioner’s Petition to Cancel would still proceed on Petitioner’s likelihood of confusion claim regardless of the outcome of this Motion. Any contention by Registrant that it was “unaware” of Petitioner’s fourth claim is belied by Registrant’s own words

and conduct in this proceeding. In the alternative, if the Board finds that Petitioner's likelihood of confusion claim should be clarified, Petitioner seeks leave to file an amended Petition to Cancel.

II. THERE ARE GENUINE ISSUES OF MATERIAL FACT THAT PRECLUDE SUMMARY JUDGMENT OF SERVI-TEK'S COUNTS I-III

A. Legal Standard

The purpose of summary judgment is to avoid an unnecessary trial by enabling an expeditious procedure whereby, *for issues on which there is no material factual dispute*, the Board can decide the controversy by applying the law to the undisputed facts. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 252 (1986). The party seeking summary judgment always bears the initial burden of informing the Board of the basis for its motion, and identifying those portions of the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, which it believes demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Catrett*, 477 U.S. 317, 324 (1986). *See also, Adickes v. S.H. Kress & Co.*, 398 U.S. 144, 157 (1970) (unless movant meets initial burden, summary judgment must be denied even if no opposing evidentiary matter is presented). The summary judgment burden is a heavy burden, and cannot be met with equivocal evidence. *BBS Norwalk One, Inc. v. Raccolta, Inc.*, 117 F.3d 674, 677 (2d Cir. 1997). All evidence must be viewed in the light most favorable to the party opposing the motion, and reasonable inferences made in favor of the non-movant. *Simms v. Oklahoma ex rel. Department of Mental Health and Substance Abuse Services*, 165 F.3d 1321, 1326 (10th Cir. 1999). If and only if the movant meets its initial burden does the burden shift to the non-movant to set out specific facts showing a genuine issue for trial. *See, e.g., Saab Cars USA, Inc. v. United States*, 434 F.3d 1359, 1368 (Fed. Cir. 2006). Indeed, the Federal Circuit has cited the principle that a non-movant is required to provide opposing evidence under Rule 56(e) only if the moving party has provided evidence sufficient, if unopposed, to prevail as a matter of law. *Id.* at 1369.

Registrant's motion for summary judgment as to abandonment, fraud and nonuse is wholly unsupported by sufficient evidence to meet its initial burden that there is no genuine issue of

material fact as to Registrant's use of the SERV-TECH mark, and its motion should be denied in its entirety.

B. The Board Should Deny Registrant's Motion for Summary Judgment Due To Registrant's Failure to Establish There Is No Genuine Issue of Material Fact Regarding Its Continuous Use in Commerce of the SERV-TECH Mark

The entire basis of Registrant's Motion is that it used the SERV-TECH mark both before its claimed date of first use (July 31, 2015) and continuously thereafter. 17 TTABVue 5. It is Registrant's burden to establish that there is no genuine issue of material fact as to its use of the SERV-TECH mark. Yet, none of Registrant's proffered documentary evidence supports Registrant's assertions that it has continuously used the SERV-TECH mark.

Registrant's evidence fails to establish use in commerce of the SERV-TECH mark in connection with "Roofing services; Roofing consultation; Roofing contracting; Roofing installation; Roofing repair; Roofing services, namely, waterproofing," as identified in U.S. Registration No. 5044774 ("Registrant's Services"). Registrant, as the party moving for summary judgment to dismiss the claims, must establish continuous use of its mark for all of the Registrant's Services. *DLR Licensing, LLC v. Carnival Corporation*, 2014 WL 5788061, at *5 (Oct. 22, 2014). The Lanham Act is clear that a mark for services is "used in commerce" only when *both* [1] "it is used or displayed in the sale or advertising of services *and* [2] the services are rendered in more than one State...." 15 U.S.C. § 1127. Registrant has not provided evidence to establish either requirement.

1. Registrant's Evidence Fails to Establish Use of the SERV-TECH Mark in Connection with Registrant's Services.

In order to constitute service mark use, a mark must be used in a manner that would be perceived by the relevant public as identifying the specified services and indicating their source. *See In re Advertising & Marketing Development Inc.*, 821 F.2d 614, 2 USPQ2d 2010, 2014 (Fed. Cir. 1987) (it is implicit in the statutory definition of a service mark that a service mark be used to identify the named services for which registration is sought and to indicate the source of

the services). It is not enough to provide the services; the mark must also be displayed “in the sale or advertising of [the] services” in such a way as to identify and distinguish the named services. Trademark Act Section 45, 15 U.S.C. § 1127; *In re Advertising & Marketing Development Inc.*, 2 USPQ2d at 2014.

With regard to Petitioner’s claims that Registrant has never used or has ceased using the SERV-TECH mark, Registrant boldly asserts that “no facts support Petitioner’s theory; to the contrary, the evidence of records shows that Registrant used the SERV-TECH mark, in commerce in 2015, 2016, 2017, 2018, 2019, 2020 and now in 2021.” 17 TTABVUE 9. Registrant provides the declaration of Jim Stroh (hereinafter referred to as “Stroh Decl.”) and Exhibits A-G in support thereof. 17 TTABVUE 85. The evidence Registrant provided, however, shows there is a genuine dispute of material fact as to Registrant’s use of the mark. Specifically, the documentary evidence establishes that between May 8, 2015 and July 3, 2019 (when this action was commenced) there was no use in commerce of the SERV-TECH mark in connection with Registrant’s Services.

2015

Registrant’s claimed use of the SERV-TECH mark in 2015 relies entirely upon documentary evidence that either (1) shows no use of the mark in association with the Registrant’s Services, (2) is undated, or (3) is unsupported by any testimonial evidence that the documents were ever provided to consumers of Registrant’s Services.

- **Truck Decals.** In support of its newly claimed first use date of May 8, 2015, Registrant points the Board to photographs of two trucks bearing SERV-TECH decals. *See*, Stroh Decl., Exs. A at JCS_9, JCS_139, JCS_428 and C at JCS_135. These photographs are insufficient to establish use in commerce because they fail to include any information associating the SERV-TECH mark with Registrant’s Services. *In re Universal Oil Prods. Co.*, 476 F.2d 653, 655 (C.C.P.A. 1973) (“The minimum requirement is some direct association between the offer of services and the mark sought to be registered therefor.”)

- **Promotional T-Shirts and Mugs.**¹ Registrant also includes multiple *undated* photographs of promotional shirts and a *mock-up* of a promotional mug. *See*, Stroh Decl., Exs. B and C.

The *undated* photographs of promotional shirts do not established use of the SERV-TECH mark in connection with Registrant’s Services. First, the shirts depicted in the *undated* photographs (JCS_143, JCS_148-149) are not the same as the mock-up shirts attached to the dated 2015 invoices (JCS_157, JCS_010). As such, there is no support for the assertion these shirts were created, let alone used, in 2015. The only dated photographs provided by Registrant do not clearly show the SERV-TECH mark on the shirt. (JCS_448, JCS_429). Second, the use of the SERV-TECH mark on shirts is not sufficient to show use of the SERV-TECH mark in connection with Registrant’s Services. *In re WAY Media, Inc.*, 118 USPQ2d 1697, 1698 (TTAB 2016) (“A specimen that shows only the mark with no reference to, or association with, the services does not show service mark usage.”) Third, Registrant’s assertion that these shirts are “uniforms” is wholly unsupported, especially where the shirts were allegedly sourced from “NBS *Promos*” and according to the provided invoice were ordered in bulk, which is more indicative of promotional items than company uniforms. (JCS_453). Moreover, the only photographs showing the shirts on a person, depict men in casual (not work-related) settings and attire. (JCS_448, JCS_429).

The *mock-ups* of promotional mugs likewise fail to establish use in that they do not show the mark in connection with Registrant’s Services. *See In re Chica*, 84 USPQ2d 1845, 1848 (TTAB 2007) (holding that “a mere drawing of the goods with an illustration of how the mark may be displayed” was not an acceptable specimen because it did not show actual use in commerce); *In re The Signal Cos.*, 228 USPQ 956, 957-58 n.4 (TTAB 1986) (noting that a printer’s proof of an advertisement would not be an acceptable specimen because it is does not show actual use in commerce).

- **Business Cards.** Registrant’s reliance on *undated* photographs of a business card with the SERV-TECH mark, without any other corroborating evidence that they were used (or even printed) in 2015, is insufficient to show use of the SERV-TECH mark in connection with Registrant’s Services. *See*, Stroh Decl., Ex. C. *See, Conan Doyle Est., Ltd. v. The Sherlock Holmes Memorabilia Company Ltd.*, 2014 WL 11033093, at *6 (Aug. 28, 2014)(holding that an undated photograph of a CD bearing the mark, with no evidence as to if, or how, the CD was sold to US consumers was insufficient to support allegations of use).
- **Domain Name and Website.** Registrant’s reference to its purchase of the serv-tech.com domain name also does not constitute use of the SERV-TECH mark in connection with Registrant’s Services. *Brookfield Communications, Inc. v. West*

¹ Registrant claims its mark was used on “promotional car chargers,” however, there is no documentary evidence showing use of the SERV-TECH mark on these items. Nevertheless, as mentioned above, any such use would more than likely be insufficient to show service mark use. 17 TTABVUE 10.

Coast Entertainment Corp., 174 F.3d 1036, 50 USPQ2d 1545, 1556 (9th Cir. 1999) (registration of a domain name does not by itself constitute use for purposes of establishing priority of use). In fact, Registrant concedes that the domain was redirected to its Jimmy's Roofing website until November of 2019-- months after the commencement of this proceeding. *See* 17 TTABVUE 9. Moreover, other than Registrant's unsupported assertion that the SERV-TECH mark appeared on the jimmysroofing.com website, there is no supporting evidence showing such use or how the mark was associated with Registrant's Services.

- **Promotional Brochure.** Registrant also attempts to corroborate its claim of use in 2015 with an *undated* brochure void of any testimonial information as to if, or how, the brochure was distributed to consumers. *See*, Stroh Decl., Ex. C. This insufficient to support claimed use in commerce of the SERV-TECH mark in 2015. *See*, *Conan Doyle Est., Ltd.*, 2014 WL 11033093, at *6.

Registrant's evidence not only fails to show use of the SERV-TECH mark on or before its claimed date of first use (July 31, 2015), but also fails to establish that there was any use of the mark during *the entirety of 2015*.

2016

Registrant's proffered evidence of use in 2016 is likewise deficient. 17 TTABVUE 10. As identified above, *undated* photographs showing the SERV-TECH mark placed on vehicles without any additional information associating the mark with Registrant's Services is not service mark use. Stroh Decl., Ex. D. Additionally, invoices for *internal* coaching services from a third-party in no manner establishes use of the SERV-TECH mark for Registrant's Services. *Id.* (JCS_0413-JCS_0415); *City National Bank v. OPGI Management GP Inc./Gestion OPGI Inc.*, 106 USPQ2d 1668, 1676-78 (TTAB 2013) (internal use of mark by applicant did not constitute use in commerce)

2017

Similarly, Registrant's evidence of use for 2017 fails to establish that there is no genuine use of material fact as to the use of the SERV-TECH mark. 17 TTABVUE 10. Registrant again provides *undated* photographs of decals on vehicles, which as previously addressed are insufficient because there is no association between the SERV-TECH mark and Registrant's Services. Registrant's *internal* "Technical Services Manual" also fails to establish use of the SERV-TECH

mark. Stroh Decl., Ex. E. at JCS_091-113. First, Registrant does not claim (nor could it) that this *internal* training manual was ever provided to Registrant’s consumers. As such, the manual does not establish use of the SERV-TECH mark in selling or advertising Registrant’s Services. *City National Bank*, 106 USPQ2d at 1676-78. Second, this is a *draft* manual, as indicated by the attachment entitled “SERV-TECH Technical Services Manual (Working Copy).docx” shown at the bottom of the accompanying email. Stroh Decl., Ex. E. at JCS_089-90. As such, there is no indication the manual was ever actually used by Registrant in any manner. In fact, Registrant itself only attests that the manual was “created”—not used—in 2017. Stroh Decl., ¶ 10.

2018

Registrant’s evidence of use for 2018 is also insufficient to show use. 17 TTABVUE 10. As previously addressed, *undated* photographs of vehicle decals and pictures of promotional shirts are insufficient to establish use of the SERV-TECH mark for Registrant’s Services. Registrant next attempts to direct the Board to its alleged use of “serv-tech.com email addresses” in 2018. The provided evidence, however, only shows the *creation* of a gmail address. Stroh Decl., Ex. F at JCS_114. The evidence does not establish that the email address was ever used in connection with providing Registrant’s Services. Similarly, Registrant’s reliance upon the use of “serv-tech” in the signature line of two emails also is deficient. *Id.* at Ex. F. The first email, addressed to an individual named Edward, seeks information about *Edward’s “area of expertise.”* *Id.* at JCS_412. The second email, addressed to an individual named James at “Your Franchise Success,” also seeks information about *James’ business.* *Id.* at JCS_154. Neither of these emails discuss Registrant’s Services, nor were they received by consumers regarding Registrant’s Services. As such, the use of “serv-tech” in the signature line does not establish use of the SERV-TECH mark. Finally, despite both emails *post-dating* the creation of the “serv-tech.com email addresses,” Registrant did not use the email address for either communication, which strongly indicates the email address was in fact never used.

2019

This proceeding was initiated on July 3, 2019; therefore, any evidence of claimed use of the SERV-TECH mark after this date should be viewed for what it is— perfunctory use in an attempt to defend against cancellation. 1 TTABVUE. The only evidence Registrant provides to corroborate any claimed use in 2019, predating the commencement of this proceeding, are two emails from April-May of 2019 discussing a *draft* signature block incorporating the SERV-TECH mark. 17 TTABVUE 11; Stroh Decl., Ex. G at JCS_0043. Not only are “mock-ups” insufficient to show use of a mark, but these are *internal* emails between Registrant’s employees. Thus, these emails are incapable of establishing use in commerce of the mark in connection with Registrant’s Services.

Registrant’s evidence *post-dating* the July 3, 2019 commencement of this proceeding, even if considered, still fails to show use of SERV-TECH mark in connection with Registrant’s Services. Stroh Decl., Ex. G. For the same reasons previously discussed, vehicle decals, promotional shirts, and mock-ups of promotional flashlights are insufficient to show use of the SERV-TECH mark. *See, e.g.*, Stroh Decl., Ex. G at JCS_34 JCS_0047, JCS_116-117, JCS_119-121, JCS_140, JCS_409. Additionally, the Board should disregard Registrant’s screen captures of purported social media pages and websites due to Registrant’s failure to properly authenticate these documents. Stroh Decl., Ex. at JCS_044-046, JCS_054-56, JCS_129-130, JCS_436. Registrant submits these documents without any statement within the supporting declaration establishing their admissibility, as required by the Federal and TTAB rules, and should not be considered by the Board. *See, e.g.*, TBMP § 528.05(a), 528.05(b). Specifically, neither the supporting declaration of Jim Stroh, nor the documents themselves identify the date the screen captures were taken, who took them, or when the SERV-TECH mark was added to the identified websites or social media pages.

2. Registrant Has Failed To Offer Any Evidence Establishing That It Has Rendered Services In Connection With The SERV-TECH Mark

Even if the proffered documentary evidence were considered to be proper advertising or promotional material for Registrant's Services, "[t]he mere use of a trademark in the advertising or promotion of goods in the United States is insufficient to constitute use of the mark in commerce, within the meaning of the Trademark Act[.]" *Clorox Co. v. Salazar*, 108 USPQ2d 1083, 1086 (TTAB 2013). The advertising or promotion must be accompanied by the actual rendering of services in commerce. *Id.*; *Cf. Couture v. Playdom*, 113 USPQ2d 2042, 2043-44 (Fed. Cir. 2015) (merely offering a service, without actually providing it, does not constitute use in commerce).

Registrant points the Board to nearly 220 pages of invoices that it claims are for "services performed under, and in connection with, the SERV-TECH mark". *See*, Stroh Decl., ¶ 17, Ex. I. However, *not a single invoice* actually includes the SERV-TECH mark, or mentions "serv-tech" in any manner. In fact, the header and footer of each invoice only identifies "Jimmy's Roofing" with information that checks can be made payable to "Jimmy's Roofing." During the discovery deposition of Registrant, Mr. Stroh confirmed the SERV-TECH mark has *never* been used on invoices. Declaration of Meghan C. Killian ("Killian Decl.), Ex.A at 14:1-8. These invoices fail to establish that Registrant has actually provided Registrant's Services in connection with the SERV-TECH mark. No other evidence was provided. Mr. Stroh also confirmed that Registrant does not have any consumer contracts for Registrant's Services bearing the SERV-TECH mark. *Id.* at 13:13-20. As such, Registrant has not met its burden of showing that there is no genuine issue of material fact.

In sum, the very evidence provided by Registrant to support its assertion that the SERV-TECH mark has been in continuous use since May of 2015, indicates the exact opposite. The proffered evidence establishes that any claimed "use" of the SERV-TECH mark prior to the commencement of this proceeding in June 2019 was *not* use in commerce of a service mark as defined by the Lanham Act. To the extent, the Board finds sufficient use of the mark in advertising

and promotional materials *after the commencement* of this proceeding, Registrant has still failed to establish that it has actually rendered services in connection with the SERV-TECH mark in interstate commerce. As such, there is a genuine issue of material fact as to Registrant's claim of continuous use in commerce of the SERV-TECH mark in connection Registrant's Services.

III. EVEN IF, THE BOARD GRANTS REGISTRANT'S MOTION FOR SUMMARY JUDGMENT, PETITIONER'S PETITION TO CANCEL IS *NOT* DISMISSED IN ITS ENTIRETY BUT PROCEEDS ON THE LIKELIHOOD OF CONFUSION CLAIM

Registrant requests the Board grant its Motion as "to all counts and dismiss Petitioner's Petition for Cancellation in its entirety." 17 TTABVUE 14. Registrant fails, however, to address Petitioner's likelihood of confusion claim. 1 TTABVUE. As such, even if, the Board grants Registrant's Motion, the proceeding will continue solely as to likelihood of confusion. In recent correspondence relating to Registrant's Motion, Registrant has feigned ignorance as to this remaining count; however, as shown by the pleading and the parties prior statements and conduct, Registrant has been not only been provided fair notice of this basis for cancellation but proceeded with extensive discovery accordingly.

In order to properly state a claim of likelihood of confusion, Petitioner must plead that (1) Respondent's mark, as applied to its services, so resembles Petitioner's mark as to be likely to cause confusion, mistake or deception; and (2) Petitioner has either priority of use or a federal registration for its pleaded mark. *See* Fed. R. Civ. P. 8(a); *King Candy Co. v. Eunice King's Kitchen, Inc.*, 496 F.2d 1400 (CCPA 1974).

The Board has held that the content of the ESTTA cover sheet is read in conjunction with the petition to cancel as an integral component. *PPG Indus., Inc. v. Guardian Indus. Corp.*, 73 USPQ2d 1926, 1928 (TTAB 2005) (noting that Board views ESTTA filing form and any attachments thereto as comprising single document). Here, Petitioner not only identified "Priority and likelihood of confusion, Trademark Act Sections 14(1) and 2(d)" as grounds for cancellation on the ESTTA cover sheet, but also included specific allegations within the attached Petition to

Cancel to support the claim. Specifically, the Petition to Cancel includes the following allegations as to priority and likelihood of confusion:

Priority

3. Since as early as January 2006 Petitioner has continuously advertised, promoted, offered to render, and rendered janitorial cleaning services in connection with the mark SERVI-TEK.
4. Petitioner has been used the mark SERVI-TEK in interstate commerce since as early as March 2006 and received federal registration for SERVI-TEK in August 2007 (Registration No. 3,273,571) for use in conjunction with “Janitorial and building maintenance services.”
13. Registrant’s application subsequently registered on September 20, 2016, as Registration No. 5,044,774, listing July 31, 2015 as the date of first use in commerce. A copy of the Registration is attached as Exhibit 2.

