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

Proceeding	92073434
Party	Defendant Seated, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

SEATED TECHNOLOGIES, INC.,
a Delaware corporation,

Petitioner,

v.

SEATED, INC.,
a Delaware corporation,

Respondent.

In the matter of U.S. Trademark
Application Serial No. 87/374456

Trademark: SEATED

Cancellation No. 92073434

SEATED, INC.’S MOTION TO COMPEL RESPONSES

Pursuant to Rules 36 and 37 of the Federal Rules of Civil Procedure, Trademark Rule of Practice §§ 2.120(f) and 2.120(i)(1), and Trademark Trial and Appeal Board Manual of Practice (“TBMP”) §§ 403.03, 411.02, 411.03, 523 and 524, Respondent Seated, Inc. (“Respondent”) hereby moves to compel discovery responses from Petitioner Seated Technologies, Inc. and for a determination of the sufficiency of Petitioner’s Responses to Respondent’s Requests for Admissions.

I. BACKGROUND AND PROCEDURAL HISTORY

Petitioner filed a Petition to Cancel Registration (“Amended Petition”) against Application Serial No. 87/374456 for the trademark SEATED (the “Seated Mark”) on the basis of fraud. Petitioner alleges that Respondent’s Statement of Use filed on September 19, 2017, was fraudulently submitted with a first use date of April 24, 2017, as Respondent “was not legitimately using its mark in commerce in April or September 2017.” Amended Petition, ¶ 4.

On October 19, 2020, Respondent filed an Answer to Petitioner’s Amended Petition to Cancel Registration (“Answer”), which included the affirmative defenses of priority and unclean hands. Respondent maintains that it lawfully owns the Seated Mark, as well as numerous domains that include the Seated Mark, and that it has used the Seated Mark well before Petitioner. *See Answer, First Affirmative Defense.* Respondent alleges that many months after Respondent started its use of the Seated Mark, it discovered that a software application, called VocoLife, run by a company call YouPik, Inc. had rebranded its services to the name “Seated” in June 2017. *Id.* Respondent alleges that, at some point around February 2019, a company called GuestFriend acquired YouPik, Inc. and reincorporated as Petitioner, “Seated Technologies, Inc.” *Id.* Respondent alleges that, in or around May or June 2019, Respondent started to experience significant confusion in the marketplace with Petitioner due to Petitioner’s large influx of funding, marketing, and encroachment of services related to Respondent. *Id.*

Respondent further alleges that Petitioner has filed this proceeding, as well as a number of international trademark applications for the mark “SEATED” for services identical to Respondent’s, in bad faith to gain leverage in the Parties’ dispute, cause unnecessary delay, and needlessly increase the cost of litigation. *See Answer, Second Affirmative Defense.*

On December 17, 2020, Respondent served its First Request for Production of Documents (“RFPs”), First Set of Interrogatories (“Interrogatories”), and First Set of Requests for Admissions (“RFAs”). *See Kelson Decl., ¶¶ 3-5.*

On January 15, 2021, Petitioner served its Objections and Responses to each set of discovery requests. *See Kelson Decl., ¶¶ 6-8.*

As explained below, Petitioner's Responses and Objections to Respondent's RFPs and Interrogatories are almost entirely devoid of responses and improperly withhold relevant information. Further, Petitioner's responses to Respondent's RFAs are insufficient and improper. Petitioner has refused to participate in discovery (in an action it brought) and failed to respond to essentially any of Respondent's discovery demands by Petitioner's claimed reasoning of irrelevance.

As required by Rule 37 of the Federal Rules of Civil Procedure, Trademark Rule of Practice § 2.120, and TBMP § 523.02, Respondent made a good faith attempt to resolve the issues presented in this motion. On February 5, 2021, Respondent notified Petitioner via email that its responses were deficient, and requested a meet and confer to discuss the same. *See* Kelson Decl., ¶ 9. After a lack of response to the February 5, 2021 email, Respondent sent a follow up email on February 19, 2021. *See* Kelson Decl., ¶¶ 9-10. Petitioner responded on February 19, 2021, stating, "We're researching these issues and will be prepared to discuss them with you in the near future." *See* Kelson Decl., ¶¶ 9 -10. After a continued lack of response, Respondent sent a follow up email on March 5, 2021. Kelson Decl., ¶¶ 9-10.

To date, Petitioner has not responded to Respondent's concerns or multiple requests for a meet and confer. Therefore, given the Petitioner's lack of participation or cooperation in attempting to resolve these issues and Respondent's good faith attempts to do so, this motion is ripe for the Board's consideration. *See* Kelson Decl., ¶¶ 9-11. Respondent on the other hand has responded to 33 Interrogatories, 52 Requests for Documents, 26 Requests to Admit and an 8 hour deposition all in good faith. How can Petitioner rationalize not participating in its own proceeding?

II. LEGAL STANDARD

“Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party’s claim or defense and proportional to the needs of the case.” Fed. R. Civ. P. 26(b)(1). Furthermore, “[a] party may serve on any other party a written request to admit . . . the truth of any matters . . . relating to facts, the application of law to fact, or opinions about either.” Fed. R. Civ. P. 36(a)(1). “A denial must fairly respond to the substance of the matter.” *Id.* “The answering party may assert lack of knowledge or information as a reason for failing to admit or deny only if the party states that it has made reasonable inquiry and that the information it knows or can readily obtain is insufficient to enable it to admit or deny.” *Id.*

III. RESPONDENT’S REQUESTS FOR PRODUCTION OF DOCUMENTS

Respondent requested relevant and discoverable documents from Petitioner in each of its Request for Production of Documents. In response to 27 of the 31 requests,¹ Petitioner responded as follows:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner’s right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner’s current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

¹ See Requests for Production Nos. 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, 24, 25, 27, 28, 29, 30, and 31, attached as Ex. A to Kelson Decl.

As discussed below, each request is in fact relevant to the claims in the Amended Petition as well as the Respondent's Affirmative Defenses.

A. Request for Production Nos. 4, 5, 6, 7, 8, 24, and 25

Respondent requested certain documents from Petitioner regarding the adoption, selection, development and use of the Seated Mark on websites, social media and mobile apps, as well as documents concerning first us, annual sales and costs and expenses.

In Request for Production No. 4, Respondent requested documents from Petitioner "concerning Petitioner's adoption and selection to use the Seated Mark for use on or in connection with any goods and services." *See* Kelson Decl., Ex. A, at Request for Production No. 4. Request for Production No. 5 requests documents "sufficient to show the corporate organization and structure associated with Petitioner's business," including the persons "that have been, are, or will be responsible for any product or service offered, marketed, and/or sold under the Seated Mark." *See* Kelson Decl., Ex. A, at Request for Production No. 5.

Request for Production No. 6 requests from Petitioner "documents sufficient to show the circumstances of Petitioner's first use of the Seated mark . . ." *See* Kelson Decl., Ex. A, at Request for Production No. 6. Requests for Production Nos. 7 and 8 request documents "sufficient to show Petitioner's use of the Seated Mark on Petitioner's websites and social media platforms" and "documents related to the development of all of Petitioner's mobile apps displaying the Seated Mark." *See* Kelson Decl., Ex. A, at Requests for Production Nos. 7 and 8. Requests for Production Nos. 24 and 25 requests documents sufficient to show, for the last five years, the volume of Petitioner's annual sales of goods or services sold or licensed under the Seated Mark; and all costs and amounts expended by Petitioner and its licensees to promote,

market, and advertise goods or services in connection with the Seated Mark. *See* Kelson Decl., Ex. A, at Requests for Production Nos. 24 and 25.²

These requests are relevant to the claims alleged in the Amended Petition, which alleges that Petitioner offers a “popular mobile app called SEATED that provides rewards for dining out” and that Petitioner “owns longstanding rights in the SEATED mark based on its use of the mark in connection with mobile apps since 2017.” Amended Petition, ¶¶ 1-2. The Amended Petition also references Respondent’s September 2019 cease and desist letter “claiming that Petitioner’s SEATED mark infringed Respondent’s SEATED mark.” Amended Petition, ¶ 3. Thus, the requests regarding the adoption, selection, development and use of the Seated Mark on websites, social media and mobile apps, and information concerning first use and sales and expenses, are relevant to the issues Petitioner raised in its Amended Petition, particularly its claim that Petitioner has longstanding rights in the Seated Mark and its use since 2017. Each of these requests speaks directly to those allegations. Plaintiff should also disclose responsive documents sufficient to show the corporate structure of its business, and persons responsible for products or services offered, marketed and/sold under the Seated Mark.

Furthermore, the above requests are also relevant to Respondent’s Affirmative Defense of priority. *See* Answer, First Affirmative Defense. Responses to these requests are relevant to the allegations that Respondent has priority of the Seated Mark over Petitioner’s use, and that Petitioner is barred from seeking cancellation of Respondent’s trademark. The requests are also relevant to the Affirmative Defense of unclean hands, which alleges that: 1) Petitioner filed this

² Although Requests for Production Nos. 24 and 25 were not specifically discussed by number in the February 5, 2021, email; Kelson Decl, ¶ 9; Respondent seeks adjudication of same as Petitioner has failed to respond to Respondent’s good faith efforts to resolve Petitioner’s objections and/or for a meet and confer concerning all of Petitioner’s objections.

very action simply to make Respondent incur large costs in hope to force Respondent into a settlement and 2) Petitioner filed a number of international trademark applications for the Seated Mark in October 2019 without a bona fide intent to use the Seated Mark in the international jurisdictions in relation to the goods and services it applied for. *See Answer, Second Affirmative Defense.*

Therefore, respectfully, the Board should compel the Petitioner to provide documents responsive to Requests for Production Nos. 4, 5, 6, 7, 8, 24 and 25, as they are relevant to the issues alleged in the Amended Complaint and the Affirmative Defenses alleged by Respondent.