Likelihood of Confusion

14. Petitioner’s mark SERVI-TEK and Registrant’s mark SERV-TECH, while different in appearance, are similar in sound and meaning.
15. Use of SERV-TECH by Registrant for the goods listed in Registration No. 5,044,774 is likely to confuse and deceive consumers into thinking that the goods and/or services offered thereunder are affiliated with, authorized or sponsored by, or connected with Petitioner and/or Petitioner’s goods and/or services.

1 TTABVue at ¶¶ 3-4, 13-15.

The Board has previously found that “[i]nasmuch as Petitioner alleges that its mark was in use ‘prior to the filing of the application for Respondent’s registration and prior to Respondent’s adoption of the mark’ and that use of Respondent’s mark ‘is likely to cause confusion or mistake in the market,’ the ground is properly pleaded.” *Irun & Company, LLC v. Jamie Mastoianni*, 2016 WL 6833522 (TTAB 2016). Petitioner’s allegations far exceed that threshold.²

For the duration of this proceeding, both parties have conducted discovery with full knowledge of Registrant’s claim based on likelihood of confusion. As such any feigned ignorance by Petitioner is belied by Petitioner’s own statements and the discovery conducted during this proceeding, including but not limited to the following:

² While the Petition to Cancel does not include a Count heading for Petitioner’s likelihood of confusion claim, the Board has previously held that separate headings are not required where the claim is properly pled. *Columbia Ins. Co., v. Appalachian Trail Conservancy*, 2013 WL 3191224, at *2 (May 20, 2013).

- Registrant's First Set of Interrogatories were almost solely focused on likelihood of confusion, such as the selection and creation of Petitioner's mark, the identification of Petitioner's services, the first use in commerce date for each good or service provided in connection with Petitioner's mark, knowledge of any third-party use or registration of Petitioner's mark, enforcement efforts of Petitioner's mark, advertising expenditures for Petitioner's mark, identity of person's with knowledge of the selection and use of Petitioner's mark, instances of actual confusion, identify of any advertising agencies used to promote Petitioner's mark, plans to expand the use of Petitioner's mark, and trade channels that Petitioner has offered its goods or services. Killian Decl., ¶ 3, Ex. B.
- Registrant's First Set of Requests for Product also were almost solely focused on likelihood of confusion such as requests for documents referring to the selection and creation of Petitioner's mark, Petitioner's online marketplace, how Petitioner's mark is used on each service, advertising or promoting Petitioner's mark, all goods or services sold or offered in connection with Petitioner's mark, channels of trade Petitioner has used to offer its services under Petitioner's mark, target consumers of Petitioner's goods and services, marketing channels used to advertise Petitioner's goods and services, marketing plans, actual confusion, maintenance of Petitioner's prior trademark registration, and agreements or contracts with any third-party regarding the use of Petitioner's mark. Killian Decl., ¶ 4, Ex. C.
- Petitioner's First and Second Sets of Interrogatories also requested information regarding likelihood of confusion, such as the selection and creation of Registrant's mark, marketing channels used by Registrant, actual confusion, goods and services offered or sold in connection with Registrant's mark, target consumers, and marketing and advertising expenditures. Killian Decl., ¶ 5, Ex. D.
- Petitioner's First and Second Set of Requests for Product also requested documents regarding likelihood of confusion, such as documents referring to the selection and creation of Registrant's mark, marketing channels used by Registrant, marketing and advertising materials, goods and services offered or sold in connection with Registrant's mark, geographic region Registrant has offered its services in connection with Registrant's mark, price-point of Registrant's services, marketing and advertising expenditures, and actual confusion. Killian Decl., ¶ 6, Ex. E.
- Petitioner's Notice of Deposition of Registrant, pursuant to Fed. Rule 30(b)(6), identified as a topic to be discussed: The likelihood of confusion between use of Petitioner's SERVI-TEK mark and Respondent's SERV-TECH mark, including, but not limited to, the similarity of the two marks in terms of appearance, sound and meaning; the relatedness of the services provided or intended to be provided under the respective marks; the similarity of the established or intended channels of trade; the similarity of purchasers or intended purchasers of the services provided or intended to be provided under the marks; the similarity of marketing, advertising and promotion of the marks or intended marketing, advertising and promotion of the marks and the services provided thereunder; any similarity in terms of the

conditions of purchase for the services marketed or intended to be marketed under the respective marks; the degree of consumer care in making purchasing decisions for the services at issue and the sophistication of the consumers or intended consumers. Killian Decl., ¶ 7, Ex. F.

- On November 13, 2020, *more than three months before discovery closed*, Petitioner responded to Registrant’s First Set of Interrogatories, wherein it stated in response to multiple interrogatories: “the sole issues in this proceeding are Registrant’s right to a registration in Registrant’s Mark given Petitioner’s ***allegations of likelihood of confusion with Petitioner’s Mark***, Registrant’s fraud on the USPTO and abandonment of Registrant’s Mark.” Killian Decl., ¶ 8, Ex G (emphasis provided).
- On December 16, 2020, *more than two months before discovery closed*, Registrant sent meet and confer correspondence to Petitioner acknowledging that Petitioner is “alleging likelihood of confusion.” Killian Decl., ¶ 8, Ex. H.

IV. In the Alternative, Petitioner Seeks Leave To Amend Its Petition to Cancel To Plead Count IV Based on Likelihood of Confusion

As addressed above, Petitioner’s claim based on likelihood of confusion was not only properly pled within the Petition to Cancel, but both parties’ conduct during discovery clearly establishes that Respondent was on notice of Petitioner’s claim. Nevertheless, if the Board finds the claim not sufficiently clear within the Petition to Cancel, Petitioner seeks leave to file an amended petition.

Amendments of pleadings in a cancellation proceeding are governed by 37 C.F.R. § 2.115, which provides:

Amendment of pleadings in a cancellation proceeding. Pleadings in a cancellation proceeding may be amended in the same manner and to the same extent as in a civil action in a United States District Court.

Fed. R. Civ. P. 15(a), concerning amendments before trial, provides in relevant part:

[A] party may amend its pleadings only with the opposing party's written consent or the court's leave. **The court should freely give leave when justice so requires.**

Fed. R. Civ. P. 15(a)(2) (emphasis added); see also TBMP § 507.02.

A proposed amendment may serve simply to amplify allegations already included in the moving party’s pleading, as is the case here. *See e.g. The Delta W. Grp., L.L.C.*, No. 92030817,

2006 WL 2558858, at *3 (Aug. 23, 2006); *Choice First Distribution, LLC*, No. CANCELLATION 9204411, 2006 WL 7275708, at *2 (May 9, 2006). It is well settled that the Board liberally grants leave to amend pleadings at any stage of the proceedings when justice so requires, unless entry of the proposed amendment would violate settled law or be prejudicial to the rights of the adverse party. *See, e.g., Karsten Mfg. Corp. v. Editoy BV*, 79 U.S.P.Q.2d 1783, 1786 (TTAB 2007); *Glad Prods. Co. v. Illinois Tool Works Inc.*, 62 U.S.P.Q.2d 1538, 1540 (TTAB 2002).

For the avoidance of any doubt as to Petitioner's claims, Petitioner seeks to amend its Petition to Cancel to further delineate its claim based on likelihood of confusion. There is no danger of prejudice to Registrant and the proposed amendment does not violate settled law. The "new" claim would be based entirely upon the discovery already conducted by both sides in this proceeding; therefore, additional discovery is not necessitated by the additional claim. Registrant has conducted *extensive* discovery regarding Petitioner's allegations of likelihood of confusion. Moreover, Registrant has responded to discovery regarding the same and acknowledged Petitioner's allegations in prior correspondence.

Attached to the Killian Decl. at Exhibit I is a copy of Petitioner's proposed Amended Petition to Cancel (without exhibits) redlined to show Petitioner's proposed changes, together with a signed, clean copy, including exhibits, at Exhibit J.

V. CONCLUSION

For the foregoing reasons, Petitioner respectfully submits that there are genuine issues of material fact, and Registrant's Motion should be denied in its entirety. If the Board is inclined to grant the Motion, Petitioner's Petition to Cancel should proceed on the basis of likelihood of confusion, which was unaddressed within the Motion. In the alternative, Petitioner requests leave to amend the Petition to Cancel to clarify its claim based on likelihood of confusion.

Dated: April 9, 2021

Respectfully submitted,

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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that on April 9, 2021 a true and complete copy of the foregoing **OPPOSITION TO REGISTRANT'S MOTION FOR SUMMARY JUDGMENT** has been served by e-mail to the following e-mail address of record for Respondent's counsel:

RHETT V BARNEY
LEE & HAYES PC
601 W RIVERSIDE AVENUE, SUITE 1400
SPOKANE, WA 99201
rhettb@leehayes.com

/Meghan C. Killian/
Meghan C. Killian

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

Mark: SERV-TECH
Registration No. 5044774
Reg. Date: September 20, 2016

Servi-Tek, Inc.,	:	
	:	
Petitioner,	:	
	:	Cancellation No.: 92071703
v.	:	
	:	
Jimmy's Contractor Services, Inc.,	:	
	:	
Respondent,	:	

**DECLARATION OF MEGHAN C. KILLIAN IN SUPPORT OF PETITIONER'S
OPPOSITION TO MOTION FOR SUMMARY JUDGMENT**

I, Meghan C. Killian, declare as follows:

1. I am an attorney at Duane Morris LLP, the firm representing Petitioner Servi-Tek, Inc. I have personal knowledge of the facts set forth herein and will testify competently to the truth of the same if requested.

2. Attached hereto as **Exhibit A** is a true and correct copy of an excerpt (pgs. 13-14) of the deposition transcript of Jim Stroh, Jimmy's Contractor Services, Inc.'s Rule 30(b)(6) deponent. The deposition occurred on February 23, 2021 and I was in attendance.

3. Attached hereto as **Exhibit B** is a true and correct copy of Registrant's First Set of Interrogatories, dated March 17, 2020, with a Certificate of Service on Petitioner's counsel dated March 17, 2020.

4. Attached hereto as **Exhibit C** is a true and correct copy of Registrant's First Set of Requests for Production, dated March 17, 2020, with a Certificate of Service on Petitioner's counsel dated March 17, 2020.

5. Attached hereto as **Exhibit D** are true and correct copies of Petitioner's First Set of Interrogatories, dated March 3, 2020, with a Certificate of Service on Registrant's counsel dated March 3, 2020, and Second Set of Interrogatories, dated December 23, 2020, with a Certificate of Service on Registrant's counsel dated December 23, 2020.

6. Attached hereto as **Exhibit E** are true and correct copies of Petitioner's First Set of Requests for Production, dated March 3, 2020, with a Certificate of Service on Registrant's counsel dated March 3, 2020, and Second Set of Interrogatories, dated December 23, 2020, with a Certificate of Service on Registrant's counsel dated December 23, 2020.

7. Attached hereto as **Exhibit F** is a true and correct copy of Petitioner's Notice of Deposition of Registrant, dated January 27, 2021, with a Certificate of Service on Registrant's counsel dated January 27, 2021.

8. Attached hereto as **Exhibit G** is a true and correct copy of Petitioner's Responses to Registrant's First Set of Interrogatories, dated November 13, 2020, with a Certificate of Service on Registrant's counsel dated November 13, 2020.

9. Attached hereto as **Exhibit H** is a true and correct copy of a correspondence I received on December 16, 2020, via email, from Registrant's counsel Rhett V. Barney at Lee & Hayes, P.C.

10. Attached hereto as **Exhibit I** is Petitioner's proposed Amended Petition to Cancel with redlines to show Petitioner's proposed changes.

11. Attached hereto as **Exhibit J** is a signed, clean copy of Petitioner's proposed Amended Petition to Cancel.

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

DATED this 9th day of April, 2021 at San Francisco, California.

/Meghan C. Killian/

Meghan C. Killian

EXHIBIT A

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

Servi-Tek, Inc.,)
)
Petitioner,)
) Cancellation No.: 92071703
vs.) Registration No. 5044774
)
Jimmy's Contractor Services,)
Inc.,)
)
Respondent.)
_____)

PORTIONS OF THIS TRANSCRIPT ARE DESIGNATED
ATTORNEYS' EYES ONLY

DEPOSITION OF JIM STROH
Spokane, Washington
Tuesday, February 23, 2021
Volume I

Reported by:
ELAINE SMITH, RMR
CSR No. 5421
Job No. 4445997
PAGES 1 - 74
PAGES 51-58, 65-68 ARE DESIGNATED ATTORNEYS' EYES ONLY AND
BOUND SEPARATELY

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

Servi-Tek, Inc.,)
)
Petitioner,)
) Cancellation No.: 92071703
vs.) Registration No. 5044774
)
Jimmy's Contractor Services,)
Inc.,)
)
Respondent.)
_____)

Deposition of JIM STROH, Volume I, taken on
behalf of Petitioner, by videoconference/
teleconference, all parties, the witness, and court
reporter attending remotely, beginning at 9:33 a.m.
and ending at 12:18 p.m. on Tuesday, February 23,
2021, before ELAINE SMITH, RMR, Certified Shorthand
Reporter No. 5421.

1 APPEARANCES (By Videoconference):

2

3 For Petitioner:

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6 750 B Street, Suite 2900

7 San Diego, California 92101-4681

8 (619) 744-2219

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10

11 DUANE MORRIS LLP

12 BY: MEGHAN KILLIAN, ESQ.

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14 San Francisco, California 94105-1127

15 (415) 957-3138

16 mckillian@duanemorris.com

17

18 For Respondent:

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20 BY: CALEB HATCH, ESQ.

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22 Spokane, Washington 99201

23 (509) 324-9256

24 caleb.hatch@leehayes.com

25

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INDEX

WITNESS EXAMINATION
JIM STROH
Volume I

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BY MR. HATCH 69

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1 company has produced in this case that were captured
2 from the Internet Archive?

3 A Perhaps some of the images of our website that
4 came from our web developer came from there.

5 Q So all the -- all the Internet Archive images
6 that you produced came from your web developer?

7 A I wouldn't say all of them, but any that came
8 from that service would have been from there.

9 Q Okay. And who is your web developer?

10 A Social Power.

11 Q It's a third-party web developer?

12 A Yes.

13 Q One of our requests for production of documents
14 sought consumer contracts for your roofing services,
15 consultation, contracting, and installation and repair
16 services that include the Serv-Tech mark. Now, no
17 documents were actually produced in response to that
18 request. Can you please confirm that the Serv-Tech mark
19 has not been used on any customer contract?

20 A Yes, I can confirm that.

21 Q We also requested company invoices for your
22 services, one per month from May 2015 to the present,
23 that include the Serv-Tech mark. Did you produce any
24 invoices in response to this request?

25 A Yes.

1 Q Did any of the invoices that you provided
2 include the Serv-Tech mark?

3 A No.

4 Q And can you confirm that the Serv-Tech mark has
5 not been used on any invoices?

6 A To my knowledge, yes.

7 Q Yes, you're confirming they have not been used?

8 A Yes, to my knowledge.

9 Q Okay. I want to go back to our requests for
10 admission. You previously indicated that you helped
11 prepare responses to those requests. Did anybody else
12 at the company assist in preparing those responses?

13 A Could you repeat the question?

14 Q When -- you previously testified that you
15 helped prepare responses to our requests for admissions.
16 Did anybody else provide any information in response to
17 those requests for admission?

18 A Yes, they did.

19 Q Who else helped provide information for those
20 responses?

21 A I don't recall all that would have been
22 involved, but I reached out in different requests and
23 different ways trying to gather information. I don't
24 recall all the people.

25 MS. DONOVAN: Okay. I'm going to introduce as

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I, the undersigned, a Certified Shorthand Reporter of the State of California, do hereby certify:

That the foregoing proceedings were taken before me at the time and place herein set forth; that any witnesses in the foregoing proceedings, prior to testifying, were administered an oath; that a record of the proceedings was made by me using machine shorthand which was thereafter transcribed under my direction; that the foregoing transcript is a true record of the testimony given.

Further, that if the foregoing pertains to the original transcript of a deposition in a federal case, before completion of the proceedings, a review of the transcript [X] was [] was not requested.

I further certify I am neither financially interested in the action nor a relative or employee of any attorney or any party to this action.

IN WITNESS WHEREOF, I have this date subscribed my name.

Dated: 3/12/2021




ELAINE SMITH, RMR
CSR No. 5421

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I, JIM STROH, do hereby declare under penalty of perjury that I have read the foregoing transcript; that I have made any corrections as appear noted, in ink, initialed by me, or attached hereto; that my testimony as contained herein, as corrected, is true and correct.

EXECUTED this 8th day of April,
2021, at Spokane Valley, WA.
(City) (State)



JIM STROH
Volume I

EXHIBIT B

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

In the Matter of Registration No. 5,044,774

Servi-Tek, Inc.

Petitioner,

v.

Jimmy's Contractor Services, Inc.

Registrant.

Cancellation No. 92071703
Registration No. 5044774

**REGISTRANT JIMMY'S CONTRACTOR SERVICES, INC.'S FIRST SET OF
INTERROGATORIES TO PETITIONER SERVI-TEK, INC.**

Pursuant to 37 C.F.R. § 2.120, TBMP § 405, and Fed. R. Civ. P. 33, Registrant Jimmy's Contractor Services, Inc. ("Registrant"), hereby serves the following interrogatories upon Petitioner, Servi-Tek, Inc. ("Petitioner"), to be answered under oath within thirty (30) days of service.

DEFINITIONS AND INSTRUCTIONS

1. These interrogatories are continuing in nature and, pursuant to Rule 26 of the Federal Rules of Civil Procedure, Petitioner has a duty to supplement its answers promptly upon obtaining or learning of further responsive information.

2. The answer to each interrogatory shall include such knowledge or information as is within Petitioner's possession, custody, or control including, but not limited to, knowledge, information and documents in the possession, custody, or control of Petitioner's officers, directors, accountants, consultants, attorneys, or other agents or representatives.

3. The answers to interrogatories must be furnished separately and fully in writing under oath or verification by Petitioner declaring, under penalty of perjury, that the answers are true and accurate to the best of its current knowledge, information, and belief. If an answer depends upon the knowledge of a person other than the person signing the answers, each such person should be identified in the answer.

4. The answers shall include the knowledge of Petitioner's representatives and agents including, but not limited to, its consultants, accountants, and attorneys.

5. If an objection is raised to all or any part of an interrogatory, state the grounds of the objection with sufficient specificity to permit determination of the basis for and propriety of such objection, including citations where legal authority is relied upon, and answer to the extent the interrogatory or document request is not objectionable. All objections shall be signed by the attorney making them.

6. All answers and objections to interrogatories shall be made within thirty (30) days of the service of these interrogatories in writing.

7. Petitioner shall not refer to documents generally in lieu of answering; if the burden upon you of deriving an answer from documents is the same as it is upon Registrant, you may elect to refer to documents which are specifically identified from which the response may be readily obtained. Such a response constitutes a representation under oath by you and your counsel that, after reasonable investigation, those conditions have been met.

8. The full text of the interrogatory (or part thereof) to which any answer is intended to respond is to be restated immediately preceding such answer.

9. If at any time, you obtain knowledge that the answer given in response to any interrogatory was not correct when given or is no longer correct, a statement in writing under

penalty of perjury consisting of the correct answer to such interrogatory shall be promptly provided.

10. If you contend that any item of information requested by the interrogatories is privileged, in whole or in part, as a ground for its non-production or non-disclosure, for each alleged privileged item or document, provide all information required by Rule 26 of the Federal Rules of Civil Procedure and relevant case law.

11. The term “Petitioner” shall mean Servi-Tek, Inc. and any present or former officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor or successor either within the United States or a foreign country.