B. Requests for Production Nos. 9, 10, 12, 13, 14, 15, 16, 17, and 21

Respondent requested documents from Petitioner “sufficient to identify all goods and services . . . sold, offered, or licensed by Petitioner under or in connection with the Seated Mark,” as well as documents “sufficient to identify all words, terms, phrases, and other designations” used in connection with the goods and services under the Seated Mark. *See Kelson Decl., Ex. A, at Requests for Production Nos. 9, 10.* Respondent also requested documents regarding the “channels of trade” and “geographic scope” through which and where Petitioner has “offered for sale, sold or intends to offer for sale or sell goods or services under or in connection with the Seated Mark.” *See Kelson Decl., Ex. A, at Requests for Production Nos. 12, 13.*

Respondent has also requested documents “sufficient to show each visual, oral and other manner in which Petitioner has presented or authorized the presentation of the Seated Mark . . .;” “[r]epresentative samples of each type of advertisement and promotional material . . . that have displayed or that will display the Seated Mark;” all “newspaper, magazine, newsletter, trade

journal, website, and other media coverage ... concerning the Seated Mark;" documents sufficient to "identify the target purchasers or potential purchasers of goods and services actually or planned or intended to be sold, offered, distributed, or licensed by Petitioner under or in connection with the Seated Mark;" and agreements concerning Petitioner's use of the Seated Mark. *See* Kelson Decl., Ex. A, at Requests for Production Nos. 14, 15, 16, 17 and 21.

Each of these requests seeks relevant documents that are reasonably calculated to lead to the discovery of admissible evidence. As previously discussed, Petitioner's Amended Petition alleges, among other things, that Petitioner "owns longstanding rights in the SEATED mark" based on its "use . . . since 2017." Amended Petition, ¶¶ 1-2. Therefore, given that each of these requests speak directly to the issue of Petitioner's use of the mark, including what goods and services the mark is used in connection with, where such goods and services are sold and/or promoted and to what targeted purchasers, and agreements concerning Petitioner's use of the Seated Mark, they are relevant to the claims in the Amended Petition.

These requests are also relevant to the Affirmative Defense of priority. *See* Answer, First Affirmative Defense. Responses to these requests are relevant to the allegations that Petitioner's services and goods directly encroach on Respondent's mark in connection with the goods and services offered well before Petitioner. The requests are also relevant to the Affirmative Defense of unclean hands, which alleges that: 1) Petitioner filed this very action simply to make Respondent incur large costs in hope to force Respondent into a settlement and 2) Petitioner filed a number of international trademark applications for the Seated Mark in October 2019 without a bona fide intent to use the Seated Mark in the international jurisdictions in relation to the goods and services it applied for. *See* Answer, Second Affirmative Defense. Petitioner filed the international applications for the Seated Mark in bad faith to undermine Respondent's interest in

the mark, block Respondent's established use of the Seated Mark in other countries, and gain leverage in the dispute in the United States. Therefore, Respondent respectfully requests the Board to compel the production of responsive documents as to Requests for Production Nos. 9, 10, 12, 13, 14, 15, 16, 17, and 21.

C. Requests for Production Nos. 11 and 27

Requests for Production No. 11 and 27 seek "documents sufficient to show any plans for development or expansion of the goods or services that are offered . . . in connection with the Seated Mark," as well as "documents concerning Petitioner's acquisition of the G GET SEATED trademark . . ." *See* Kelson Decl., Ex. A, at Requests for Production Nos. 11 and 27. These requests, as discussed above, speak directly to the Petitioner's alleged "longstanding rights in the Seated Mark" based on its "use . . . since 2017." Amended Petition, ¶¶ 1-2. Furthermore, they are relevant to Respondent's Affirmative Defense of unclean hands. Respondent contends the "submissions were made in bad faith, as the Petitioner knew of Respondent's use of the identical trademark." Answer, Second Affirmative Defense. Responsive documents are relevant to Petitioner's use and intended use and reasoning for filing such applications and acquiring G GET SEATED. Respondent, upon good faith and belief, believes that Petitioner's acquisition of G GET SEATED was another tactic to threaten Respondent into settlement. Therefore, the pattern of threatening courses of action taken by Petitioner, including documents in connection with the acquisition of the G GET SEATED trademark, are important to show Petitioner's bad faith and unclean hands in filing this action.

Therefore, Respondent respectfully requests the Board to compel the production of responsive documents as to Requests for Production Nos. 11 and 27.

D. Requests for Production Nos. 18, 19, 20, 22, 23, and 28

Respondent has requested documents concerning: “Petitioner’s knowledge of Respondent or Respondent’s use of the Seated Mark ...;” any “trademark searches” or clearances or other inquiries conducted concerning the availability to use or register the Seated Mark; any opinion letter, analysis or other communication concerning whether Petitioner has the right to use or register the Seated Mark; any observations, perceptions, impressions or inquiries of any person as to whether the goods and services sold, offered, provided or licensed under the Seated Mark are produced, sponsored or endorsed by Respondent or its goods and services offered under the Seated Mark; and any instances of actual or possible confusion, mistake, deception, or association between Petitioner’s and Respondent’s goods or services. *See* Kelson Decl., Ex. A, at Requests for Production Nos. 18, 19, 20, 22, and 23. Relatedly, Respondent seeks documents concerning any due diligence conducted by GuestFriend, Inc. prior to acquiring YouPik, Inc. *See* Kelson Decl., Ex. A, at Requests for Production No. 28.

The requested documents are relevant to the claims and defenses in this matter. They seek relevant information and/or information that is reasonably calculated to lead to the discovery of admissible evidence, particularly as to Petitioner’s allegations concerning its alleged longstanding rights in the Seated Mark and its use since 2017. Responses to these requests would provide information relevant to Petitioner’s knowledge of Respondent’s use of the mark and/or confusion between Respondent and Petitioner’s mark.

The requested information is also relevant to the Affirmative Defenses of priority and unclean hands, particularly as it relates to first use and whether or not Petitioner had knowledge of Respondent’s use of the Seated Mark prior to Petitioner’s alleged adoption and use.

Respondent also seeks documents concerning any due diligence conducted by GuestFriend, Inc. prior to acquiring YouPik, Inc., in connection with Respondent's First Affirmative Defense, wherein it is alleged that GuestFriend acquired YouPik, Inc. and reincorporated as Petitioner, "Seated Technologies, Inc." *See* Answer, First Affirmative Defense.

Therefore, because these request are relevant to both the alleged claims and the affirmative defenses, Respondent respectfully requests Petitioner be compelled to provide responsive documents as to Requests for Production Nos. 18, 19, 20, 22, 23, and 28.

IV. RESPONDENT'S INTERROGATORIES

Respondent requested relevant and discoverable information from Petitioner in each of its Interrogatories. In response to 23 of the 25 interrogatories,³ Petitioner responded as follows:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

As with the Requests for Production, Petitioner objects to almost every interrogatory and "will not respond." As discussed below, each interrogatory is in fact relevant to the claims in the Amended Petition as well as the Respondent's Affirmative Defenses.

³ See Interrogatory Nos. 2, 3, 4, 5, 6, 7, 8, 9, 10, 11, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, 22, 23, and 25, attached as Ex. B to Kelson Decl.

A. Interrogatory Nos. 2, 6, 7, 8, and 13

Respondent requested certain information from Petitioner regarding the adoption, selection, development and use of the Seated Mark on websites, social media and mobile apps, as well as information concerning first use and expenditures.

In Interrogatory No. 2, Respondent requested Petitioner to “[f]ully describe the facts surrounding Petitioner’s adoption and selection to use the Seated Mark.” *See* Kelson Decl., Ex. B, at Interrogatory No. 2. Interrogatory Nos. 6 and 7 seek information regarding “all websites and social media platforms” and “mobile apps” displaying the Seated Mark, along with the date they were created or first available, as well as persons who participated in or were responsible for the creation of same. *See* Kelson Decl., Ex. B, at Interrogatory Nos. 6 and 7. Interrogatory No. 8 seeks information with respect to the “date of first use” in interstate commerce of the goods and services offered in connection with the Seated Mark in the United States and date ranges of actual and planned use of the Seated Mark. *See* Kelson Decl., Ex. B, at Interrogatory No. 8. Interrogatory No. 13 seeks information with respect to “expenditures incurred by [Petitioner] in connection with the development, promotion, advertisement and sale of any goods and services under the Seated Mark” *See* Kelson Decl., Ex. B, at Interrogatory No. 13.

As discussed in section III(A) above, in connection with the referenced Requests for Production, Interrogatory Nos. 2, 6, 7, 8, and 13 also seek information relevant to the claims alleged in the Amended Petition. The Amended Petition alleges that Petitioner offers a “popular mobile app called SEATED that provides rewards for dining out” and that Petitioner “owns longstanding rights in the SEATED mark based on its use of the mark in connection with mobile apps since 2017.” Amended Petition, ¶¶ 1-2. The Amended Petition also references

Respondent's September 2019 cease and desist letter "claiming that Petitioner's SEATED mark infringed Respondent's SEATED mark." Amended Petition, ¶ 3. Thus, the interrogatories requesting information regarding the adoption, selection, development and use of the Seated Mark on websites, social media and mobile apps, and information concerning first use and expenditures, are relevant to the issues Petitioner raised in its Amended Petition, particularly its claim that Petitioner has longstanding rights in the Seated Mark and its alleged use since 2017. *See* Amended Petition, ¶¶ 1-2. Each of these interrogatories speaks directly to those allegations.

Furthermore, these interrogatories are also relevant to Respondent's Affirmative Defense of priority. *See* Answer, First Affirmative Defense. Responses to these interrogatories are relevant to the allegations that Respondent has priority of the Seated Mark over Petitioner's use, and that Petitioner is barred from seeking cancellation of Respondent's trademark. The interrogatories are also relevant to the Affirmative Defense of unclean hands, which alleges that: 1) Petitioner filed this very action simply to make Respondent incur large costs in hope to force Respondent into a settlement and 2) Petitioner filed a number of international trademark applications for the Seated Mark in October 2019 without a bona fide intent to use the Seated Mark in the international jurisdictions in relation to the goods and services it applied for. *See* Answer, Second Affirmative Defense. Petitioner filed the international applications for the Seated Mark in bad faith to undermine Respondent's interest in the mark, block Respondent's established use of the Seated Mark in other countries, and gain leverage in the dispute in the United States.

Therefore, respectfully, the Board should compel the Respondent to respond Interrogatory Nos. 2, 6, 7, 8 and 13, as they are relevant to the issues alleged in the Amended Complaint and the affirmative defenses raised by Respondent.

B. Interrogatory Nos. 3, 4, 10, 14, 15, 21, 22, and 23

Respondent requested certain information from Petitioner regarding Petitioner's research and investigation into the Seated Mark, its awareness of Respondent's use and registration of the Seated Mark, and confusion in the marketplace among the parties' businesses and goods or services sold or offered in connection with the Seated Mark.