12. The term “Registrant” shall mean Jimmy’s Contractor Services, Inc. and any present or former officer, director, employee, servant, agent, attorney or other representative acting on its behalf, and shall include any predecessor or successor either within the United States or a foreign country.

13. The terms “you” and “your” shall mean the party or person to whom this Request is propounded, all agents, employees, servants, attorneys, and all other representatives, and persons over whom the person or party to whom the Interrogatory is propounded has the right to or does control or direct any activities.

14. The term “document” shall have the meaning ascribed to it in the Federal Rules of Civil Procedure and shall include, by way of example and not limitation, any tangible thing upon which information is or has been stored, recorded, or communicated, and any written, printed, typed and visually or aurally reproduced material of any kind, whether or not privileged, such as (by way of example and not by way of limitation) correspondence, letters, notes, memoranda, diaries, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts,

price lists, studies, drawings or sketches, tapes or discs capable of being mechanically read, films, pictures, photographs, electronic mail, advertising or promotional literature, operating manuals or instructions bulletins, voice recording, cables or telegrams, maps, charts, surveys, tape or other recordings, test data, HTML code, email, website pages and reports; every copy of every such writing or record where the original is not in the possession, custody, or control of Petitioner, and every copy of every such writing record where such copy is not an identical copy of the original or where such copy contains any commentary that does not appear in the original.

15. The term “thing” shall mean all tangible objects of any type, composition, construction or nature.

16. The term “affiliate” shall mean a person that directly, or indirectly through one or more intermediaries, controls or is controlled by or is under common control with, the person specified as defined in 17 C. F. R. § 230.405.

17. The term “person” shall include natural persons or any corporate or other business entities, legal or governmental entities, or association, whether or not in your employ, and the acts and knowledge of a person are defined to include the acts and knowledge of that person’s directors, officers, members, employees, representatives, agents, and attorneys.

18. The term “concerning” means relating to, referring to, describing, evidencing or constituting.

19. A document or thing “relating” or which “relates” to any given subject means any document or thing that comprises, constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any way pertinent to that subject, including, without limitation, documents concerning the preparation of other documents.

20. The terms “all” and “each” shall be construed to include all and each.

21. The term “and” shall be construed to include “or” and vice versa, and shall be the logical equivalent of “and/or.”

22. The use of the singular form of any word also includes the plural and vice versa.

23. The term “trademark” or “mark” includes trademarks, service marks, collective marks, certification marks and trade names as defined in 15 U.S.C. §1127.

24. The terms “Petitioner’s Supposed Mark” and/or “Petitioner’s Supposed trademark” refers to any and all supposed trademarks that were supposedly used or are used by Petitioner.

25. The terms “Registrant’s Mark” and/or “Registrant’s trademark” refers to Registrant’s “SERV-TECH” mark listed in Registration No. 5044774.

26. The term “goods” or “services” shall refer to any and all of the goods or services that have been offered or sold in connection with Petitioner’s Supposed Mark.

27. The terms “Customer” and “Consumer” shall mean any person that can, has or is eligible to purchase any of Petitioner’s goods or services.

28. The term “identify” and “identity” shall mean:

- a. When used with respect to a natural person, to state his or her full name, present or last known address, present or last known business position or affiliation, and present or last known business telephone number;
- b. When used with respect to any other entity, to state its full name, the address of its principal place of business and the name of its chief executive officer;
- c. When used with respect to a document, to state the name or title of the document, the type of document, its subject matter, its number of pages, its date, the identity of the person(s) who authored the document, the identity of the person(s) to whom

it was addressed and/or sent, the identity of the person(s) who otherwise saw or received the document, its present location, and its present custodian;

- d. When used with respect to a communication, to state its date, the identity of the person(s) delivering it, the identity of the person(s) to whom it was delivered, the identity of anyone else present when it was delivered, and a description of its content. When used with respect to a meeting, to identify the date and place of the meeting, the persons invited to attend the meeting, the persons attending the meeting, all other persons having knowledge of the meeting, to state the substance of the subject matter discussed, and to identify each document relating to the meeting or prepared as a consequence thereof.

INTERROGATORIES

INTERROGATORY NO. 1: Identify each officer of Petitioner.

ANSWER:

INTERROGATORY NO. 2: Identify any present or past corporate name of Petitioner and any name which Petitioner has done business under since Petitioner's formation.

ANSWER:

INTERROGATORY NO. 3: Describe in detail the business conducted by Petitioner since its formation.

ANSWER:

INTERROGATORY NO. 4: Identify and describe each of the goods and services for which Petitioner has used Petitioner's Supposed Mark in United States interstate commerce, and for each supply the date of first use of the mark on such goods or services; the geographic areas in which the Goods have been marketed and distributed; and the sales price for such goods or services.

ANSWER:

INTERROGATORY NO. 5: State whether Petitioner is aware of any third-party uses or registrations of Petitioner's Supposed Mark or any variation thereof with respect to any goods or services, and if so, identify each such third party and the goods or services for which such use has been or is now used or registered.

ANSWER:

INTERROGATORY NO. 6: Identify each party against whom Petitioner has enforced or attempted to enforce Petitioner's rights in Petitioner's Supposed Mark.

ANSWER:

INTERROGATORY NO. 7: Identify, by description and amount, all expenditures made by Petitioner in identifying, creating, adapting, using, and advertising Petitioner's Supposed Mark as a mark or trade name, and all documents pertaining thereto, including, without limitation, all invoices, brochures, or ordering documentation containing Petitioner's Supposed Mark and all invoices related to advertising expenses involving Petitioner's Supposed Mark.

ANSWER:

INTERROGATORY NO. 8: Identify every grant of authority or permission granted to Petitioner or given by Petitioner relating to the use of Petitioner's Supposed Mark to or from any person, firm, individual, corporation, or other legal entity, including without limitation all license agreements and consent agreements.

ANSWER:

INTERROGATORY NO. 9: Describe the circumstances surrounding Petitioner's selection and adoption of the Petitioner's Supposed Mark or any mark similar thereto as a mark and/or trade

name, including without limitation all proposals, resolutions, memoranda, correspondence, marketing research, pursuit of legal opinions, artwork, and press releases.

ANSWER:

INTERROGATORY NO. 10: Identify the persons employed or connected with Petitioner who have the best knowledge of Petitioner's Supposed Mark or any mark similar thereto as used or intended to be used in connection with Petitioner's goods or services.

ANSWER:

INTERROGATORY NO. 11: Identify by name, address, job title, and business affiliation (if any) the person(s) primarily responsible for selecting Petitioner's Supposed Mark.

ANSWER:

INTERROGATORY NO. 12: If Petitioner has used Petitioner's Supposed Mark in interstate commerce, then please identify the exact date of first such use.

ANSWER:

INTERROGATORY NO. 13: Identify any instances of actual or suspected consumer confusion involving Petitioner's Supposed Mark which Petitioner, its agents, or employees have become aware including, but not limited to, any mail, telephone calls, orders, inquiries, complaints, and or communications.

ANSWER:

INTERROGATORY NO. 14: Describe in detail every instance in which Petitioner has ever explained and/or disclaimed any association with Registrant.

ANSWER:

INTERROGATORY NO. 15: Identify all advertising agencies, public relations agencies or market research agencies which Petitioner has used, participated with or cooperated with in

creating, advertising, marketing or promoting Petitioner's Supposed Mark, and indicate the time period(s) during which such activities were conducted.

ANSWER:

INTERROGATORY NO. 16: List all geographic areas, by state and by goods and services, in which Petitioner has offered or sold its goods or services as specified in the USPTO applications for Petitioner's Supposed Mark in the United States.

ANSWER:

INTERROGATORY NO. 17: Identify and describe any documents or things referring to Petitioner's plans to expand Petitioner's product or service line under Petitioner's Supposed Mark.

ANSWER:

INTERROGATORY NO. 18: Identify the trade channels through which Petitioner has sold and now is offering and selling goods or services under Petitioner's Supposed Mark or any mark similar thereto.

ANSWER:

INTERROGATORY NO. 19: Identify each different purchase order, invoice, label, hangtag, wrapper, container, advertisement, brochure, and the like, which contains or bears Petitioner's Supposed Mark or any variation thereof.

ANSWER:

INTERROGATORY NO. 20: Identify the date Petitioner first became aware of Registrant's use of Registrant's Mark.

ANSWER:

INTERROGATORY NO. 21: Identify and describe any documents or things referring to Petitioner's first knowledge of Registrant's Mark.

ANSWER:

INTERROGATORY NO. 22: Identify and describe any documents, communications, or things referring to Petitioner's knowledge of Registrant's Mark and/or Registrant's use of Registrant's Mark.

ANSWER:

INTERROGATORY NO. 23: Identify and describe any period of time during which Petitioner did not use Petitioner's Supposed Mark in connection with the provision of goods or services.

ANSWER:

INTERROGATORY NO. 24: Identify by Interrogatory Number the name or names of all persons who prepared responses to this set of Interrogatories, and the name or names of all persons who prepared responses to the Requests for Production of documents served concurrently herewith.

ANSWER:

DATED this 17th day of March, 2020.



RHETT V. BARNEY
Lee & Hayes, PC
601 W. Riverside Avenue, Suite 1400
Spokane, WA 99201
Telephone: (509) 944-4642
Fax: (509) 323-8979

*Attorneys for Registrant Jimmy's Contractor Services,
Inc.*

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 2020, I caused the foregoing REGISTRANT'S FIRST SET OF INTERROGATORIES to be served upon Petitioner's attorneys of record by emailing the same as follows:

Gary L. Eastman
Eastman McCartney Dallman LLP
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San Diego, CA 92101
Telephone: 619-230-1144
gary@emdlp.com

/Rhett V. Barney/
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RhettB@leehayes.com

*Attorneys for Registrant Jimmy's Contractor Services,
Inc.*

EXHIBIT C

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

In the Matter of Registration No. 5,044,774

Servi-Tek, Inc.

Petitioner,

v.

Jimmy's Contractor Services, Inc.

Registrant.

Cancellation No. 92071703
Registration No. 5044774

**REGISTRANT JIMMY'S CONTRACTOR SERVICES, INC.'S FIRST SET OF
REQUESTS FOR PRODUCTION TO PETITIONER SERVI-TEK, INC.**

Pursuant to 37 C.F.R. § 2.120, TBMP § 406, and Fed. R. Civ. P. 34, Registrant Jimmy's Contractor Services, Inc. ("Registrant"), hereby serves the following Requests for Production upon Petitioner, Servi-Tek, Inc. ("Petitioner"), to be answered under oath within thirty (30) days of service.

DEFINITIONS AND INSTRUCTIONS

Registrant incorporates, as if fully set forth herein, the Definitions contained in its First Set of Interrogatories directed to Petitioner, served concurrently herewith.

1. If you claim that any document requested or any portion thereof is privileged, please provide all information on such document falling within the scope of the Request which is not privileged and identify with sufficient particularity for purposes of a Motion to Compel a Response for Production of each item, document or thing, separately, with respect to which you claim a privilege and state:

- a. the bases on which the privilege is claimed;

- b. the author of the document;
- c. each individual or other person to whom the document or copy thereof was sent or otherwise disclosed;
- d. the date of the document; and
- e. the general subject matter of the document.

You are not requested to provide privileged documents or portions thereof for which you claim privilege, but only to identify such information, document or thing.

2. Applicant's responses to the following Requests are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

REQUESTS FOR PRODUCTION OF DOCUMENTS AND THINGS

REQUEST NO. 1: All Documents and things referring to, or evidencing the creation and selection by Petitioner of Petitioner's Supposed Mark, including correspondence with and memoranda between Petitioner and any name consultant, design firm, advertising agency, advertising media, suppliers and printers.

RESPONSE:

REQUEST NO. 2: Documents, things, and representative copies sufficient to show the evolution of Petitioner's online marketplace from the first iteration to the present display.

RESPONSE:

REQUEST NO. 3: Documents and things referring, relating, or reflecting how Petitioner's Supposed Mark is used as on each service Petitioner provides in the United States.

RESPONSE:

REQUEST NO. 4: Documents and things referring, relating, or reflecting any agreement, contract, or other understanding, written or oral, with any third-party regarding use of Petitioner’s Supposed Mark, including but not limited to all license, franchise, coexistence, and distribution agreements in the United States.

RESPONSE:

REQUEST NO. 5: Samples of advertisements and promotional pieces concerning goods and services sold under Petitioner’s Supposed Mark in the United States.

RESPONSE:

REQUEST NO. 6: Documents and things sufficient to show all goods and serviced sold or offered by Petitioner under Petitioner’s Supposed Mark in the United States.

RESPONSE:

REQUEST NO. 7: Documents and things sufficient to show all channels of trade Petitioner has used or intends to use to offer its services under Petitioner’s Supposed Mark in the United States.

RESPONSE:

REQUEST NO. 8: Documents and things sufficient to show Petitioner’s target consumers and purchasing consumers in the United States for Petitioner’s goods and services bearing.

RESPONSE:

REQUEST NO. 9: Documents and things sufficient to show the marketing channels used to advertise Petitioner’s goods and services under Petitioner’s Supposed Marks in the United States.

RESPONSE:

REQUEST NO. 10:

All documents and things referring to or evidencing Petitioner’s knowledge of Registrant’s use of the name or mark “SERV-TECH”.

RESPONSE:

REQUEST NO. 11:

All documents and things between Petitioner and any other party referring to or evidencing Petitioner's knowledge of Registrant's use of the name or mark "SERV-TECH".

RESPONSE:

REQUEST NO. 12:

All documents and things between Petitioner and any other party referring to the instant proceeding.

RESPONSE:

REQUEST NO. 13:

All documents that summarize or set forth the marketing plan(s) of Petitioner in connection with use or intended use of Petitioner's Supposed Mark in connection with goods or services, including the documents that identify the class or classes of customers or purchasers of Petitioner's goods and services.

RESPONSE:

REQUEST NO. 14:

All documents and things evidencing suspected or known customer confusion arising out of Registrant's use of the mark "SERV-TECH", including but not limited to phone calls, emails, and social media inquiries.

RESPONSE:

REQUEST NO. 15:

All Documents and things evidencing or referring to any instance in which Petitioner has ever disclaimed any association with Registrant.

RESPONSE:

REQUEST NO. 16:

All Documents and things evidencing or referring to any instances of actual confusion involving the name or mark "SERV-TECH" of which Petitioner, its agents or employees are aware.

RESPONSE:

REQUEST NO. 17:

All Documents and things related to Petitioner's failure to file maintenance documents related to U.S. Trademark Reg. No. 3,273,571.


RESPONSE:

REQUEST NO. 18:

All documents and things evidencing, referring to, referenced, or on which you supported your responses to Registrant's First Set of Interrogatories to Petitioner.

RESPONSE:

DATED this 17th day of March, 2020.



RHETT V. BARNEY
Lee & Hayes, PC
601 W. Riverside Avenue, Suite 1400
Spokane, WA 99201
Telephone: (509) 944-4642
Fax: (509) 323-8979

Attorneys for Registrant Jimmy's Contractor Services, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of March, 2020, I caused the foregoing REGISTRANT'S FIRST SET OF REQUESTS FOR PRODUCTION to be served upon Petitioner's attorneys of record by emailing the same as follows:

Gary L. Eastman
Eastman McCartney Dallman LLP
401 West A Street, Suite 1785
San Diego, CA 92101
Telephone: 619-230-1144
gary@emdllp.com

/Rhett V. Barney/
RHETT V. BARNEY
Lee & Hayes, P.C.
601 W. Riverside Avenue, Suite 1400
Spokane, WA 99201
Telephone: (509) 944-4642
Fax: (509) 323-8979
RhettB@leehayes.com

*Attorneys for Registrant Jimmy's Contractor Services,
Inc.*

EXHIBIT D

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

<p>SERVI-TEK, INC.,</p> <p>Petitioner,</p> <p>v.</p> <p>JIMMY’S CONTRACTOR SERVICES, INC.,</p> <p>Owner.</p>	<p>Cancellation No. 92071703</p> <p>SERV-TECH – Reg. No. 5,044,774</p> <p>PETITIONER’S FIRST SET OF INTERROGATORIES TO RESPONDENT</p>
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PLEASE TAKE NOTICE, pursuant to TBMP 405 et seq. and Rule 33 of the Federal Rules of Civil Procedure, that Petitioner hereby demands that the Respondent answer under oath, the following interrogatories upon the undersigned within thirty (30) days after receipt of this document.

These interrogatories are addressed to the knowledge of the Respondent, both with respect to the information which the Respondent has itself obtained, as well as with respect to information which Respondent has obtained from others.

Interrogatories are continuing in nature and in the event that additional information comes to the attention of Respondent following submission of answers to these interrogatories, supplemental answers are required.

DEFINITIONS

As used in these discovery requests:

1. “Petitioner” means Servi-Tek, Inc.

2. “Respondent”, “You” and “Your” means Jimmy’s Contractor Services, Inc., related companies, or predecessors in interest; Respondent also means officers and others having authority to sign on behalf of Respondent.

3. “Mark”, “Respondent’s Mark”, or “Your Mark” means SERV-TECH (Registration No. 5044774).

4. The phrase “use in commerce” shall mean and refer to the definition provided under 15 U.S.C. § 1127.

5. The term “identify,” when referring to a person, means to give the person’s full name, present or last known address and telephone number, and when referring to a natural person, the present or last known place of employment and job title during the relevant period. Once a person has been identified in accordance with this paragraph, only the name of the person need be listed in response to subsequent discovery requesting the identification of the person.

6. The term “identify,” when used with respect to a document, means to assign a number to such document starting with “I” and continuing consecutively for each document and to state:

- a) Type of document (letter, memo, etc.);
- b) The author/addresser of the document;
- c) The addressee of the document;
- d) All indicated or blind copies;
- e) Date;
- f) Subject matter;
- g) Number of pages;
- h) Attachment or appendices;
- i) All persons to whom it or its contents were distributed, shown or explained;
- j) Present custodian; and

k) The identity of each natural person whose testimony could be used to authenticate the document.

All subsequent references to a document once identified may be made by stating the document identification number assigned by you pursuant to the above instruction. In lieu of the foregoing, Respondent may identify a document by attaching a copy of the document to Respondent's answers to these Interrogatories.

7. The term "describe" means to list all those descriptive factors listed under the relevant definition of "identify" if used with respect to a document, communication, or to a fact or reason; when used with respect to assets, "describe" means to list the name, type, function, and other commonly used identifying characteristics of the asset; when used with respect to a method of calculation, "describe" means to explain the accounting procedure used to reach the answer to the relevant interrogatory, including the actual figures and categories which were used; and "describe" shall otherwise mean delineate, explain, depict, or portray.

8. "Submitted Specimens" means specimens submitted by Registrant as evidence of use during the application/registration process with the USPTO for Registrant's Marks.

9. "Writings" means all written documents and content in physical or electronic form, including letters, emails, texts, notes, etc.

INTERROGATORIES

INTERROGATORY NO. 1:

Identify all persons that assisted in preparing these responses.

INTERROGATORY NO. 2:

Provide the date on which YOU first began using YOUR mark anywhere in the United States in connection with roofing services, consultation, contracting, installation, and repair.

INTERROGATORY NO. 3:

Describe the process of selecting YOUR mark—including, but not limited to, any trademark searches or hiring of counsel.

INTERROGATORY NO. 4:

Identify all marketing channels through which YOU used YOUR mark in commerce in connection with offering, selling, rendering, marketing, or advertising roofing services, consultation, contracting, installation, and repair as of July 31, 2015.

INTERROGATORY NO. 5:

Provide the date on which YOU first began YOUR mark on YOUR website www.jimmysroofing.com.

INTERROGATORY NO. 6:

Provide the circumstances under which YOU stopped using YOUR mark on YOUR website www.jimmysroofing.com, including, but not limited to, the date on which YOU stopped using YOUR mark on www.jimmysroofing.com and the reasons why YOU modified YOUR website to remove YOUR mark.

INTERROGATORY NO. 7:

Identify all marketing channels through which YOU used YOUR mark in commerce in connection with offering, selling, rendering, marketing, or advertising

roofing services, consultation, contracting, installation, and repair between September 16, 2016 and September 16, 2019.

INTERROGATORY NO. 8:

Describe the relationship between YOU and Jim Huntsman, including whether Mr. Huntsman is a W-2 employee or independent contractor of Respondent and whether Mr. Huntsman is a director or officer of Respondent.

INTERROGATORY NO. 9:

Describe YOUR involvement in creating, managing, and updating servtechpodcast.com, including YOUR participation in selecting the domain name and YOUR input in selecting and shaping the blog content and podcast content.

INTERROGATORY NO. 10:

Describe all ways in which YOU are currently using YOUR mark in commerce in connection with offering, selling, rendering, marketing, or advertising roofing services, consultation, contracting, installation, and repair, apart from any uses related to servtechpodcast.com.

INTERROGATORY NO. 11:

Describe with particularity each instance in which any person or entity has confused the origin, source, sponsorship, affiliation, or approval of YOUR services with Petitioner. For each such instance, identify the person who was allegedly confused, the nature of the alleged confusion, uncertainty, or inquiry, the manner in which YOU learned of the alleged confusion, uncertainty, or inquiry, and all persons having factual knowledge thereof.

INTERROGATORY NO. 12:

Identify all web-based uses of YOUR mark from July 31, 2015 to present.

INTERROGATORY NO. 13:

Identify all customer contracts which have YOUR mark in connection with roofing services, consultation, contracting, installation, and repair from 2015 to present.

Date: March 3, 2020

Respectfully submitted,

/s/ Gary L. Eastman
Gary L. Eastman, Esq. of
Eastman McCartney Dallmann LLP
401 West A Street, Suite 1785
San Diego, CA 92101
Tel. 619-230-1144
Gary@EMDLLP.com

Attorneys for Petitioner

Certificate of Service

I hereby certify that a true and complete copy of the foregoing PETITIONER'S FIRST SET OF INTERROGATORIES TO RESPONDENT has been served on Respondent by e-mailing said copy on March 3, 2020, to:

Rhett V. Barney
LEE & HAYES PC
601 W. Riverside Avenue, Suite 1400
Spokane, WA 99201
rhettb@leehayes.com

Attorneys for Owner

By: /s/ Gary L. Eastman
Gary L. Eastman

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

Mark: SERV-TECH
Registration No. 5044774
Reg. Date: September 20, 2016

Servi-Tek, Inc.,	:	
	:	
Petitioner,	:	
	:	Cancellation No.: 92071703
v.	:	
	:	
Jimmy’s Contractor Services, Inc.,	:	
	:	
Respondent,	:	

PETITIONER’S INTERROGATORIES TO RESPONDENT, SET TWO

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Sections 405.01 *et seq.* of the Trademark Trial and Appeal Board Manual of Procedure, Petitioner Servi-Tek, Inc. (“Petitioner”), requests that Respondent Jimmy’s Contractor Services, Inc. (“Respondent”) answer under oath and respond to the following Interrogatories by serving written responses thereto within thirty (30) days after service of this request.

DEFINITIONS AND INSTRUCTIONS

- A. The terms “Respondent,” “You” and “Your” shall mean Jimmy’s Contractor Services, Inc. and/or any of its Affiliates, employees, attorneys and/or agents thereof. The term “Affiliate” shall mean any Person controlled by, controlling or under common control with Respondent.
- B. The term “Petitioner” shall mean Servi-Tek, Inc.
- C. The term “Person(s)” shall mean natural persons and legal entities and includes firms, partnerships, associations and corporations.

D. "Petitioner's Marks" shall mean SERVI-TEK.

E. "Respondent's Mark" shall mean SERV-TECH, which is the subject of U.S. Trademark Registration No. 5044774.

F. "Respondent's Services" shall mean Roofing services; Roofing consultation; Roofing contracting; Roofing installation; Roofing repair; Roofing services, namely, waterproofing.

G. The term "Document" is used in the broadest sense consistent with Fed. R. Civ. P. 34 and includes, without limitation, the original and any copy of the following items, whether printed, written, contained in a computer storage device such as a floppy disk or computer memory, and whether produced by and/or reproduced by any process, namely: email, printed matter, notes, correspondence, internal company communications, telegrams, cables, telexes, ledgers, calendars, diaries, books, statements, memoranda, summaries or records of conversations, minutes or records of meetings, reports, records, market surveys, market research, tabulations, contracts, invoices, receipts, vouchers, charges, labels, artwork, mockup labels, films, video tapes, photo boards, drawings, graphs, photographs, microfilms, tape recordings, reports and/or summaries of interviews or investigations, opinions or reports of consultants, promotional literature, trade letters, press releases, drafts of documents and revisions of drafts of documents, notes or comments on or appended to requested documents, and other written or recorded material now or formerly in the possession, custody or control of Respondent.

H. The term "Identify" when used with respect to a person, means to state the full name of the person, the present or last known residence and business address of the person, the present or last known business affiliation, including the position or title, of said person and the address at which he or she is employed.

I. The term "Identify" with respect to documents means to state:

- (i) type of document;
- (ii) general subject matter of the document;
- (iii) date of the document; and

(iv) the identity of the author(s), addressee(s) and recipient(s) of the document.

J. The term “Describe” means to state or identify the date, duration, location, nature, persons involved, witnesses, physical occurrences and a summary of the substance of any conversations of the relevant item, person or event.

K. Whenever the terms “and” or “or” are used they are to be construed both disjunctively and conjunctively as is necessary to bring within the scope of the Interrogatory a response that might otherwise be construed to be outside of its scope.

L. The use of the singular form of any word includes the plural and vice versa. Similarly, references to the masculine gender shall apply equally to the feminine gender.

M. In answering these Interrogatories, even though the questions may be directed to “Respondent” or “You,” furnish all information which is available to You, including information in the possession, custody or control of Your attorneys, agents, employees, investigators, consultants, experts and licensees, as well as any firm, company, corporation or business in which You own a controlling interest or over which You exercise control. If You cannot answer any of the following Interrogatories in full after exercising due diligence to secure the information, so state and answer to the extent possible, specifying Your inability to answer the remainder and stating whatever information or knowledge You have concerning the unanswered portions.

N. If Respondent objects to furnishing information requested in response to any interrogatory, or any part or portion thereof, You must specifically state the basis of such objection in writing, identify the information or Documents to which each objection applies, and furnish all requested information or Documents to which the objection does not apply. Any objection for which a basis has not been specifically stated within the time provided by the Federal Rules of Civil Procedure, or any extensions thereof, shall be waived.

O. If information responsive to the following Interrogatories, including a Document, electronically stored information or an oral communication, is withheld or not produced on the

basis of a claim of privilege, You shall provide Petitioner with a list containing the following information, unless divulging the information would disclose privileged information:

(a) the nature of the privilege which is being claimed and if the privilege is being asserted in connection with a claim or a defense governed by state law, indicate the state rule of privilege being invoked;

(b) the subject matter of the information;

(c) if a Document, the date of the Document, and, if electronically stored information, the software application used to create it;

(d) if a Document, the author(s) and/or preparer(s) of the Document, addressee and any other recipient, and where not apparent, the relationship between the author(s), addressee and recipient; and

(e) if an oral communication, the place where it was made, the names of the persons present while it was made, and, if not apparent, the relationship of the persons present to the declarant.

P. These Interrogatories are intended to be continuing pursuant to Rule 26 (e) of the Federal Rules of Civil Procedure. If at any time after the requested discovery is furnished Respondent ascertains or acquires additional Documents or things responsive to these requests, Respondent is required to produce such supplemental information and items to Petitioner promptly upon receiving it.

Q. For the convenience of the Board and the parties, each Interrogatory should be quoted in full immediately preceding the Respondent's response.

INTERROGATORIES

INTERROGATORY NO. 14:

Identify and describe all goods and services sold and/or distributed or intended to be sold and/or distributed by Respondent under Respondent's Mark.

INTERROGATORY NO. 15:

Identify and describe all geographic areas where Respondent sold or provided Respondent's Services under Respondent's Mark.

INTERROGATORY NO. 16:

Identify and describe any lapses in time in the use of Respondent's Mark since May 8, 2015.

INTERROGATORY NO. 17:

Identify and describe all trademark searches, including clearance searches, concerning any mark including the terms "SERV", "SERVI", "TECH", or "TEK" including Respondent's Mark.

INTERROGATORY NO. 18:

Identify Respondent's target consumers for Respondent's Services.

INTERROGATORY NO. 19:

Identify and describe all sales (in dollars) of Respondent's Services sold by or on behalf of Respondent in connection with Respondent's Mark in the United States, broken down by year and service, for each year from 2015 to the present.

INTERROGATORY NO. 20:

Identify and describe all expenditures (in dollars) for all advertising, marketing and promotional activities related to Respondent's Mark in the United States, broken down by year and service, for each year from 2015 to the present.

INTERROGATORY NO. 21:

Describe in detail when and how Respondent first became aware of Petitioner's Mark and Identify the Person(s) involved and all Documents concerning such initial awareness.

INTERROGATORY NO. 22:

For each of the following, identify the date, the account, and describe the manner that Registrant's Mark first appeared on the following websites/ social media platforms:

1. Facebook
2. LinkedIn
3. Instagram
4. Twitter
5. www.jimmysroofing.com
6. www.serv-tech.com
7. www.servtechpodcast.com

INTERROGATORY NO. 23:

For each Interrogatory No. 14-22, identify the Person(s) who supplied information for the responses or who was consulted, or whose Documents or files were consulted in the preparation of the responses.

DUANE MORRIS LLP

DATED: December 23, 2020

By: /Michelle Hon Donovan/
Michelle Hon Donovan
750 B Street, Suite 2900
San Diego, CA 92101-4681
Telephone: 619 744 2219
Fax: 619 923 2967

Attorneys for Petitioner
Servi-Tek, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2020 a true and complete copy of the foregoing **PETITIONER'S INTERROGATORIES TO RESPONDENT, SET TWO** has been served by e-mail to the following e-mail address of record for Respondent's counsel:

RHETT V BARNEY
LEE & HAYES PC
601 W RIVERSIDE AVENUE, SUITE 1400
SPOKANE, WA 99201
rhettb@leehayes.com

/Meghan C. Killian/
Meghan C. Killian

EXHIBIT E

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

<p>SERVI-TEK, INC.,</p> <p>Petitioner,</p> <p>v.</p> <p>JIMMY'S CONTRACTOR SERVICES, INC.,</p> <p>Owner.</p>	<p>Cancellation No. 92071703</p> <p>SERV-TECH – Reg. No. 5,044,774</p> <p>PETITIONER'S FIRST SET OF REQUESTS FOR PRODUCTION TO RESPONDENT</p>
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PLEASE TAKE NOTICE, pursuant to TBMP 406 et seq. and Rule 34 of the Federal Rules of Civil Procedure, that Petitioner hereby demands that the Respondent produce the following documents and other tangible things within Respondent's possession, custody, or control, or reasonably available to Respondent after a diligent inquiry, to Petitioner's counsel Gary L. Eastman at the office of Eastman McCartney Dallmann, LLP located at 401 West A Street, Suite 1785, San Diego, California 92101, within 30 days of the service date of this document.

In answering these requests, Respondent is required to furnish all documents available to it or available through reasonable inquiry, including documents in the possession of Respondent's attorneys, accountants, advisors, investigators, experts, or others retained by Respondent or Respondent's attorneys, and not merely documents in Respondent's personal possession.

If Respondent cannot answer the following requests in full after exercising due diligence to secure the documents to do so, Respondent must so state, and respond to the extent possible. If Respondent withholds documents to these requests as privileged or protected, Respondent must: (1) describe the general nature of the document, (2) state the identity of its author, (3) state the date it was written, (4) identify the name, address, and telephone number of its recipients, (5) state the address of the document's present location, (6) identify the privilege or protection claimed, and (7) identify and describe the document withheld in sufficient detail to enable Petitioner to assess the applicability of the privilege or protection claimed.

These requests are deemed continuing until the time of trial and Respondent must immediately supplement or correct his answers to these requests upon learning that its answers are incomplete or incorrect when made or are no longer true.

DEFINITIONS

As used in these discovery requests:

1. "Petitioner" means Servi-Tek, Inc.
2. "Respondent", "You" and "Your" means Jimmy's Contractor Services, Inc., related companies, or predecessors in interest; Respondent also means officers and others having authority to sign on behalf of Respondent.
3. "Mark", "Respondent's Mark", or "Your Mark" means SERV-TECH (Registration No. 5044774).
4. The phrase "use in commerce" shall mean and refer to the definition provided under 15 U.S.C. § 1127.
5. The term "document" shall mean all original documents or electronically stored information, and all copies or versions thereof (whether or not

different from the original because of, e.g., notes made on or attached to certain copies), encompassed by Rule 1001 of the Federal Rules of Evidence or Federal Rule of Civil Procedure 34(a), including, without limitation: e-mail, writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations stored in any medium from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form, such as electronically stored, magnetically stored, optically stored, and visually and aurally reproduced material of any kind, whether or not privileged.

6. The term “identify,” when used with respect to a document, means to assign a number to such document starting with “I” and continuing consecutively for each document and to state:

- a) Type of document (letter, memo, etc.);
- b) The author/addresser of the document;
- c) The addressee of the document;
- d) All indicated or blind copies;
- e) Date;
- f) Subject matter;
- g) Number of pages;
- h) Attachment or appendices;
- i) All persons to whom it or its contents were distributed, shown or explained;
- j) Present custodian; and
- k) The identity of each natural person whose testimony could be used to authenticate the document.

All subsequent references to a document once identified may be made by stating the document identification number assigned by you pursuant to the above

instruction. In lieu of the foregoing, Respondent may identify a document by attaching a copy of the document to Respondent's answers to these Interrogatories.

REQUESTS FOR PRODUCTION

REQUEST FOR PRODUCTION NO. 1:

Produce all DOCUMENTS showing the first use of YOUR mark in commerce.

REQUEST FOR PRODUCTION NO. 2:

Produce all non-privileged DOCUMENTS relating to the selection of YOUR mark for use.

REQUEST FOR PRODUCTION NO. 3:

Provide all DOCUMENTS showing continuous use of YOUR mark in commerce from July 31, 2015 to present, including, but not limited to, documents showing YOUR mark being used in connection with the advertising, marketing, sale, or offering for sale of roofing services and the dates associated with those uses.

REQUEST FOR PRODUCTION NO. 4:

Provide a complete copy of each version of the www.jimmysroofing.com website from July 31, 2015 to present.

REQUEST FOR PRODUCTION NO. 5:

Provide a complete copy of each version of any web-based use of YOUR mark from July 31, 2015 to present.

REQUEST FOR PRODUCTION NO. 6:

Produce all DOCUMENTS showing the different marketing channels through which YOU market YOUR services using YOUR mark.

REQUEST FOR PRODUCTION NO. 7:

Produce all customer contracts which have YOUR mark in connection with roofing services, consultation, contracting, installation, and repair from 2015 to present.

REQUEST FOR PRODUCTION NO. 8:

Produce an exemplar of each DOCUMENT bearing your MARK and used for marketing YOUR offering, selling, rendering, marketing, or advertising roofing services, consultation, contracting, installation, and repair from 2015 to present.

REQUEST FOR PRODUCTION NO. 9:

Produce a copy of each contract for roofing services, consultation, contracting, installation, and repair that bears YOUR mark from 2015 to present.

Date: March 3, 2020

Respectfully submitted,

/s/ Gary L. Eastman
Gary L. Eastman, Esq. of
Eastman McCartney Dallmann LLP
401 West A Street, Suite 1785
San Diego, CA 92101
Tel. 619-230-1144
Gary@EMDLLP.com

Attorneys for Petitioner

Certificate of Service

I hereby certify that a true and complete copy of the foregoing PETITIONER'S FIRST SET OF REQUESTS FOR PRODUCTION TO RESPONDENT has been served on Respondent by e-mailing said copy on March 3, 2020, to:

Rhett V. Barney
LEE & HAYES PC
601 W. Riverside Avenue, Suite 1400
Spokane, WA 99201
rhettb@leehayes.com

Attorneys for Owner

By: /s/ Gary L. Eastman
Gary L. Eastman

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

Mark: SERV-TECH
Registration No. 5044774
Reg. Date: September 20, 2016

Servi-Tek, Inc.,	:	
	:	
Petitioner,	:	
	:	Cancellation No.: 92071703
v.	:	
	:	
Jimmy’s Contractor Services, Inc.,	:	
	:	
Respondent,	:	

**PETITIONER’S REQUESTS FOR PRODUCTION OF DOCUMENTS
TO RESPONDENT, SET TWO**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Section 406.01 *et seq* of the Trademark Trial and Appeal Board Manual of Procedure, Petitioner Servi-Tek, Inc. (“Petitioner”), requests that Respondent Jimmy’s Contractor Services, Inc. (“Respondent”) produce the following documents and things in its possession, custody or control for inspection and copying by Petitioner’s counsel. Pursuant to Rule 34, Petitioner further requests that Respondent serve on Petitioner a written response to this request within thirty (30) days of service. These Document Requests (“Requests”) are continuing and require supplemental responses to the extent provided by Fed. R. Civ. P. 26(e).

DEFINITIONS AND INSTRUCTIONS

A. The terms “Respondent,” “You” and “Your” shall mean Jimmy’s Contractor Services, Inc. and/or any of its Affiliates, employees, attorneys and/or agents thereof. The term “Affiliate” shall mean any Person controlled by, controlling or under common control with Respondent.

- B. The term “Petitioner” shall mean Servi-Tek, Inc.
- C. The term “Person” shall mean natural persons and legal entities and includes firms, partnerships, associations and corporations.
- D. “Respondent’s Mark” shall mean SERV-TECH, which is the subject of U.S. Trademark Registration No. 5044774.
- E. “Petitioner’s Marks” shall mean SERVI-TEK.
- F. “Respondent’s Services” shall mean Roofing services; Roofing consultation; Roofing contracting; Roofing installation; Roofing repair; Roofing services, namely, waterproofing.
- G. The term “Document(s)” is used in the broadest sense consistent with Fed. R. Civ. P. 34 and includes, without limitation, the original and any copy of the following items, whether printed, written, contained in a computer storage device such as a floppy disk or computer memory, and whether produced by and/or reproduced by any process, namely: email, printed matter, notes, correspondence, internal company communications, telegrams, cables, telexes, ledgers, calendars, diaries, books, statements, memoranda, summaries or records of conversations, minutes or records of meetings, reports, records, market surveys, market research, tabulations, contracts, invoices, receipts, vouchers, charges, labels, artwork, mockup labels, films, video tapes, photo boards, drawings, graphs, photographs, microfilms, tape recordings, reports and/or summaries of interviews or investigations, opinions or reports of consultants, promotional literature, trade letters, press releases, drafts of documents and revisions of drafts of documents, notes or comments on or appended to requested documents, and other written or recorded material now or formerly in the possession, custody or control of Respondent.
- H. The term “concerning” means relating to, referring to, describing, evidencing or constituting. A request for a Document or thing “concerning” any of Petitioner’s allegations or claims includes not only Documents and things supporting or evidencing any such allegation or claim, but also Documents or things negating or tending to disprove the allegation or claim.

I. Whenever the terms “and” or “or” are used they are to be construed both disjunctively and conjunctively as necessary to bring within the scope of the Request responses that might otherwise be construed to be outside of its scope.

J. The use of the singular form of any word includes the plural and vice versa. Similarly, references to the masculine gender shall apply equally to the feminine gender.