Interrogatory Nos. 3 and 4 request that Petitioner identify each "trademark search, investigation or any inquiry" conducted by Petitioner concerning the availability to use or register the Seated Mark, and to identify "each person involved in the review of any trademark search, investigation or other inquiry conducted by or for Petitioner concerning the availability to use or register the Seated Mark." *See* Kelson Decl., Ex. B, at Interrogatory Nos. 3 and 4. Similarly, Interrogatory No. 10 requests that Petitioner describe "all market research" conducted by Petitioner concerning the Seated Mark or any goods or services marketed or proposed to be marketed under the Seated Mark. *See* Kelson Decl., Ex. B, at Interrogatory No. 10.

Interrogatory No. 14 requests the date and circumstances of Petition "first becoming aware of Respondent's use and registration of the Seated Mark" *See* Kelson Decl., Ex. B, at Interrogatory No. 14. Relatedly, in Interrogatory No. 15, Respondent requested that Petitioner state whether, after Petitioner became aware of Respondent and Respondent's use of the Seated Mark, "anyone affiliated with Petitioner. . . questioned the priority of Petitioner's use of the Seated Mark, and identify the parties involved in such matters, the documents that evidences such matters, and any person who has knowledge about such matters." *See* Kelson Decl., Ex. B, at Interrogatory No. 15.

Interrogatory No. 21 requests that Petitioner describe instances in which “any person has been confused, mistaken, or deceived as to the origin or sponsorship of any goods or services” sold or offered in connection with the Seated Mark. *See* Kelson Decl., Ex. B, at Interrogatory No. 21. Interrogatory No. 22 also requests that Petitioner describe any inquiries or communications it received as to whether its business is associated or connected with Respondent. *See* Kelson Decl., Ex. B, at Interrogatory No. 22. Relatedly, Interrogatory No. 23 requests that Petitioner describe facts that would support a contention that Petitioner owns any rights in the Seated Mark. *See* Kelson Decl., Ex. B, at Interrogatory No. 23.

These Interrogatories seek relevant information and/or information that is reasonably calculated to lead to the discovery of admissible evidence. Interrogatory Nos. 3, 4, 10, 14 and 15 seek information concerning Petitioner’s research and investigation into the Seated Mark, and its awareness of Respondent’s use and registration of the Seated Mark, as well as identities of individuals involved in such research, which is an appropriate use of interrogatories. These Interrogatories are particularly relevant to Petitioner’s allegations of “longstanding rights in the SEATED mark” and its “use of the mark in connection with mobile apps since 2017.” Amended Petition, ¶¶ 1-2. These interrogatories are also relevant to Respondent’s First Affirmative Defense, which alleges that Respondent lawfully owns the Seated Mark and has used the mark well before Petitioner. They are also relevant to the Second Affirmative Defense, which alleges that Petitioner knew of Respondent’s use of the Seated Mark when Petitioner filed its Amended Petition in this action and filed a number of international trademark applications in October 2019. Likewise, Interrogatory Nos. 21 through 23, concerning confusion in the marketplace and whether Petitioner contends that it owns rights in the Seated Mark, are relevant to Petitioner’s claims of “longstanding rights” and the Respondent’s defenses of priority and unclean hands.

Responses to these interrogatories would provide information relevant to Petitioner's knowledge of Respondent's use of the mark and/or confusion between Respondent and Petitioner's mark. This information is also relevant to the affirmative defenses of priority and unclean hands, particularly as it relates to first use and whether or not Petitioner had knowledge of Respondent's use of the Seated Mark prior to Petitioner's alleged adoption and use and before the filing of this action.

Therefore, because these interrogatories are relevant to both the alleged claims and the Affirmative Defenses, Respondent respectfully requests Petitioner be compelled to provide responses to Interrogatory Nos. 3, 4, 10, 14, 15, 21, 22, and 23.

C. Interrogatory Nos. 5, 9, 11, 12, and 17

Respondent requested certain information from Petitioner regarding Petitioner's goods and services it has offered for sale, sold, or provided under or in connection with the Seated Mark in the United States, its advertising and geographic scope, and agreements concerning the use of the Seated Mark.

In Interrogatory No. 5, Respondent requested that Petitioner identify "all goods and services that Petitioner has offered for sale, sold, or provided under or in connection with the Seated Mark in the United States." *See* Kelson Decl., Ex. B, at Interrogatory No. 5. In Interrogatory Nos. 9 and 11, Respondent requested that Petitioner describe its "advertisements, promotional materials, and marketing materials ... in which Petitioner is using, has used, or plans to use the Seated Mark;" and describe its "channels of trade in the United States through which Petitioner has offered, sold, or intends to offer for sale or sell goods or services under or in connection with the Seated Mark." *See* Kelson Decl., Ex. B, at Interrogatory Nos. 9, 11. In

Interrogatory No. 12, Respondent requested that Petitioner identify the “geographic scope in which Petitioner has or has caused to be advertised, promoted, marketed, offered for sale, or sold any goods or services under or in connection with the Seated Mark.” *See* Kelson Decl., Ex. B, at Interrogatory No. 12. In Interrogatory No. 17, Respondent requested that Petitioner identify “all agreements concerning Petitioner’s use of the Seated Mark by date, parties to the agreement, and the subject matter of the agreement.” *See* Kelson Decl., Ex. B, at Interrogatory No. 17.