K. Although some Requests may be directed to “Respondent” or “You,” furnish all information which is available to You, including information in the possession, custody or control of Your attorneys, agents, employees, investigators, consultants, experts and licensees, as well as any firm, company, corporation or business in which You own a controlling interest or over which You exercise control. If You cannot answer any of the following Requests in full after exercising due diligence to secure the information, so state and answer to the extent possible, specifying Your inability to answer the remainder and stating whatever information or knowledge You have concerning the unanswered portions.

L. If any of the following Requests calls for information subject to a claim of privilege or other objection, answer so much of each Request and each part thereof as does not request privileged or confidential information. With respect to those portions of these Requests which do request privileged information, set forth the basis for Your claim of privilege or any other objection You may have.

M. If any Document responsive to the following Requests is withheld or not produced on the basis of a claim of privilege, You shall provide Respondent with a list containing the following information for each of the documents:

(i) the type of Document, and, if electronically stored information, the software application used to create it;

(ii) the author(s) and/or preparer(s) of the Document, addressee and any other recipient, and where not apparent, the relationship between the author(s), addressee and recipients;

(iii) a brief description of the Document;

- (iv) the subject matter of the Document;
- (v) the names of people to whom copies of the Document were distributed;
- (vi) the nature of the privilege which is being claimed, and if the privilege is being asserted as to a claim or defense governed by state law, indicate the state's privilege rule being invoked; and
- (vii) the number of the Request under which the Document would otherwise be produced.

If it is claimed that only part of the Document is privileged or otherwise need not be produced, please produce the remaining part of the Document.

N. Each request for Documents seeks production of Documents in their entirety, without redaction, abbreviation or expurgation, including all attachments and/or other matter affixed thereto, and including all existing drafts of any such documents.

O. If any Document requested has been lost, discarded, transferred to another person or entity, destroyed, or otherwise disposed of, please set forth in writing:

- (i) the date, name and subject matter of the Document;
- (ii) the name, employment and title of each person who prepared, received, reviewed or had custody, possession or control of the Document;
- (iii) the previous location of the Document;
- (iv) the reason for disposal or transfer of the Document;
- (v) the manner of disposal of the Document; and
- (vi) the names and addresses of the transferee of the Document.

P. These Requests are intended to be continuing pursuant to Rule 26(e) of the Federal Rules of Civil Procedure. If, at any time after the requested discovery is furnished, Respondent ascertains or acquires additional information, Documents or things responsive to these requests, Respondent is required to produce such supplemental information and items to Petitioner promptly upon receiving it.

Q. For the convenience of the Board and the parties, each Request should be quoted in full immediately preceding the response. You are also requested to order and label the materials produced in accordance with the final paragraph of Fed. R. Civ. P. 34(b).

REQUESTS FOR PRODUCTION OF DOCUMENTS

REQUEST FOR PRODUCTION NO. 10:

Documents sufficient to identify all goods and services offered in connection with Respondent's Mark.

REQUEST FOR PRODUCTION NO. 11:

Documents sufficient to identify all goods and services intended to be offered in connection with Respondent's Mark.

REQUEST FOR PRODUCTION NO. 12:

Documents sufficient to identify the geographic regions in which Respondent markets, advertises, promotes, offers, and/or sells Respondent's Services in connection with Respondent's Mark.

REQUEST FOR PRODUCTION NO. 13:

Documents sufficient to identify the price-point of Respondent's Services.

REQUEST FOR PRODUCTION NO. 14:

All Documents relating or referring to unsolicited media coverage of Respondent's Services promoted, marketed, distributed, sold, or offered for sale in connection with Respondent's Mark including, but not limited to, articles and features in newspapers, newsletters, magazines, television and radio programs, and internet sites or electronic mail.

REQUEST FOR PRODUCTION NO. 15:

Documents sufficient to identify any tradeshows or conferences, including the dates, names, and organizers of the show or conference, where Respondent in connection with Respondent's Mark has advertised or had an exhibit.

REQUEST FOR PRODUCTION NO. 16:

Provide one invoice for Respondent's Services bearing Respondent's Mark for each month from May of 2015 to the present.

REQUEST FOR PRODUCTION NO. 17:

Documents sufficient to show all sales (in dollars) of Respondent's Services sold by or on behalf of Respondent in connection with Respondent's Mark in the United States, broken down by year and service, for each year from 2015 to the present.

REQUEST FOR PRODUCTION NO. 18:

Documents sufficient to show all expenditures (in dollars) for all advertising, marketing and promotional activities related to Respondent's Mark in the United States, broken down by year and service, for each year from 2015 to the present.

REQUEST FOR PRODUCTION NO. 19:

All Documents which relate or refer to any instances of actual confusion or mistake between the Respondent's Mark and Petitioner's Marks.

REQUEST FOR PRODUCTION NO. 20:

All Documents that refer, reflect, or relate to any instance in which a Person has inquired or made statements to Respondent regarding whether Respondent is associated with, sponsored or licensed by, or in any manner affiliated with Petitioner and/or Petitioner's Marks.

REQUEST FOR PRODUCTION NO. 21:

All non-privileged Documents concerning Petitioner.

REQUEST FOR PRODUCTION NO. 22:

All Documents identified in Respondent's responses to Petitioner's Interrogatories to Respondent, Set Two.

DUANE MORRIS LLP

DATED: December 23, 2020

By: /Michelle Hon Donovan/

Michelle Hon Donovan
750 B Street, Suite 2900
San Diego, CA 92101-4681
Telephone: 619 744 2219
Fax: 619 923 2967

Attorneys for Petitioner
Servi-Tek, Inc.

CERTIFICATE OF SERVICE

I hereby certify that on December 23, 2020 a true and complete copy of the foregoing **PETITIONER'S REQUESTS FOR PRODUCTION OF DOCUMENTS TO RESPONDENT, SET TWO** has been served by e-mail to the following e-mail address of record for Respondent's counsel:

RHETT V BARNEY
LEE & HAYES PC
601 W RIVERSIDE AVENUE, SUITE 1400
SPOKANE, WA 99201
rhettb@leehayes.com

/Meghan C. Killian/
Meghan C. Killian

EXHIBIT F

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

Servi-Tek, Inc.,	:	
	:	
Petitioner,	:	
	:	Cancellation No.: 92071703
v.	:	Registration No. 5044774
	:	
Jimmy’s Contractor Services, Inc.,	:	
	:	
Respondent,	:	
	:	

**PETITIONER’S NOTICE OF DEPOSITION OF RESPONDENT, JIMMY’S
CONTRACTOR SERVICES, PURSUANT TO RULE 30(b)(6)**

PLEASE TAKE NOTICE that pursuant to Federal Rule of Civil Procedure 30(b)(6), TBMP § 404.05 and Trademark Rule 2.120(b), Petitioner Servi-Tek, Inc. (“Servi-Tek” or “Petitioner”) will take the deposition of Respondent Jimmy’s Contractor Services, Inc. (“Respondent”), by and through its representative(s), on February 17, 2021 beginning at 9:30 am and continuing day-to-day thereafter until completed. Due to the current COVID-19 pandemic, the deposition will be conducted remotely via a remote deposition platform pursuant to Federal Rule of Civil Procedure 30(b)(4) and TBMP 404.06. Details on how to access the remote deposition platform will be provided.

The deposition will be taken by oral examination, with written and/or sound and visual record made thereof (e.g. videotape, LiveNote, etc.), before a Notary Public or officer authorized by law to administer such oaths. Respondent is directed to designate and produce, pursuant to Federal Rule of Civil Procedure 30(b)(6), one or more of its officers, directors, managing agents, or other designated persons to testify on Respondent’s behalf as to the information known or reasonably available to the Respondent concerning the matters set forth in Exhibit A attached

hereto. In addition, Respondent is directed to identify the designee of each topic to Petitioner's counsel in writing at least three days in advance of the Rule 30(b)(6) deposition.

Dated: January 27, 2021

/Michelle Hon Donovan/
Michelle Hon Donovan
DUANE MORRIS LLP
750 B Street, Suite 2900
San Diego, CA 92101-4681
Telephone: (619) 744 2219
Fax: (619) 923 2967
Attorneys for Petitioner

SCHEDULE A

Topic No 1. The nature of the business of Respondent, including but not limited to, the types of services offered or sold by Respondent and/or any services intended to be offered or sold by Applicant; the persons to whom such services are provided and to whom the Respondent intends to provide such services presently and in the future; the use of the SERV-TECH mark; the planned price points for any and all services offered or sold and/or intended to be and/or sold under the SERV-TECH mark; the sales figures for all services sold or distributed under the SERV-TECH mark; the advertising and promotion of services offered or sold and/or intended to be sand/or sold under the SERV-TECH mark; all domain names owned by or on behalf of Respondent; and all websites operated or intended to be operated by or on behalf of Respodnent.

Topic No 2. The nature and extent of Respondent's use of the SERV-TECH mark in connection with the offer sale and/or sale of any services, including, but not limited to, advertising; promotion; marketing; method-of-distribution; classes of purchasers; channels of trade; licenses; assignments and/or grants.

Topic No 3. The factual basis for Respondent's alleged first use of the SERV-TECH mark.

Topic No 4. The duration and extent of Respondent's continuous marketing and advertising of its services under the SERV-TECH mark since Respondent's alleged first use of the SERV-TECH Trademark.

Topic No 5. The nature of Respondent's intended future use of the SERV-TECH mark in connection with the offer to sale and/or sale of any services, including, but not limited to, any actions undergone by Respondent demonstrating a bona fide intention to use the mark in commerce; advertising; promotion; marketing; method-of-distribution; classes of purchasers; channels of trade; licenses; assignments; and/or grants.

Topic No 6. The circumstances surrounding the selection, development and adoption by Respondent of the SERV-TECH mark for its services including trademark search reports, alternative marks considered and opinions as to the availability of this mark.

Topic No 7. The nature and extent of Respondent's foregoing knowledge of Petitioner's SERVI-TEK mark prior to the adoption of its SERV-TECH mark, including, but not limited to, the extent of Respondent's knowledge of: Petitioners' use of the SERVI-TEK mark in connection with its services; Petitioner's U.S. Trademark Registration No. 3,273,571 and any marketing, advertising and promotion of the SERVI-TEK mark.

Topic No 8. The likelihood of confusion between use of Petitioner's SERVI-TEK mark and Respondent's SERV-TECH mark, including, but not limited to, the similarity of the two marks in terms of appearance, sound and meaning; the relatedness of the services provided or intended to be provided under the respective marks; the similarity of the established or intended channels of trade; the similarity of purchasers or intended purchasers of the services provided or intended to be provided under the marks; the similarity of marketing, advertising and promotion of the marks or intended marketing, advertising and promotion of the marks and the services provided thereunder; any similarity in terms of the conditions of purchase for the services marketed or intended to be marketed under the respective marks; the degree of consumer care in making purchasing decisions for the services at issue and the sophistication of the consumers or intended consumers.

Topic No 9. The nature and extent of Respondent's knowledge of any instances of actual or potential consumer confusion between Petitioner's SERVI-TEK mark and Respondent's SERV-TECH mark, including but not limited to information regarding misdirected mail, telephone call logs, telephone and e-mail inquiries and reports, letters regarding potential

confusion, websites indicating potential confusion, and trade journal articles regarding potential confusion.

Topic No 10. The filing and prosecution of Respondent's U.S. Registration No. 5044774 for the SERV-TECH mark.

Topic No 11. The factual bases for all allegations, admissions and denials made by Respondent in the Answer to Petition for Cancellation.

Topic No 12. The factual bases for all allegations contained in the Petition for Cancellation.

Topic No 13. The factual bases for Respondent's Initial Disclosures.

Topic No 14. Respondent's answers to Petitioner's First Set Of Interrogatories To Respondent.

Topic No 15. Respondent's answers to Petitioner's First Set Of Requests For Admission To Respondent.

Topic No 16. Respondent's answers to Petitioner's Interrogatories To Respondent, Set Two.

CERTIFICATE OF SERVICE

I hereby certify that on January 27, 2021 a true and complete copy of the foregoing **NOTICE OF DEPOSITION OF RESPONDENT PURSUANT TO RULE 30(B)(6)** has been served by e-mail to the following e-mail address of record for Respondent's counsel:

RHETT V BARNEY
LEE & HAYES PC
601 W RIVERSIDE AVENUE, SUITE 1400
SPOKANE, WA 99201
rhettb@leehayes.com

/Michelle Hon Donovan/
Michelle Hon Donovan

EXHIBIT G

request for further responses, to these or any other discovery requests; and (f) all rights to revise, correct, supplement, or clarify any objection(s) or response(s), at any time.

DEFINITIONS

1. “Petitioner’s Mark” refers to Petitioner’s SERVI-TEK mark.
2. “Duplicative” when used in an objection means that the Interrogatory is unreasonably cumulative or redundant. *See* Fed. R. Civ. P. 26(b)(2)(C)(i).
3. “Burdensome” when used in an objection means that the Interrogatory exposes Petitioner to undue burden or expense, which is not proportional to the needs of this case, considering the relative importance of the issues at stake in this proceeding, the parties’ relative access to relevant information, the parties’ resources, the importance of the discovery sought to potentially resolving the disputed issues, and the burden or expense of the proposed discovery as outweighing its likely benefit; or that the requested information can be obtained from some other source that is more convenient, less burdensome or less expensive; or that the Interrogatory requires Petitioner to conduct more than a reasonable and diligent investigation for documents responsive to the Interrogatory. *See* Fed. R. Civ. P. 26(b)(2)(C)(i), 26(b)(2)(C)(iii).
4. “Irrelevant” when used in an objection means that the information sought is not reasonably calculated to lead to the discovery of relevant evidence. *See* Fed. R. Civ. P. 26(b)(1).
5. “Confidential” when used in an objection means that the information sought is confidential, proprietary, financial, or personal information. *See* Fed. R. Civ. P. 26(c)(1).
5. “Privileged” when used in an objection means that the information requested is protected by the attorney-client privilege, attorney work-product doctrine, or other legally cognizable privilege.

6. “Vague” when used in an objection means that the Interrogatory is ambiguous or incomprehensible, or that terms used in a Interrogatory are subject to more than one meaning, requiring Petitioner to speculate to determine the documents or information that Registrant seeks.

GENERAL OBJECTIONS

1. Petitioner generally objects to the Interrogatories to the extent that Registrant has set forth definitions and instructions in an impermissible attempt to expand the requirements of the Federal Rules of Civil Procedure and/or the relevant sections of the Trademark Board Manual of Procedure. Petitioner further objects to the Interrogatories to the extent that they exceed the scope of permissible discovery under the applicable rules. Petitioner will respond to the Interrogatories in accordance with the definitions and instructions of the applicable rules, or in the absence of such a rule, shall apply a reasonable interpretation to the Interrogatory so as not to burden Petitioner unduly.

2. Petitioner generally objects to the Interrogatories to the extent that the Interrogatories seek information that is irrelevant to and outside the scope of the Cancellation proceeding, which is specifically limited to Registrant’s right to a United States trademark registration for its marks given Petitioner’s allegations of likelihood of confusion with Petitioner’s Mark, Registrant’s fraud on the USPTO, and abandonment of Registrant’s Mark.

3. Petitioner generally objects to the Interrogatories to the extent that the Interrogatories are premature or call for disclosure of irrelevant information.

4. Petitioner generally objects to the Interrogatories to the extent that the Interrogatories seek disclosure of documents or information protected by the attorney-client privilege, the attorney work-product doctrine, and/or any other applicable privilege or immunity. Privileged materials are not provided in these responses, and will not be provided in future

responses, even if such materials may be responsive to a particular Interrogatory. Petitioner does not waive or intend to waive, but rather intends to preserve, the attorney-client privilege, the attorney work-product doctrine, and every other judicially recognized protection, privilege, and/or immunity, with respect to all information and documents subject thereto.

5. Petitioner generally objects to the Interrogatories to the extent that the Interrogatories seek disclosure of opinions, mental impressions, conclusions, or legal theories of Petitioner and/or its counsel or other representatives.

6. Petitioner generally objects to the Interrogatories to the extent that the Interrogatories seek disclosure of information that is duplicative or burdensome.

7. Petitioner generally objects to the Interrogatories to the extent that the Interrogatories are vague, or that terms contained within a particular Interrogatory are vague.

8. Petitioner generally objects to the Interrogatories as overbroad, unduly burdensome, harassing, and oppressive to the extent the Interrogatories seek materials that are not reasonably available to Petitioner or within its possession, custody, or control.

9. Petitioner generally objects to the Interrogatories to the extent the Interrogatories seek information or documents containing trade secrets, or proprietary or other confidential information.

10. Petitioner's responses are based upon information and belief after a reasonable and diligent investigation, including, but not limited to, a diligent search of records considered reasonably likely to contain information responsive to these Interrogatories. To the extent Registrant's Interrogatories require Petitioner to conduct more than a reasonable and diligent investigation, Petitioner generally objects that the Interrogatories are overbroad, unduly burdensome, harassing, and oppressive.

11. These responses represent Petitioner's good faith effort to respond to the Interrogatories based on information available at this time. Petitioner notes that discovery is ongoing, and thus, it expressly reserves the right to supplement and/or amend its responses in the future, at any time, for any reason.

12. Except for facts explicitly admitted herein, no admission of any nature whatsoever is to be implied or inferred.

13. These general objections are applicable to each of the following responses, and the failure to repeat an objection in response to a specific Interrogatory shall not be deemed a waiver of the objection.

**SPECIFIC OBJECTIONS AND RESPONSES
TO INTERROGATORIES**

INTERROGATORY NO. 1:

Identify each officer of Petitioner.

RESPONSE TO INTERROGATORY NO. 1:

Petitioner objects to the Interrogatory as seeking irrelevant information.

Subject to this objection and without waiving this objection, Petitioner responds as follows:

Eric Friz, Chief Executive Officer; Bryan McMinn, Chief Financial Officer; and Kurt Lester, Secretary. These individuals should only be contacted through Petitioner's counsel.

INTERROGATORY NO. 2:

Identify any present or past corporate name of Petitioner and any name which Petitioner has done business under since Petitioner's formation.

RESPONSE TO INTERROGATORY NO. 2:

Petitioner objects to the Interrogatory as seeking irrelevant information, as the sole issues in this proceeding is Registrant's right to a registration in Registrant's Mark given Petitioner's allegations of likelihood of confusion with Petitioner's Mark, Registrant's fraud on the USPTO

and abandonment. Petitioner further objects that “identify” as defined is Vague in connection with this Interrogatory.

Subject to this objection and without waiving this objection, Petitioner responds as follows:

Petitioner conducted business as Servi-Tek, LLC until June of 2010 when the limited liability company was converted into a corporation, Servi-Tek, Inc.

Petitioner has recorded the following fictitious business names with the County of San Diego:

Servitek Facility Services

Servitek Facility Solutions

Servitek Janitorial Services

Servitek Landscape Services

Servitek Maintenance Services

Servitek Security Services

Due to a limitation on the government form, Petitioner was not able to include the dash within the recorded fictitious business names. The dash is included when the names are used.

INTERROGATORY NO. 3:

Describe in detail the business conducted by Petitioner since its formation.

RESPONSE TO INTERROGATORY NO. 3:

Petitioner objects to the Interrogatory as burdensome and overbroad, and as potentially seeking irrelevant information, as the Interrogatory is not limited to goods and services offered in connection with Petitioner’s Mark, and the sole issues in this proceeding are Registrant’s right to a registration in Registrant’s Mark given Petitioner’s allegations of likelihood of confusion with Petitioner’s Mark, Registrant’s fraud on the USPTO and abandonment of Registrant’s Mark. Accordingly, Petitioner limits its response to the goods and services currently offered in connection with Petitioner’s Mark.

Subject to this objection and without waiving this objection, Petitioner responds as follows:

Janitorial services; building maintenance services; engineering services

INTERROGATORY NO. 4:

Identify and describe each of the goods and services for which Petitioner has used Petitioner's Supposed Mark in United States interstate commerce, and for each supply the date of first use of the mark on such goods or services; the geographic areas in which the Goods have been marketed and distributed; and the sales price for such goods or services.

RESPONSE TO INTERROGATORY NO. 4:

Petitioner objects to Registrant's defined term "Petitioner's Supposed Mark" as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant's right to a registration in Registrant's Mark given Petitioner's allegations of likelihood of confusion with Petitioner's Mark, Registrant's fraud on the USPTO and abandonment of Registrant's Mark. Accordingly, Petitioner limits its response to the services currently offered in connection with Petitioner's Mark.

Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Since at least as early as March 1, 2006, Petitioner has used Petitioner's Mark in connection with janitorial services and building maintenance services.

Since at least as early as 2016, Petitioner has used Petitioner's Mark in connection with engineering services.

Petitioner has provided its services to consumers throughout the United States, including California, Florida, Hawaii, and Nevada. The price for these services varies greatly depending on the scope of work provided to the consumer.

INTERROGATORY NO. 5:

State whether Petitioner is aware of any third-party uses or registrations of Petitioner's Supposed Mark or any variation thereof with respect to any goods or services, and if so, identify

each such third party and the goods or services for which such use has been or is now used or registered.

RESPONSE TO INTERROGATORY NO. 5:

Petitioner objects to Registrant's defined term "Petitioner's Supposed Mark" as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant's right to a registration in Registrant's Mark given Petitioner's allegations of likelihood of confusion with Petitioner's Mark, Registrant's fraud on the USPTO and abandonment of Registrant's Mark. Petitioner further objects to this Interrogatory as overbroad as it is not limited in time. Petitioner objects to this Interrogatory to the extent that it seeks information that is protected from disclosure by the attorney-client privilege, attorney work-product doctrine, and/or any other Privilege. Accordingly, Petitioner limits its response to its knowledge, prior to the commencement of this proceeding of any third-party uses or registrations for marks similar to Petitioner's Mark for the services related to those offered in connection with Petitioner's Mark.

Subject to and without waiving the foregoing objections, Petitioner responds as follows: Petitioner had knowledge of Registrant's Mark prior to the commencement of this proceeding. Applicant is not aware of any additional non-privileged responsive information.

INTERROGATORY NO. 6:

Identify each party against whom Petitioner has enforced or attempted to enforce Petitioner's rights in Petitioner's Supposed Mark.

RESPONSE TO INTERROGATORY NO. 6:

Petitioner objects to Registrant's defined term "Petitioner's Supposed Mark" as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant's right to a registration in Registrant's Mark given Petitioner's allegations of likelihood of confusion with Petitioner's Mark, Registrant's fraud on the USPTO and abandonment of

Registrant's Mark. Accordingly, Petitioner limits its response to actions taken with regard to Petitioner's Mark.

Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has not enforced or attempted to enforce its rights in Petitioner's Mark separate from this current cancellation proceeding.

INTERROGATORY NO. 7:

Identify, by description and amount, all expenditures made by Petitioner in identifying, creating, adapting, using, and advertising Petitioner's Supposed Mark as a mark or trade name, and all documents pertaining thereto, including, without limitation, all invoices, brochures, or ordering documentation containing Petitioner's Supposed Mark and all invoices related to advertising expenses involving Petitioner's Supposed Mark.

RESPONSE TO INTERROGATORY NO. 7:

Petitioner objects to Registrant's defined term "Petitioner's Supposed Mark" as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant's right to a registration in Registrant's Mark given Petitioner's allegations of likelihood of confusion with Petitioner's Mark, Registrant's fraud on the USPTO and abandonment of Registrant's Mark. Accordingly, Petitioner limits its response to Petitioner's Mark. Petitioner further objects to this Interrogatory on the ground that the Interrogatory is compound. Petitioner also objects to the Interrogatory on the ground that it is burdensome, to the extent that it seeks "all" documents, invoices, and expenditures, rather than a representative sample or a sufficient number of documents, which would adequately provide Registrant with the information sought. Petitioner is willing to meet and confer regarding the scope of this Interrogatory.

INTERROGATORY NO. 8:

Identify every grant of authority or permission granted to Petitioner or given by Petitioner relating to the use of Petitioner's Supposed Mark to or from any person, firm, individual, corporation, or other legal entity, including without limitation all license agreements and consent agreements.

RESPONSE TO INTERROGATORY NO. 8:

Petitioner objects to Registrant's defined term "Petitioner's Supposed Mark" as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant's right to a registration in Registrant's Mark given Petitioner's allegations of likelihood of confusion with Petitioner's Mark, Registrant's fraud on the USPTO and abandonment of Registrant's Mark. Accordingly, Petitioner limits its response to Petitioner's Mark. Petitioner further objects to this Interrogatory on the ground that the Interrogatory is compound.

Subject to and without waiving the foregoing objections, Petitioner responds as follows: Petitioner is the exclusive owner of the rights in Petitioner's Mark. Petitioner has not given any third-party permission to use Petitioner's Mark.

INTERROGATORY NO. 9:

Describe the circumstances surrounding Petitioner's selection and adoption of the Petitioner's Supposed Mark or any mark similar thereto as a mark and/or tradename, including without limitation all proposals, resolutions, memoranda, correspondence, marketing research, pursuit of legal opinions, artwork, and press releases.

RESPONSE TO INTERROGATORY NO. 9:

Petitioner objects to Registrant's defined term "Petitioner's Supposed Mark" as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant's right to a registration in Registrant's Mark given Petitioner's allegations of likelihood of confusion with Petitioner's Mark, Registrant's fraud on the USPTO and abandonment of Registrant's Mark. Accordingly, Petitioner limits its response to Petitioner's Mark. Petitioner objects to this Interrogatory to the extent that it seeks information that is protected from disclosure by the attorney-client privilege and/or attorney work-product doctrine.

Subject to and without waiving the foregoing objections, Petitioner responds as follows: Petitioner conceived of and selected Petitioner's Mark on or around January of 2006. Kurt Lester, Secretary of Petitioner, created Petitioner's Mark by combining variations of the words

“service” and “technology” to convey Petitioner’s desire to utilize technology for janitorial and building maintenance services.

Petitioner began using Petitioner’s Mark at least as early as March 1, 2006 in commerce in connection with janitorial services and building maintenance services. Petitioner applied for a federal trademark registration on October 6, 2006. Petitioner’s U.S. Trademark Registration No. 3273571 was registered on August 7, 2007.

INTERROGATORY NO. 10:

Identify the persons employed or connected with Petitioner who have the best knowledge of Petitioner’s Supposed Mark or any mark similar thereto as used or intended to be used in connection with Petitioner’s goods or services.

RESPONSE TO INTERROGATORY NO. 10:

Petitioner objects to Registrant’s defined term “Petitioner’s Supposed Mark” as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant’s right to a registration in Registrant’s Mark given Petitioner’s allegations of likelihood of confusion with Petitioner’s Mark, Registrant’s fraud on the USPTO and abandonment of Registrant’s Mark. Accordingly, Petitioner limits its response to Petitioner’s Mark.

Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Kurt Lester, Secretary of Petitioner. Mr. Lester can be contacted through Petitioner’s counsel.

INTERROGATORY NO. 11:

Identify by name, address, job title, and business affiliation (if any) the person(s) primarily responsible for selecting Petitioner’s Supposed Mark.

RESPONSE TO INTERROGATORY NO. 11:

Petitioner objects to Registrant’s defined term “Petitioner’s Supposed Mark” as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant’s right to a registration in Registrant’s Mark given Petitioner’s allegations of

likelihood of confusion with Petitioner's Mark, Registrant's fraud on the USPTO and abandonment of Registrant's Mark. Accordingly, Petitioner limits its response to Petitioner's Mark.

Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Kurt Lester, Secretary of Petitioner. Mr. Lester can be contacted through Petitioner's counsel.

INTERROGATORY NO. 12:

If Petitioner has used Petitioner's Supposed Mark in interstate commerce, then please identify the exact date of first such use.

RESPONSE TO INTERROGATORY NO. 12:

Petitioner objects to Registrant's defined term "Petitioner's Supposed Mark" as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant's right to a registration in Registrant's Mark given Petitioner's allegations of likelihood of confusion with Petitioner's Mark, Registrant's fraud on the USPTO and abandonment of Registrant's Mark. Accordingly, Petitioner limits its response to Petitioner's Mark.

Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner began using in commerce Petitioner's Mark since at least as early as March 1, 2006.

INTERROGATORY NO. 13:

Identify any instances of actual or suspected consumer confusion involving Petitioner's Supposed Mark which Petitioner, its agents, or employees have become aware including, but not limited to, any mail, telephone calls, orders, inquiries, complaints, and or communications.

RESPONSE TO INTERROGATORY NO. 13:

Petitioner objects to Registrant's defined term "Petitioner's Supposed Mark" as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant's right to a registration in Registrant's Mark given Petitioner's allegations of likelihood

of confusion with Petitioner's Mark, Registrant's fraud on the USPTO and abandonment of Registrant's Mark. Petitioner further objects to the Interrogatory as burdensome and overbroad, and as potentially seeking Irrelevant information, as the Interrogatory is not limited to instances of actual or suspected consumer confusion involving Petitioners' Marks and Registrant's Mark. Accordingly, Petitioner limits its response to instances of actual or suspected consumer confusion involving Petitioner's Mark and Registrant's Mark.

Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner is not aware of any responsive information.

INTERROGATORY NO. 14:

Describe in detail every instance in which Petitioner has ever explained and/or disclaimed any association with Registrant.

RESPONSE TO INTERROGATORY NO. 14:

Petitioner is not aware of any responsive information.

INTERROGATORY NO. 15:

Identify all advertising agencies, public relations agencies or market research agencies which Petitioner has used, participated with or cooperated with in creating, advertising, marketing or promoting Petitioner's Supposed Mark, and indicate the time period(s) during which such activities were conducted.

RESPONSE TO INTERROGATORY NO. 15:

Petitioner objects to Registrant's defined term "Petitioner's Supposed Mark" as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant's right to a registration in Registrant's Mark given Petitioner's allegations of likelihood of confusion with Petitioner's Mark, Registrant's fraud on the USPTO and abandonment of Registrant's Mark. Accordingly, Petitioner limits its response to Petitioner's Mark. Petitioner further objects on the basis that the identities of all agencies behind Petitioner's promotion of Petitioner's Mark are Irrelevant, as the identities of the agencies have no bearing on the enforceability of Petitioner's Mark or the likelihood of confusion between Petitioner's Mark

and Registrant's Mark. Petitioner further objects that the request for the time periods during which "such activities" were conducted is Vague, as "such activities" is not defined.

Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner engaged The Agency San Diego, last known address at P.O. Box 1603 La Jolla, Ca 92038 from 2008-2009.

INTERROGATORY NO. 16:

List all geographic areas, by state and by goods and services, in which Petitioner has offered or sold its goods or services as specified in the USPTO applications for Petitioner's Supposed Mark in the United States.

RESPONSE TO INTERROGATORY NO. 16:

Petitioner objects to Registrant's defined term "Petitioner's Supposed Mark" as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant's right to a registration in Registrant's Mark given Petitioner's allegations of likelihood of confusion with Petitioner's Mark, Registrant's fraud on the USPTO and abandonment of Registrant's Mark. Accordingly, Petitioner limits its response to Petitioner's Mark. Petitioner further objects that "USPTO applications" is Vague, as "USPTO applications" is not defined.

Subject to and without waiving the foregoing objections, Petitioner responds as follows: Petitioner has provided and offered to provide janitorial and building maintenance services throughout the United States, including California, Hawaii, Florida and Nevada.

INTERROGATORY NO. 17:

Identify and describe any documents or things referring to Petitioner's plans to expand Petitioner's product or service line under Petitioner's Supposed Mark.

RESPONSE TO INTERROGATORY NO. 17:

Petitioner objects to Registrant's defined term "Petitioner's Supposed Mark" as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant's right to a registration in Registrant's Mark given Petitioner's allegations of

likelihood of confusion with Petitioner's Mark, Registrant's fraud on the USPTO and abandonment of Registrant's Mark. Petitioner further objects that responsive information constitutes highly confidential and sensitive business information, the disclosure of which risks competitive harm to Petitioner.

INTERROGATORY NO. 18:

Identify the trade channels through which Petitioner has sold and now is offering and selling goods or services under Petitioner's Supposed Mark or any mark similar thereto.

RESPONSE TO INTERROGATORY NO. 18:

Petitioner objects to Registrant's defined term "Petitioner's Supposed Mark" as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant's right to a registration in Registrant's Mark given Petitioner's allegations of likelihood of confusion with Petitioner's Mark, Registrant's fraud on the USPTO and abandonment of Registrant's Mark. Accordingly, Petitioner limits its response to Petitioner's Mark.

Subject to and without waiving the foregoing objections, Petitioner responds as follows: Petitioner offers to provide and provides its services to properties of all sizes and across every industry.

INTERROGATORY NO. 19:

Identify each different purchase order, invoice, label, hangtag, wrapper, container, advertisement, brochure, and the like, which contains or bears Petitioner's Supposed Mark or any variation thereof.

RESPONSE TO INTERROGATORY NO. 19:

Petitioner objects to Registrant's defined term "Petitioner's Supposed Mark" as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant's right to a registration in Registrant's Mark given Petitioner's allegations of likelihood of confusion with Petitioner's Mark, Registrant's fraud on the USPTO and abandonment of Registrant's Mark. Accordingly, Petitioner limits its response to Petitioner's

Mark. Petitioner further objects to the Interrogatory as burdensome and overbroad in that it requests Petitioner identify every purchase order, invoice, label, hangtag, wrapper, container, advertisement and brochure.

Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner will produce a representative sample of the purchase orders, invoices, labels, hangtags, wrappers, containers, advertisements and brochure that bear Petitioner's Mark, to the extent they exist, in lieu of an answer as permitted by Federal Rule 33(d).

INTERROGATORY NO. 20:

Identify the date Petitioner first became aware of Registrant's use of Registrant's Mark.

RESPONSE TO INTERROGATORY NO. 20:

Petitioner further objects that "identify" as defined in Petitioner's Interrogatories, Set One is Vague in connection with this Interrogatory.

Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner first became aware of Registrant's U.S. Registration No. 5044774 for SERV-TECH through a U.S. Patent and Trademark Office ("USPTO") office action, dated September 4, 2018, against U.S. Application Serial No. 87/908,708, which cited U.S. Registration No. 5044774 as a bar to registration based on a likelihood of confusion. Petitioner is not aware of any use of Registrant's Mark by Registrant.

INTERROGATORY NO. 21:

Identify and describe any documents or things referring to Petitioner's first knowledge of Registrant's Mark.

RESPONSE TO INTERROGATORY NO. 21:

USPTO office action, dated September 4, 2018, against U.S. Application Serial No. 87/908,708.

INTERROGATORY NO. 22:

Identify and describe any documents, communications, or things referring to Petitioner's knowledge of Registrant's Mark and/or Registrant's use of Registrant's Mark.

RESPONSE TO INTERROGATORY NO. 22:

Petitioner objects to this Interrogatory to the extent that it seeks information that is protected from disclosure by the attorney-client privilege and/or attorney work-product doctrine.

Subject to and without waiving the foregoing objections, Petitioner responds as follows: USPTO office action, dated September 4, 2018, against U.S. Application Serial No. 87/908,708, cited Registrant's U.S. Registration No. 5044774 for SERV-TECH. Petitioner is not aware of any use of Registrant's Mark by Registrant.

INTERROGATORY NO. 23:

Identify and describe any period of time during which Petitioner did not use Petitioner's Supposed Mark in connection with the provision of goods or services.

RESPONSE TO INTERROGATORY NO. 23:

Petitioner objects to Registrant's defined term "Petitioner's Supposed Mark" as Vague, and as potentially seeking Irrelevant information, as the sole issues in this proceeding are Registrant's right to a registration in Registrant's Mark given Petitioner's allegations of likelihood of confusion with Petitioner's Mark, Registrant's fraud on the USPTO and abandonment of Registrant's Mark. Accordingly, Petitioner limits its response to Petitioner's Mark. Petitioner further objects that "identify" as defined in Petitioner's Interrogatories, Set One is Vague in connection with this Interrogatory.

Subject to and without waiving the foregoing objections, Petitioner responds as follows:

Petitioner has continuously used Petitioner's Mark since at least as early as March 1, 2006.

INTERROGATORY NO. 24:

Identify by Interrogatory Number the name or names of all persons who prepared responses to this set of Interrogatories, and the name or names of all persons who prepared responses to the Requests for Production of documents served concurrently herewith.

RESPONSE TO INTERROGATORY NO. 24:

Counsel for Petitioner and Bryan McMinn, Chief Financial Officer of Petitioner.

Dated: November 13, 2020

/s/ Michelle Hon Donovan

Michelle Hon Donovan
Meghan C. Killian

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mhdonovan@duanemorris.com
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Attorneys for Petitioner

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the Petitioner's Response to Registrant's First Set of Interrogatories has been served on this 13th day of November 2020, via email, to Registrant's counsel of record as follows:

RHETT V BARNEY
LEE & HAYES PC
601 W RIVERSIDE AVENUE, SUITE 1400
SPOKANE, WA 99201

rhettb@leehayes.com
shellyg@leehayes.com
ethan.vodde@leehayes.com
litigation@leehayes.com

/s/ Meghan C. Killian

Meghan C. Killian

EXHIBIT H

December 16, 2020

Via Email Only

Michelle Hon Donovan
Meghan C. Killian
Duane Morris LLP
750 B Street, Suite 2900
San Diego, CA 92101
mhdonovan@duanemorris.com
mckillian@duanemorris.com

Re: *Servi-Tek, Inc. v. Jimmy's Contractor Services, Inc. d/b/a Serv-Tech.*
Cancellation No. 92071703.
Discovery Response Deficiencies & Requests for Supplemented and Corrected Responses

Dear Counsel:

I write briefly to address a few of the deficiencies in Servi-Tek's responses to Registrant's First Set of Interrogatories and Requests for Production. It appears that a number of the deficient responses may have simply been an oversight that Servi-Tek can quickly and easily supplement and correct, thereby avoiding unnecessary and costly motion practice.

I am happy to discuss the same with you by phone on or before **December 23, 2020**.

INTERROGATORIES

Interrogatory No. 7:

Interrogatory No. 7 requests information related to expenditures.

In response, Petitioner states it is willing to meet and confer regarding the scope of this interrogatory.

Please let us know when you are available for a meet-and-confer on or before December 23, 2020.

Interrogatory No. 17:

This interrogatory requests Servi-Tek "Identify and describe any documents or things referring to Petitioner's plans to expand Petitioner's product or service line under Petitioner's Supposed Mark."

In response, Petitioner contends that this information is irrelevant while simultaneously alleging likelihood of confusion, and – response to other interrogatories – stating Petitioner is not aware of any confusion.

Unequivocally, this interrogatory is relevant as it goes directly to the unsupported allegation in Petitioner's response. Additionally, should Servi-Tek have a legitimate concern with respect to the purported sensitivity of the information, Servi-Tek can provide the same pursuant to the standard protective order and marked "Attorneys' Eyes Only." In short, there is no valid reason to not provide the requested information. A supplemental response is required.

Requests for Production

Request for Production No. 2:

This Request seeks "Documents, things, and representative copies sufficient to show the evolution of Petitioner's online marketplace from the first iteration to the present display."

In response, Petitioner states it is willing to meet and confer regarding its assertion that this request is vague.

Please let us know when you are available for a meet-and-confer on or before December 23, 2020.

Request for Production No. 12:

This Request seeks "[a]ll documents and things between Petitioner and any other party referring to the instant proceeding."