As discussed in section III(B) above, in connection with the referenced Requests for Production, Interrogatory Nos. 5, 9, 11, 12, and 17 seek relevant information to the claims alleged in the Amended Petition. The Amended Petition alleges that Petitioner offers a “popular mobile app called SEATED that provides rewards for dining out” and that Petitioner “owns longstanding rights in the SEATED mark based on its use of the mark in connection with mobile apps since 2017.” Amended Petition, ¶¶ 1-2. The Amended Petition also references Respondent’s September 2019 cease and desist letter “claiming that Petitioner’s SEATED mark infringed Respondent’s SEATED mark.” Amended Petition, ¶ 3. Thus, the interrogatories requesting information regarding Petitioner’s goods and services offered for sale, sold or provided in connection with the Seated Mark, advertisements related to the Seated Mark, channels of trade, agreements concerning Petitioner’s use, and the geographic scope in which Petitioner has advertised and promoted goods and services under the Seated Mark, are clearly relevant to the issues Petitioner raised in its Amended Petition, particularly its claim that Petitioner has “longstanding rights in the SEATED mark” and its “use ... since 2017.” *See* Amended Petition, ¶¶ 1-2. Each of these interrogatories speaks directly to those allegations, including issues related to of Petitioner’s use of the mark, what goods and services the mark is

used in connection with, where such goods and services are sold and/or promoted and to what targeted purchasers.

These interrogatories are also relevant to the affirmative defenses of priority and unclean hands. Responses to these interrogatories are relevant to the allegations that Petitioner's services and goods directly encroach on Respondent's mark in connection with the goods and services offered well before Petitioner. They are also relevant to Respondent's defense that this action was filed in bad faith and that Petitioner filed a number of international trademark applications for the Seated Mark in bad faith to undermine Respondent's interest in the mark, block Respondent's established use of the Seated Mark in other countries, and gain leverage in the dispute in the United States.

Therefore, Respondent respectfully requests the Board to compel Petitioner to respond to Interrogatory Nos. 5, 9, 11, 12 and 17.

C. Interrogatory No. 25

Interrogatory No. 25 requests that Petitioner describe in detail the "reasons Petitioner acquired the G GET SEATED trademark, US Reg. No. 5242626." *See* Kelson Decl., Ex. B, at Interrogatory No. 25. This interrogatory speaks directly to the Petitioner's alleged "longstanding rights in the Seated Mark" based on its "use . . . since 2017." Amended Petition, ¶ 2. It is also relevant to Respondent's affirmative defenses of priority and unclean hands. Respondent alleges that it lawfully owns the Seated Mark, as well as numerous domains that include the Seated Mark, and that it has used the Seated Mark well before Petitioner. As stated above, like filing this action, Respondent believes that Petitioner's acquisition of G GET SEATED was just another tactic in Petitioner's pattern of bad faith actions to gain leverage in this dispute. Therefore, the

pattern of threatening action taken by Petitioner, including details surrounding the acquisition of the G GET SEATED trademark, are important to show Petitioner's bad faith and unclean hands in filing this action. *See Answer, First Affirmative Defense.* Therefore, Respondent respectfully requests that Petitioner be compelled to respond to Interrogatory No. 25.

D. Interrogatory Nos. 18, 19, and 20

Respondent has requested that Petitioner describe "communications between Petitioner and Respondent concerning the Seated Mark," describe "any actions taken by Petitioner as a result of such communications," and describe "communications between Petitioner and any third party concerning Respondent or the Seated Mark." *See Kelson Decl., Ex. B, at Interrogatory Nos. 18, 19, and 20.*

Petitioner's communications with Respondent and third parties concerning the Seated Mark are relevant to several allegations in the Amended Petition and Respondent's Affirmative Defenses, including Petitioner's alleged longstanding rights in the Seated Mark, its alleged use of the mark in connection with mobile apps since 2017, and Respondent's demand in September 2019 that Petitioner cease use of the Seated Mark. *See Amended Petition, ¶¶ 1-3.* Respondent's Second Affirmative Defense contains allegations concerning Petitioner's response to Respondent's September 2019 cease and desist letter; Petitioner's reasoning for filing this action, Petitioner's international trademark applications filed between October 7 and October 10, 2019, and Petitioner's lack of a bona fide intent to use the trademark in the international jurisdictions. *See Answer, Second Affirmative Defense.* The subject interrogatories also relate to the parties' communications concerning the specimen of use in Respondent's trademark application, and Petitioner's purpose in filing this action, as well as the international trademark applications for

the Seated Mark, which are germane to Respondent's unclean hands defense. *See Answer, Second Affirmative Defense.*

Therefore, Respondent respectfully requests the Board compel responses to Interrogatory Nos. 18, 19, and 20.