In response, Petitioner stated it will produce non-privileged, responsive documents in its possession, custody, or control to the extent they exist.

After reviewing Petitioner's production, we are unable to identify any documents responsive to this request. Please, identify the Bates Nos. for the produced documents Petitioner considers responsive to this Request, produce responsive documents, or advise that no responsive documents exist.

Request for Production No. 13:

This Request seeks "[a]ll documents that summarize or set forth the marketing plan(s) of Petitioner in connection with use or intended use of Petitioner's Supposed Mark in connection with goods or services, including the documents that identify the class or classes of customers or purchasers of Petitioner's goods and services."

In response, Petitioner contends that this information is irrelevant while simultaneously alleging likelihood of confusion, and – response to interrogatories – stating Petitioner is not aware of any confusion.

Unequivocally, this Request is relevant as it goes directly to the unsupported allegation in Petitioner's response. Additionally, should Servi-Tek have a legitimate concern with respect to the purported sensitivity of the information, Servi-Tek can produce the same pursuant to the standard protective order and marked "Attorneys' Eyes Only." In short, there is no valid reason to not provide the requested information. A supplemental response and production are required.

Request for Production No. 14:

This Request seeks “[a]ll documents and things evidencing suspected or known customer confusion arising out of Registrant’s use of the mark “SERV-TECH”, including but not limited to phone calls, emails, and social media inquiries.”

In response, Petitioner stated it will produce non-privileged, responsive documents in its possession, custody, or control to the extent they exist.

After reviewing Petitioner’s production, we are unable to identify any documents responsive to this request. Please, identify the Bates Nos. for the produced documents Petitioner considers responsive to this Request, produce responsive documents, or advise that no responsive documents exist.

Request for Production No. 15:

This Request seeks “[a]ll Documents and things evidencing or referring to any instance in which Petitioner has ever disclaimed any association with Registrant.”

In response, Petitioner stated it will produce non-privileged, responsive documents in its possession, custody, or control to the extent they exist.

After reviewing Petitioner’s production, we are unable to identify any documents responsive to this request. Please, identify the Bates Nos. for the produced documents Petitioner considers responsive to this Request, produce responsive documents, or advise that no responsive documents exist.

Request for Production No. 16:

This Request seeks “[a]ll Documents and things evidencing or referring to any instances of actual confusion involving the name or mark “SERV-TECH” of which Petitioner, its agents or employees are aware.”

In response, Petitioner stated it will produce non-privileged, responsive documents in its possession, custody, or control to the extent they exist.

After reviewing Petitioner’s production, we are unable to identify any documents responsive to this request. Please, identify the Bates Nos. for the produced documents Petitioner considers responsive to this Request, produce responsive documents, or advise that no responsive documents exist.

Request for Production No. 17:

This Request seeks “[a]ll Documents and things related to Petitioner’s failure to file maintenance documents related to U.S. Trademark Reg. No. 3,273,571.”

In response, Petitioner stated it will produce non-privileged, responsive documents in its possession, custody, or control.



After reviewing Petitioner’s production, we are unable to identify any documents responsive to this request. Additionally, Petitioner’s prior trademark registration lapsed in January 2017 and was cancelled on March 9, 2018; we are unable to identify any documents showing use of “Servi-Tek” in connection with offering or selling goods or services in the years proceeding and following the lapse and cancellation, namely 2013, 2016, 2017, 2018, 2019. Please, identify the Bates Nos. for the produced documents Petitioner considers responsive to this Request, produce responsive documents, or advise that no responsive documents exist.

We look forward to receiving Petitioner’s supplementation and the meet-and-confer on or before **December 23, 2020**.

Regards,

LEE & HAYES, P.C.

A handwritten signature in blue ink, appearing to read "Rhett V. Barney".

Rhett V. Barney
(509) 944-4642
rhettb@leehayes.com

EXHIBIT I

Michelle Hon Donovan
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Attorneys for Petitioner
SERVI-TEK, INC.

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

SERVI-TEK, INC.,

Petitioner,

v.

JIMMY'S CONTRACTOR SERVICES,
INC.,

Respondent.

Registration No. 5,044,774
Issued: Sept. 20, 2016
Mark: Serv-Tech

**AMENDED PETITION FOR
CANCELLATION**

Petitioner Servi-Tek, Inc. is a California corporation duly organized and existing under the laws of the State of California, with a principal place of business at 3970 Sorrento Valley Blvd, Suite 400, San Diego, California 92121. Petitioner believes that it is being damaged by the registration of the mark SERV-TECH by Registrant Jimmy's Contractor Services, Inc., Registration No. 5,044,774 and hereby petitions to cancel the same. In support of this Petition for Cancellation, Petitioner alleges the following:

Petitioner and its SERVI-TEK Word Mark

1. Petitioner is a California corporation duly organized and existing under the laws of the State of California, with a principal place of business at 3970 Sorrento Valley Blvd, Suite 400, San Diego, California 92121.

2. Petitioner provides janitorial, [engineering](#) and building maintenance services to businesses in California, Hawaii, Nevada, and Arizona.

3. Since as early as January 2006 Petitioner has continuously advertised, promoted, offered to render, and rendered janitorial cleaning services in connection with the mark SERVI-TEK.

4. Petitioner has been used the mark SERVI-TEK in interstate commerce since as early as March 2006 and received federal registration for SERVI-TEK in August 2007 (Registration No. 3,273,571) for use in conjunction with “Janitorial and building maintenance services.”

5. Though Petitioner’s SERVI-TEK registration lapsed in March 2018 due to failure to complete the required 10-year renewal, Petitioner has continuously used SERVI-TEK since 2006, including on its website [servi-tek.net](#) since as early as 2009.

6. Petitioner started using its related mark SERVI-TRAK in interstate commerce in September 2006 for its web application for janitorial and engineering services.

7. Petitioner received federal registration for SERVI-TRAK in June 2010 (Registration No. 3,273,571) for use in conjunction with “Internet-based interface for building management, maintenance and janitorial services customers, namely, hosted software interface provided via a global computer network to customers for the management, tracking, operation, scheduling, client-interfacing and coordination of commercial janitorial, cleaning, building repair, building maintenance, and property maintenance services”.

8. Though the SERVI-TRAK registration lapsed in January 2017, Petitioner’s website [servi-tek.net](#) still uses and refers to SERVI-TRAK, and Petitioner also operates a companion website [servi-trak.com](#), pegged specifically to Petitioner’s Servi-Trak technology.

9. As a result of Petitioner’s long and continuous commercial use of both SERVI-TEK and SERVI-TRAK, both are now well recognized and relied upon by the public and trade as identifying and distinguishing the goods and services of Petitioner, and representing the valuable goodwill and reputation of Petitioner.

10. On May 4, 2018, Petitioner filed an application to re-register SERVI-TEK with the United States Patent and Trademark Office (“USPTO”), Serial No. 87/908,708, covering janitorial and building maintenance services.

11. On February 8, 2019, despite argument by Petitioner to the contrary, the examining attorney from the USPTO issued a Final Office Action refusing to register Petitioner’s mark, citing Registrant’s SERV-TECH mark, Registration No. ~~No.~~ 5,044,774, as grounds for refusal based on likelihood of confusion under Trademark Act Section 2(d).

Registration of SERV-TECH

12. On February 8, 2016, Registrant applied to register the mark SERV-TECH with the USPTO, for “Roofing services; Roofing consultation; Roofing contracting; Roofing installation; Roofing repair; Roofing services, namely, waterproofing.” A copy of Registrant’s application is attached as Exhibit 1.

13. Registrant’s application subsequently registered on September 20, 2016, as Registration No. 5,044,774, listing July 31, 2015 as the date of first use in commerce. A copy of the Registration is attached as Exhibit 2.

~~14. Petitioner’s mark SERVI TEK and Registrant’s mark SERV TECH, while different in appearance, are similar in sound and meaning.~~

~~15. Use of SERV TECH by Registrant for the goods listed in Registration No. 5,044,774 is likely to confuse and deceive consumers into thinking that the goods and/or services offered thereunder are affiliated with, authorized or sponsored by, or connected with Petitioner and/or Petitioner’s goods and/or services.~~

~~16. Registration and use of SERV-TECH by Registrant for the goods services listed in Registration No. 5,044,774 constitutes an ongoing threat to Petitioner and the public in general.~~

~~17. —~~

~~18.14.~~

COUNT ONE

Cancellation of Registration under 15 U.S.C. § 1064(3)

~~19.15.~~ Petitioner incorporates herein by reference each and every allegation in the preceding paragraphs.

~~20.16.~~ Petitioner is informed and believes that Registrant has abandoned its SERV-TECH mark by discontinuing the use of such mark in the ordinary course of trade on the products specified in Registration No. 5,044,774 with intent not to resume said use.

~~21.17.~~ Registrant's purported specimen showing use of the SERV-TECH mark submitted in support of its Application is shown in Exhibit 2 on page 11, and depicts a website located at www.jimmysroofing.com/repairs-and-maintenance/.

~~22.18.~~ At least as early as July 1, 2019, Registrant is not using the SERV-TECH mark in any capacity. A current view of the same website www.jimmysroofing.com/repairs-and-maintenance/ is located in Exhibit 3, and no use of the SERV-TECH mark is present; it has been abandoned by Registrant.

~~23.19.~~ Petitioner is damaged by the continued existence of Registration No. 5,044,774 for the abandoned mark SERV-TECH, as the existence of such registration may prevent Petitioner from importing, advertising, and/or selling goods under its SERVI-TEK mark and/or subject Petitioner to liability based therefrom, and has already prevented Petitioner from obtaining a registration for SERVI-TEK as was attempted in its trademark application for the same, Serial No. 87/908,708.

COUNT TWO

Fraud in Signing, Filing, and Prosecuting the '597 Application before the USPTO

~~24.20.~~ Petitioner incorporates herein by reference each and every allegation in the preceding paragraphs.

~~25~~21. On February 8, 2016, Registrant applied to register the mark SERV-TECH with the USPTO, Serial No. 86/900,597 (“the ‘597 Application”). In that application, Registrant claimed, among other things, that SERV-TECH was “first used in commerce at least as early as 07/31/2015, and is now in use in such commerce.”

~~26~~22. Also, on February 8, 2016, Registrant signed a declaration under Section 1101 of Title 18 of the United States Code in support of the ‘597 Application, stating, among other things, that “all statements made of his/her own knowledge are true.”

~~27~~23. Petitioner is informed and believes that on July 31, 2015, the alleged date of first use, the SERV-TECH mark was in fact not used on any product anywhere as defined by 15 U.S.C. Section 1051 et seq.

~~28~~24. Web archives accessible through web.archive.org indicate that Registrant did not add the term SERV-TECH to its website until sometime between August 15, 2015 and January 25, 2016, which is after the alleged date of first use in interstate commerce. A copy of the web.archive.org snapshot of Registrant’s website dated August 15, 2015 (showing no use of the mark) is attached as Exhibit 4. A copy of the web.archive.org snapshot of Registrant’s website dated January 25, 2016 (showing use of the mark) is attached as Exhibit 5.

~~29~~25. Registrant knew that SERV-TECH was not first used in commerce as of 07/31/2015.

~~30~~26. Petitioner is informed and believes that at the time Registrant signed the declaration in support of the ‘597 Application and filed the ‘597 Application, Registrant knew or acted in reckless disregard of the truth that its claim that SERV-TECH was “first used in commerce at least as early as 07/31/2015” and such claim was false and misleading.

~~31~~27. Petitioner is informed and believes, that at the time Registrant acknowledged and accepted the warning “that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and

the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true,” yet executed the declaration nonetheless knowing such statements to be false.

~~32.28.~~ The USPTO accepted and relied upon the above material misrepresentation by Registrant in approving the ‘597 Application for publication.

~~33.29.~~ Petitioner is informed and believes that Registrant intended to procure a registration to which it was not entitled, and thus committed fraud on the USPTO, by failing to provide truthful representations as to the date when Registrant began using SERV-TECH in commerce.

COUNT THREE
Abandonment of Registration under 15 U.S.C. § 1127

~~34.30.~~ Petitioner is informed and believes that Registrant has not used SERV-TECH in commerce for three consecutive years, which is prima facie evidence of abandonment under 15 U.S.C. § 1127.

~~35.31.~~ Web archives accessible through web.archive.org indicate that Registrant stopped using SERV-TECH on its website sometime between October 25, 2016 and April 8, 2019. A copy of the web.archive.org snapshot dated April 8, 2019 (showing no use of the mark) is attached as Exhibit 6.

~~36.32.~~ Referring again to Exhibit 3, the current view of Registrant’s website www.jimmysroofing.com/repairs-and-maintenance/ reveals no current use of the SERV-TECH mark as viewed on July 1, 2019.

33. Registrant has abandoned use of the SERV-TECH mark in any capacity, and thus Registrant’s mark should be deemed abandoned, and subsequently cancelled.

COUNT FOUR
Priority and Likelihood of Confusion under 15 U.S.C. § 1052(d)

34. Petitioner incorporates herein by reference each and every allegation in the preceding paragraphs.

35. As noted above, since at least as early as January 2006, Petitioner has been using the SERVI-TEK in commerce in connection with its identified services.

36. Petitioner's date of first use in commerce of the SERVI-TEK mark for its services is earlier than any date of use upon which Registrant could rely. Specifically, Registrant's claimed date of first use in commerce, as reflected in Registration No. 5,044,774, of the SERV-TECH mark is July 31, 2015 and Registrant's filing date is February 8, 2016. Thus, Petitioner has priority over Registrant.

37. Despite minor spelling differences between the marks, Registrant's SERV-TECH mark is confusingly similar to Petitioner's SERVI-TEK mark in sight, sound, and meaning.

38. The services offered under the parties' respective marks are highly related, overlapping, and competing and are marketed to the same or similar types of consumers through the same or similar trade channels.

39. Registrant's SERVI-TEK mark is likely to cause confusion and/or mistake, or to deceive the trade and the general public into believing that Registrant's services come from the same source as those provided in connection with Petitioner's SERVI-TEK mark, and/or are otherwise authorized, sponsored or licensed by Petitioner, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

40. As a result, continued registration of the SERV-TECH mark by Registrant will cause substantial damage and injury to Petitioner.

37.—Registrant is not entitled to continued registration for the claimed mark.

~~38.41.~~

WHEREFORE, Petitioner is being damaged by Registration No. No. 5,044,774 and respectfully requests that this petition for cancellation be granted, and that Registration No. No. 5,044,774 be cancelled.

Dated:

Respectfully submitted,

Michelle Hon Donovan
DUANE MORRIS LLP
750 B Street, Suite 2900
San Diego, CA 92101-4681
Telephone: (619) 744 2219
Fax: (619) 923 2967

Attorneys for Petitioner

EXHIBIT J

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Attorneys for Petitioner
SERVI-TEK, INC.

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

SERVI-TEK, INC.,

Petitioner,

v.

JIMMY'S CONTRACTOR SERVICES,
INC.,

Respondent.

Registration No. 5,044,774
Issued: Sept. 20, 2016
Mark: Serv-Tech

**AMENDED PETITION FOR
CANCELLATION**

Petitioner Servi-Tek, Inc. is a California corporation duly organized and existing under the laws of the State of California, with a principal place of business at 3970 Sorrento Valley Blvd, Suite 400, San Diego, California 92121. Petitioner believes that it is being damaged by the registration of the mark SERV-TECH by Registrant Jimmy's Contractor Services, Inc., Registration No. 5,044,774 and hereby petitions to cancel the same. In support of this Petition for Cancellation, Petitioner alleges the following:

Petitioner and its SERVI-TEK Word Mark

1. Petitioner is a California corporation duly organized and existing under the laws of the State of California, with a principal place of business at 3970 Sorrento Valley Blvd, Suite 400, San Diego, California 92121.

2. Petitioner provides janitorial, engineering and building maintenance services to businesses in California, Hawaii, Nevada, and Arizona.

3. Since as early as January 2006 Petitioner has continuously advertised, promoted, offered to render, and rendered janitorial cleaning services in connection with the mark SERVI-TEK.

4. Petitioner has been used the mark SERVI-TEK in interstate commerce since as early as March 2006 and received federal registration for SERVI-TEK in August 2007 (Registration No. 3,273,571) for use in conjunction with “Janitorial and building maintenance services.”

5. Though Petitioner’s SERVI-TEK registration lapsed in March 2018 due to failure to complete the required 10-year renewal, Petitioner has continuously used SERVI-TEK since 2006, including on its website servi-tek.net since as early as 2009.

6. Petitioner started using its related mark SERVI-TRAK in interstate commerce in September 2006 for its web application for janitorial and engineering services.

7. Petitioner received federal registration for SERVI-TRAK in June 2010 (Registration No. 3,273,571) for use in conjunction with “Internet-based interface for building management, maintenance and janitorial services customers, namely, hosted software interface provided via a global computer network to customers for the management, tracking, operation, scheduling, client-interfacing and coordination of commercial janitorial, cleaning, building repair, building maintenance, and property maintenance services”.

8. Though the SERVI-TRAK registration lapsed in January 2017, Petitioner’s website servi-tek.net still uses and refers to SERVI-TRAK, and Petitioner also operates a companion website servi-trak.com, pegged specifically to Petitioner’s Servi-Trak technology.

9. As a result of Petitioner’s long and continuous commercial use of both SERVI-TEK and SERVI-TRAK, both are now well recognized and relied upon by the public and trade as identifying and distinguishing the goods and services of Petitioner, and representing the valuable goodwill and reputation of Petitioner.

10. On May 4, 2018, Petitioner filed an application to re-register SERVI-TEK with the United States Patent and Trademark Office (“USPTO”), Serial No. 87/908,708, covering janitorial and building maintenance services.

11. On February 8, 2019, despite argument by Petitioner to the contrary, the examining attorney from the USPTO issued a Final Office Action refusing to register Petitioner’s mark, citing Registrant’s SERV-TECH mark, Registration No. 5,044,774, as grounds for refusal based on likelihood of confusion under Trademark Act Section 2(d).

Registration of SERV-TECH

12. On February 8, 2016, Registrant applied to register the mark SERV-TECH with the USPTO, for “Roofing services; Roofing consultation; Roofing contracting; Roofing installation; Roofing repair; Roofing services, namely, waterproofing.” A copy of Registrant’s application is attached as Exhibit 1.

13. Registrant’s application subsequently registered on September 20, 2016, as Registration No. 5,044,774, listing July 31, 2015 as the date of first use in commerce. A copy of the Registration is attached as Exhibit 2.

14. Registration and use of SERV-TECH by Registrant for the services listed in Registration No. 5,044,774 constitutes an ongoing threat to Petitioner and the public in general.

COUNT ONE

Cancellation of Registration under 15 U.S.C. § 1064(3)

15. Petitioner incorporates herein by reference each and every allegation in the preceding paragraphs.

16. Petitioner is informed and believes that Registrant has abandoned its SERV-TECH mark by discontinuing the use of such mark in the ordinary course of trade on the products specified in Registration No. 5,044,774 with intent not to resume said use.

17. Registrant’s purported specimen showing use of the SERV-TECH mark

submitted in support of its Application is shown in Exhibit 2 on page 11, and depicts a website located at www.jimmysroofing.com/repairs-and-maintenance/.

18. At least as early as July 1, 2019, Registrant is not using the SERV-TECH mark in any capacity. A current view of the same website www.jimmysroofing.com/repairs-and-maintenance/ is located in Exhibit 3, and no use of the SERV-TECH mark is present; it has been abandoned by Registrant.

19. Petitioner is damaged by the continued existence of Registration No. 5,044,774 for the abandoned mark SERV-TECH, as the existence of such registration may prevent Petitioner from importing, advertising, and/or selling goods under its SERVI-TEK mark and/or subject Petitioner to liability based therefrom, and has already prevented Petitioner from obtaining a registration for SERVI-TEK as was attempted in its trademark application for the same, Serial No. 87/908,708.

COUNT TWO

Fraud in Signing, Filing, and Prosecuting the '597 Application before the USPTO

20. Petitioner incorporates herein by reference each and every allegation in the preceding paragraphs.

21. On February 8, 2016, Registrant applied to register the mark SERV-TECH with the USPTO, Serial No. 86/900,597 (“the ‘597 Application”). In that application, Registrant claimed, among other things, that SERV-TECH was “first used in commerce at least as early as 07/31/2015, and is now in use in such commerce.”

22. Also, on February 8, 2016, Registrant signed a declaration under Section 1101 of Title 18 of the United States Code in support of the ‘597 Application, stating, among other things, that “all statements made of his/her own knowledge are true.”

23. Petitioner is informed and believes that on July 31, 2015, the alleged date of first use, the SERV-TECH mark was in fact not used on any product anywhere as defined by 15 U.S.C. Section 1051 et seq.

24. Web archives accessible through web.archive.org indicate that Registrant did not add the term SERV-TECH to its website until sometime between August 15, 2015 and January 25, 2016, which is after the alleged date of first use in interstate commerce. A copy of the web.archive.org snapshot of Registrant's website dated August 15, 2015 (showing no use of the mark) is attached as Exhibit 4. A copy of the web.archive.org snapshot of Registrant's website dated January 25, 2016 (showing use of the mark) is attached as Exhibit 5.

25. Registrant knew that SERV-TECH was not first used in commerce as of 07/31/2015.

26. Petitioner is informed and believes that at the time Registrant signed the declaration in support of the '597 Application and filed the '597 Application, Registrant knew or acted in reckless disregard of the truth that its claim that SERV-TECH was "first used in commerce at least as early as 07/31/2015" and such claim was false and misleading.

27. Petitioner is informed and believes, that at the time Registrant acknowledged and accepted the warning "that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. Section 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true," yet executed the declaration nonetheless knowing such statements to be false.

28. The USPTO accepted and relied upon the above material misrepresentation by Registrant in approving the '597 Application for publication.

29. Petitioner is informed and believes that Registrant intended to procure a registration to which it was not entitled, and thus committed fraud on the USPTO, by failing to provide truthful representations as to the date when Registrant began using SERV-TECH in commerce.

COUNT THREE
Abandonment of Registration under 15 U.S.C. § 1127

30. Petitioner is informed and believes that Registrant has not used SERV-TECH in commerce for three consecutive years, which is prima facie evidence of abandonment under 15 U.S.C. § 1127.

31. Web archives accessible through web.archive.org indicate that Registrant stopped using SERV-TECH on its website sometime between October 25, 2016 and April 8, 2019. A copy of the web.archive.org snapshot dated April 8, 2019 (showing no use of the mark) is attached as Exhibit 6.

32. Referring again to Exhibit 3, the current view of Registrant's website www.jimmysroofing.com/repairs-and-maintenance/ reveals no current use of the SERV-TECH mark as viewed on July 1, 2019.

33. Registrant has abandoned use of the SERV-TECH mark in any capacity, and thus Registrant's mark should be deemed abandoned, and subsequently cancelled.

COUNT FOUR
Priority and Likelihood of Confusion under 15 U.S.C. § 1052(d)

34. Petitioner incorporates herein by reference each and every allegation in the preceding paragraphs.

35. As noted above, since at least as early as January 2006, Petitioner has been using the SERVI-TEK in commerce in connection with its identified services.

36. Petitioner's date of first use in commerce of the SERVI-TEK mark for its services is earlier than any date of use upon which Registrant could rely. Specifically, Registrant's claimed date of first use in commerce, as reflected in Registration No. 5,044,774, of the SERV-TECH mark is July 31, 2015 and Registrant's filing date is February 8, 2016. Thus, Petitioner has priority over Registrant.

37. Despite minor spelling differences between the marks, Registrant's SERV-TECH

mark is confusingly similar to Petitioner's SERVI-TEK mark in sight, sound, and meaning.

38. The services offered under the parties' respective marks are highly related, overlapping, and competing and are marketed to the same or similar types of consumers through the same or similar trade channels.

39. Registrant's SERVI-TEK mark is likely to cause confusion and/or mistake, or to deceive the trade and the general public into believing that Registrant's services come from the same source as those provided in connection with Petitioner's SERVI-TEK mark, and/or are otherwise authorized, sponsored or licensed by Petitioner, in violation of Section 2(d) of the Lanham Act, 15 U.S.C. §1052(d).

40. As a result, continued registration of the SERV-TECH mark by Registrant will cause substantial damage and injury to Petitioner.

41. Registrant is not entitled to continued registration for the claimed mark.

WHEREFORE, Petitioner is being damaged by Registration No. No. 5,044,774 and respectfully requests that this petition for cancellation be granted, and that Registration No. No. 5,044,774 be cancelled.

Dated: April 9, 2021

Respectfully submitted,
/Michelle Hon Donovan/

Michelle Hon Donovan
DUANE MORRIS LLP
750 B Street, Suite 2900
San Diego, CA 92101-4681
Telephone: (619) 744 2219
Fax: (619) 923 2967

Attorneys for Petitioner

EXHIBIT 1

United States of America

United States Patent and Trademark Office

SERV-TECH

Reg. No. 5,044,774

Registered Sep. 20, 2016

Int. Cl.: 37

Service Mark

Principal Register

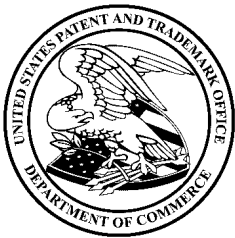
Jimmy's Contractor Services, Inc. (WASHINGTON CORPORATION)
11401 E. Montgomery Dr., Suite 2
Spokane Valley, WA 99206

CLASS 37: Roofing services; Roofing consultation; Roofing contracting; Roofing installation; Roofing repair; Roofing services, namely, waterproofing

FIRST USE 7-31-2015; IN COMMERCE 7-31-2015

THE MARK CONSISTS OF STANDARD CHARACTERS WITHOUT CLAIM TO ANY PARTICULAR FONT STYLE, SIZE OR COLOR

SER. NO. 86-900,597, FILED 02-08-2016
JENNIFER ELLEN MARINO, EXAMINING ATTORNEY



Michelle K. Lee

Director of the United States
Patent and Trademark Office

EXHIBIT 2

Generated on: This page was generated by TSDR on 2019-07-03 19:21:49 EDT

Mark: SERV-TECH

SERV-TECH

US Serial Number: 86900597

Application Filing Date: Feb. 08, 2016

US Registration Number: 5044774

Registration Date: Sep. 20, 2016

Filed as TEAS RF: Yes

Currently TEAS RF: Yes

Register: Principal

Mark Type: Service Mark

Status: Registered. The registration date is used to determine when post-registration maintenance documents are due.

Status Date: Sep. 20, 2016

Publication Date: Jul. 05, 2016

Mark Information

Mark Literal Elements: SERV-TECH

Standard Character Claim: Yes. The mark consists of standard characters without claim to any particular font style, size, or color.

Mark Drawing Type: 4 - STANDARD CHARACTER MARK

Goods and Services

Note:

The following symbols indicate that the registrant/owner has amended the goods/services:

- Brackets [...] indicate deleted goods/services;
- Double parenthesis (..) identify any goods/services not claimed in a Section 15 affidavit of incontestability; and
- Asterisks *..* identify additional (new) wording in the goods/services.

For: Roofing services; Roofing consultation; Roofing contracting; Roofing installation; Roofing repair; Roofing services, namely, waterproofing

International Class(es): 037 - Primary Class

U.S Class(es): 100, 103, 106

Class Status: ACTIVE

Basis: 1(a)

First Use: Jul. 31, 2015

Use in Commerce: Jul. 31, 2015

Basis Information (Case Level)

Filed Use: Yes

Currently Use: Yes

Amended Use: No

Filed ITU: No

Currently ITU: No

Amended ITU: No

Filed 44D: No

Currently 44D: No

Amended 44D: No

Filed 44E: No

Currently 44E: No

Amended 44E: No

Filed 66A: No

Currently 66A: No

Filed No Basis: No

Currently No Basis: No

Current Owner(s) Information

Owner Name: Jimmy's Contractor Services, Inc.

Owner Address: 11401 E. Montgomery Dr., Suite 2
Spokane Valley, WASHINGTON 99206
UNITED STATES

Legal Entity Type: CORPORATION

State or Country: WASHINGTON
Where Organized:

Attorney/Correspondence Information

Attorney of Record

Attorney Name: Rhett V. Barney

Docket Number: J043-0002TMU

Attorney Primary Email Address: trademarks@leehayes.com

Attorney Email Authorized: Yes

Correspondent

Correspondent Name/Address: RHETT V. BARNEY
LEE & HAYES, PLLC
601 W. RIVERSIDE, AVE STE 1400
SPOKANE, WASHINGTON 99201
UNITED STATES

Correspondent e-mail: trademarks@leehayes.com rhettb@leehayes.com
kariq@leehayes.com

Correspondent e-mail Authorized: Yes

Domestic Representative - Not Found

Prosecution History

Date	Description	Proceeding Number
Sep. 20, 2016	REGISTERED-PRINCIPAL REGISTER	
Jul. 05, 2016	OFFICIAL GAZETTE PUBLICATION CONFIRMATION E-MAILED	
Jul. 05, 2016	PUBLISHED FOR OPPOSITION	
Jun. 15, 2016	NOTIFICATION OF NOTICE OF PUBLICATION E-MAILED	
May 26, 2016	APPROVED FOR PUB - PRINCIPAL REGISTER	
May 24, 2016	ASSIGNED TO EXAMINER	92837
Feb. 12, 2016	NOTICE OF PSEUDO MARK E-MAILED	
Feb. 11, 2016	NEW APPLICATION OFFICE SUPPLIED DATA ENTERED IN TRAM	
Feb. 11, 2016	NEW APPLICATION ENTERED IN TRAM	

TM Staff and Location Information

TM Staff Information - None

File Location

Current Location: PUBLICATION AND ISSUE SECTION

Date in Location: Sep. 20, 2016

SERV-TECH



Serv-Tech

Repairs and Maintenance

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Roof leaks can be very difficult to diagnose. To make matters worse, water will often travel a great distance before it enters the interior of a building. You need a roofing expert that is knowledgeable enough to find the true source of the leak and repair it properly—and efficiently.

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With highly trained technicians, you'll get immediate response for any leak or roof issue.

Experienced, certified and professional.

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Emergency Leak Repair:

- 24hr/7 Days a Week Emergency Leak Response
- Fixed Right the First Time/No Call Backs
- On Site Repair Estimations
- Detailed Written Assessments with Photographs

Roof Insurance Claims:

- Property Owner Consultation about making a claim
- Liaison between Home Owner and Insurance Company

Trademark/Service Mark Application, Principal Register

Serial Number: 86900597

Filing Date: 02/08/2016

The table below presents the data as entered.

Input Field	Entered
SERIAL NUMBER	86900597
MARK INFORMATION	
*MARK	SERV-TECH
STANDARD CHARACTERS	YES
USPTO-GENERATED IMAGE	YES
LITERAL ELEMENT	SERV-TECH
MARK STATEMENT	The mark consists of standard characters, without claim to any particular font, style, size, or color.
REGISTER	Principal
APPLICANT INFORMATION	
*OWNER OF MARK	Jimmy's Contractor Services, Inc.
*STREET	11401 E. Montgomery Dr., Suite 2
*CITY	Spokane Valley
*STATE (Required for U.S. applicants)	Washington
*COUNTRY	United States
*ZIP/POSTAL CODE (Required for U.S. applicants)	99206
LEGAL ENTITY INFORMATION	
TYPE	corporation
STATE/COUNTRY OF INCORPORATION	Washington
GOODS AND/OR SERVICES AND BASIS INFORMATION	
INTERNATIONAL CLASS	037
*IDENTIFICATION	Roofing services; Roofing consultation; Roofing contracting; Roofing installation; Roofing repair; Roofing services, namely, waterproofing
FILING BASIS	SECTION 1(a)
FIRST USE ANYWHERE DATE	At least as early as 07/31/2015
FIRST USE IN COMMERCE DATE	At least as early as 07/31/2015
SPECIMEN FILE NAME(S)	\\TICRS\EXPORT16\IMAGEOUT16\869\005\86900597\xml1\ RFA0003.JPG
SPECIMEN DESCRIPTION	Screen shot from Applicant's website showing mark used in

SPECIMEN DESCRIPTION	connection with advertising of claimed services and method to pay for services rendered.
ATTORNEY INFORMATION	
NAME	Rhett V. Barney
ATTORNEY DOCKET NUMBER	J043-0002TMU
FIRM NAME	Lee & Hayes, PLLC
STREET	601 W. Riverside, Ave Ste 1400
CITY	Spokane
STATE	Washington
COUNTRY	United States
ZIP/POSTAL CODE	99201
EMAIL ADDRESS	trademarks@leehayes.com
AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
OTHER APPOINTED ATTORNEY	Daniel M. Wadkins, J. Christopher Lynch, Jeffrey R. Smith, David A. Divine, Robert A. Madayag III, Andrew L. Eisenberg, Gabriel J. Gonzalez, Brian T. Mangum, Elizabeth L. Zinke, George H. Brunt, and Lewis C. Lee
CORRESPONDENCE INFORMATION	
NAME	Rhett V. Barney
FIRM NAME	Lee & Hayes, PLLC
STREET	601 W. Riverside, Ave Ste 1400
CITY	Spokane
STATE	Washington
COUNTRY	United States
ZIP/POSTAL CODE	99201
*EMAIL ADDRESS	trademarks@leehayes.com;rhettb@leehayes.com; karig@leehayes.com
*AUTHORIZED TO COMMUNICATE VIA EMAIL	Yes
FEE INFORMATION	
APPLICATION FILING OPTION	TEAS RF
NUMBER OF CLASSES	1
FEE PER CLASS	275
*TOTAL FEE DUE	275
*TOTAL FEE PAID	275
SIGNATURE INFORMATION	
SIGNATURE	/Rhett Barney/
SIGNATORY'S NAME	Rhett V. Barney
SIGNATORY'S POSITION	Attorney of Record, WA State Bar
SIGNATORY'S PHONE NUMBER	5099444642
DATE SIGNED	02/08/2016

Trademark/Service Mark Application, Principal Register

Serial Number: 86900597

Filing Date: 02/08/2016

To the Commissioner for Trademarks:

MARK: SERV-TECH (Standard Characters, see [mark](#))

The literal element of the mark consists of SERV-TECH.

The mark consists of standard characters, without claim to any particular font, style, size, or color.

The applicant, Jimmy's Contractor Services, Inc., a corporation of Washington, having an address of
11401 E. Montgomery Dr., Suite 2
Spokane Valley, Washington 99206
United States

requests registration of the trademark/service mark identified above in the United States Patent and Trademark Office on the Principal Register established by the Act of July 5, 1946 (15 U.S.C. Section 1051 et seq.), as amended, for the following:

International Class 037: Roofing services; Roofing consultation; Roofing contracting; Roofing installation; Roofing repair; Roofing services, namely, waterproofing

In International Class 037, the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 07/31/2015, and first used in commerce at least as early as 07/31/2015, and is now in use in such commerce. The applicant is submitting one(or more) specimen(s) showing the mark as used in commerce on or in connection with any item in the class of listed goods/services, consisting of a(n) Screen shot from Applicant's website showing mark used in connection with advertising of claimed services and method to pay for services rendered..

[Specimen File1](#)

The applicant's current Attorney Information:

Rhett V. Barney and Daniel M. Wadkins, J. Christopher Lynch, Jeffrey R. Smith, David A. Divine, Robert A. Madayag III, Andrew L. Eisenberg, Gabriel J. Gonzalez, Brian T. Mangum, Elizabeth L. Zinke, George H. Brunt, and Lewis C. Lee of Lee & Hayes, PLLC 601 W. Riverside, Ave Ste 1400
Spokane, Washington 99201
United States
trademarks@leehayes.com (authorized)

The attorney docket/reference number is J043-0002TMU.

The applicant's current Correspondence Information:

Rhett V. Barney
Lee & Hayes, PLLC
601 W. Riverside, Ave Ste 1400
Spokane, Washington 99201
trademarks@leehayes.com;rhettb@leehayes.com; karig@leehayes.com (authorized)

E-mail Authorization: I authorize the USPTO to send e-mail correspondence concerning the application to the applicant or applicant's attorney at the e-mail address provided above. I understand that a valid e-mail address must be maintained and that the applicant or the applicant's attorney must file the relevant subsequent application-related submissions via the Trademark Electronic Application System (TEAS). Failure to do so will result in an additional processing fee of \$50 per international class of goods/services.

A fee payment in the amount of \$275 has been submitted with the application, representing payment for 1 class(es).

Declaration

The signatory believes that: if the applicant is filing the application under 15 U.S.C. § 1051(a), the applicant is the owner of the trademark/service mark sought to be registered; the applicant is using the mark in commerce on or in connection with the goods/services in the

application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; and/or if the applicant filed an application under 15 U.S.C. § 1051(b), § 1126(d), and/or § 1126(e), the applicant is entitled to use the mark in commerce; the applicant has a bona fide intention, and is entitled, to use the mark in commerce on or in connection with the goods/services in the application. The signatory believes that to the best of the signatory's knowledge and belief, no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive. The signatory being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. § 1001, and that such willful false statements and the like may jeopardize the validity of the application or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true and all statements made on information and belief are believed to be true.

Declaration Signature

Signature: /Rhett Barney/ Date: 02/08/2016

Signatory's Name: Rhett V. Barney

Signatory's Position: Attorney of Record, WA State Bar

RAM Sale Number: 86900597

RAM Accounting Date: 02/08/2016

Serial Number: 86900597

Internet Transmission Date: Mon Feb 08 13:08:36 EST 2016

TEAS Stamp: USPTO/BAS-XX.XX.XXX.XXX-2016020813083663

7364-86900597-5508ab32acdec7a2438573a0b9

cd4bae8b83d2f02fca5a60ede65ae0445d1efe52

-CC-11524-20160208123322664812

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With highly trained technicians, you'll get immediate response for any leak or roof issue.

Experienced, certified and professional.

Our technicians have training on all types of roof systems and have a portfolio of roofing manufacture certifications so that the roof manufacture warranty remains valid. Our crews arrive in a "Head to Toe" uniform with strict grooming and conduct standards to maintain a professional and comfortable enviroment at your home or business.

Emergency Leak Repair:

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- On Site Repair Estimations
- Detailed Written Assessments with Photographs


Roof Insurance Claims:

- Property Owner Consultation about making a claim
- Liaison between Home Owner and Insurance Company

EXHIBIT 3

Repairs and Maintenance x +

← → ↻ 🏠 🔒 https://jimmysroofing.com/repairs-and-maintenance/ 📄 ☆ ⚙️ 📄 📄 ⋮



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- Detailed Written Assessments with Photographs

START CHAT



How can I help?

START CHAT

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EXHIBIT 4

Browser window: Jimmy's Roofing :: Repa x + v
Address bar: https://web.archive.org/web/20150815001637/http://jimmysroofing.com/repairs-and-maintenance/
Search bar: Find on page Enter text to search No results < > Options v
Wayback Machine: http://jimmysroofing.com/repairs-and-maintenance/ 8 captures 26 Sep 2013 - 8 Apr 2019
Calendar: FEB AUG JAN 15 2013 2015 2016



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Emergency Leak Repair

Dell Update
3 updates are ready to install [View Details](#)

Windows taskbar: Type here to search | Taskbar icons: File Explorer, Edge, Chrome, Firefox, File Explorer, Excel, Word, Outlook, Photos | System tray: Network, Volume, 2:42 PM 4/17/2019, Notifications

EXHIBIT 5



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EXHIBIT 6



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