V. **RESPONDENT'S REQUESTS FOR ADMISSIONS**

Respondent sought Petitioner's admission or denial of certain relevant facts with regard to the claims alleged in the Amended Petition, as well as Respondent's Affirmative Defenses. Petitioner effectively responded to just three of the thirty (30) RFAs. *See Kelson Decl., Ex. C, at RFA Nos. 4, 10, and 16.* As to the others,⁴ Petitioner responded as follows:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation to respond to this Request, as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

Petitioner's responses are evasive and improper. "Rule 36 requires the answering party to make reasonable inquiry and secure such knowledge and information as are readily obtainable to him." *M-5 Steel Mfg., Inc. v. O'Hagin's, Inc.* 2000 TTAB LEXIS 294, at *6 (TTAB April 28,

⁴ See RFA Nos. 1, 2, 3, 5, 6, 7, 8, 9, 11, 12, 13, 14, 15, 17, 18, 19, 20, 21, 22, 23, 24, 25, 26, 27, 28, 29, and 30, attached as Ex. C to Kelson Decl.

2000). Petitioner is required to investigate and specifically admit or deny each request.

Following its boilerplate objections, Petitioner concedes that it “conducted no investigation to respond” It is improper to disclaim or deny each request without first conducting an investigation or reasonable inquiry to secure such knowledge to either admit or deny. *See Id.* Furthermore, the information to respond to such requests is available to Petitioner. Therefore, because Petitioner has the information readily available to admit or deny and because Petitioner conceded to not conducting an investigation or reasonable inquiry, Petitioner’s responses are insufficient.

Furthermore, Petitioner’s objection as to relevancy holds no merit as each of the RFAs, like the Interrogatories and RFPs, are relevant to Petitioner’s claims in the cancellation proceeding as well as Respondent’s Affirmative Defenses, for all of the reasons stated above.

In particular RFA Nos. 1, 2, and 3 are relevant to Respondent’s First Affirmative Defense concerning the allegations that the software application VocoLife, run by a company call YouPik, Inc., rebranded its services to the name “Seated” in June 2017, and that, at some point around February 2019, a company called GuestFriend acquired YouPik, Inc. and reincorporated as Petitioner, “Seated Technologies, Inc.” *See Kelson Decl., Ex. C, at RFA Nos. 1, 2, and 3.*

RFA Nos. 5, 6, and 7 are relevant to Respondent’s Second Affirmative Defense, which contains allegations concerning Petitioner’s response to Respondent’s September 26, 2019, cease and desist letter; Petitioner’s reasons for filing its Amended Petition to Cancel; Petitioner’s international trademark applications filed between October 7 and October 10, 2019, and Petitioner’s lack of a bona fide intent to use the trademark in the international jurisdictions. *See Kelson Decl., Ex. C, at RFA Nos. 5, 6, and 7.* Likewise, RFA Nos. 8, 9, 11 and 25 relate to the parties’ continued communications following the cease and desist letter, which are relevant to the

Second Affirmative Defense, alleging unclean hands.⁵ *See* Kelson Decl., Ex. C, at RFA Nos. 8, 9, 11 and 25.

RFA Nos. 12 and 19 seek admissions concerning actual confusion concerning the Parties' businesses, and are relevant to the First Affirmative Defense, alleging priority. *See* Kelson Decl., Ex. C, at RFA Nos. 12 and 19. Similarly, RFA Nos. 13, 14, and 15 seek admissions concerning Petitioner's awareness of Respondent's registered Seated Mark when Petitioner adopted use of same, and awareness that Respondent had purchased and owned the seated.com domain when Petitioner purchased seatedapp.io. *See* Kelson Decl., Ex. C, at RFA Nos. 13, 14, and 15.

RFA Nos. 17, 18 and 20 are also relevant to Petitioner's use of the Seated Mark and Respondent's priority defense, as well as issues of confusion in the marketplace, as alleged in the First Affirmative Defense. These requests relate to Petitioner's promotion and offering of tickets to events with live entertainment, Petitioner's promotion of Respondent's competitor's services, and the parties' offering of services through similar distribution channels. *See* Kelson Decl., Ex. C, at RFA Nos. 17, 18 and 20.

RFA Nos. 21, 22, 23, and 24, relate to Petitioner's use of "Seated, Inc." by submitting and promoting an app on Google Play through "Seated, Inc.", and by using "Seated, Inc." in legal documents and on a website. *See* Kelson Decl., Ex. C, at RFA Nos. 21, 22, 23, and 24. These requests are relevant to Respondent's priority defense, as well as issues of confusion in the marketplace, as alleged in the First Affirmative Defense. RFA Nos. 26 through 30 are similarly

⁵ For example, RFA No. 8 requests that Petitioner admit that Bo Peabody (Petitioner's principal) told David McKay (Respondent's principal) that the reason Petitioner filed the international trademark applications was in response to Respondent's submissions of notice and takedown requests of Petitioner's social media accounts, and that he (Mr. Peabody) only did so because Respondent "drew first blood" when Respondent sent the cease and desist. Additionally, RFA No. 25 requests that Petitioner admit that, on or about December 2019, Mr. Peabody told Mr. McKay that Petitioner has \$25M on their balance sheet, and plans to use the company's financial resources to acquire Respondent's domain and trademark "through legal means."

relevant as well as to the alleged Second Affirmative Defense as they relate to Petitioner's acquisition of the trademark "G GET SEATED" in December 2019; and Petitioner's public announcement in August 2020 that it raised \$30M in funding, that it acquired a company called VenueBook, and that Petitioner announced the launch of an offering called "Seated Events." *See* Kelson Decl., Ex. C, at RFA Nos. 26, 27, 28, 29, and 30.

Therefore, Respondent respectfully requests the Board find Petitioner's responses insufficient and order Petitioner to serve full, complete and proper responses to the RFAs.

VI. REQUESTS FOR RELIEF

For the foregoing reasons, Respondent respectfully requests that the Board issue an order (1) compelling Petitioner to immediately produce or provide for inspection documents and other tangible items in Petitioner's possession, custody of control in response to the Requests for Production of Documents, (2) compelling Petitioner to serve full, complete and proper responses to the Interrogatories indicated above and (3) finding Petitioner's Responses to the Request for Admissions insufficient and ordering Petitioner to serve full, complete and proper responses.

Dated: April 13, 2021

Respectfully submitted,

DISERIO MARTIN O'CONNOR &
CASTIGLIONI LLP

By:  _____

Christina L. Winsor
cwinsor@dmoc.com
DISERIO MARTIN O'CONNOR
& CASTIGLIONI, LLP
1010 Washington Blvd., Suite 800
Stamford, CT 06901
Tel. (203) 358-0800
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**DECLARATION OF JONATHAN J. KELSON IN SUPPORT OF RESPONDENT'S
MOTION TO COMPEL**

1. 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 submission or any registration resulting therefrom, declares that all statements made of his own knowledge are true and all statements made on information and belief are believed to be true.
2. I am counsel for Respondent and I have personal knowledge of the matters stated herein and am competent to testify thereto.
3. On December 17, 2020, Respondent served its First Request for Production of Documents on Petitioner, a true and correct copy of which is attached hereto as Exhibit A.
4. On December 17, 2020, Respondent served its First Set of Interrogatories on Petitioner, a true and correct copy of which is attached hereto as Exhibit B.
5. On December 17, 2020, Respondent served its First Set of Requests for Admissions on Petitioner, a true and correct copy of which is attached hereto as Exhibit C.
6. On January 15, 2021, Petitioner served its Responses and Objections to Respondent's First Set of Requests for Production of Documents, a true and correct copy of which is attached hereto as Exhibit D.
7. On January 15, 2021, Petitioner served its Responses and Objections to Respondent's First Set of Interrogatories, a true and correct copy of which is attached hereto as Exhibit E.

8. On January 15, 2021, Petitioner served its Responses and Objections to Respondent's First Set of Requests for Admissions, a true and correct copy of which is attached hereto as Exhibit F.
9. Between February 5, 2021 and March 5, 2021, Respondent emailed Petitioner notifying Petitioner that its responses to the Requests for Production, Interrogatories and Requests for Admissions were deficient and requested to meet and confer.
10. Attached hereto as Exhibit G is a true and correct copy of an email string reflecting issues raised by Respondent and requests for a response.
11. Since Petitioner's email of February 19, 2021, Respondent has not received any correspondence or communication from Petitioner concerning Petitioner's responses to the Requests for Production, Interrogatories and Requests for Admissions.

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

Dated: April 13, 2021



Jonathan J. Kelson

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

SEATED TECHNOLOGIES, INC.,
a Delaware corporation,

Petitioner,

v.

SEATED, INC.,
a Delaware corporation,

Respondent.

In the matter of U.S. Trademark
Application Serial No. 87/374456

Trademark: SEATED

Cancellation No. 92073434

I hereby certify that a true and correct copy of the foregoing *Seated Inc.'s Motion to Compel Responses and Motion to Determine the Sufficiency of Responses to Requests for Admission*, is being served on the following parties as indicated below via electronic mail:

Jennifer L. Barry
LATHAM & WATKINS LLP
12670 High Bluff Drive
San Diego, CA 92130
Email: Jennifer.Barry@lw.com

Dated: April 13, 2021

Respectfully submitted,

DISERIO MARTIN O'CONNOR &
CASTIGLIONI LLP

By: /s/ Shirley Maldonado Velez
Shirley Maldonado Velez
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& CASTIGLIONI, LLP
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EXHIBIT A

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

SEATED TECHNOLOGIES, INC.,
a Delaware corporation,

Petitioner,

v.

SEATED, INC.,
a Delaware corporation,

Respondent.

In the matter of U.S. Trademark
Application Serial No. 87/374456

Trademark: SEATED

Cancellation No. 92073434

**RESPONDENT’S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS TO
PETITIONER**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Respondent, Seated, Inc., hereby requests that Petitioner, Seated Technologies, Inc., respond to the following requests for the production of documents and things by providing written responses thereto and producing for inspection and copying the documents and things requested herein upon the undersigned attorneys answers, within thirty (30) days of service of this request.

I. DEFINITIONS

1. “Petitioner”, “you,” or “your” means Seated Technologies, Inc., its subsidiaries, divisions, predecessor and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party, and/or each of the foregoing entities’ employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any person who served in any such capacity at any time during the relevant time period specified herein.

2. “Respondent” means Seated, Inc., its subsidiaries, divisions, predecessor and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party, and/or

each of the foregoing entities' employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any person who served in any such capacity at any time during the relevant time period specified herein.

3. "Seated Mark" means the trademark SEATED as used and registered by the Respondent in promoting and offering Respondent's goods and services and/or as used by Petitioner in promoting and offering Petitioner's goods and services.

4. "Concerning" means consisting of, referring to, relating to, reflecting, or being in any way logically or factually connected with the matter discussed.

5. "Communication" means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

6. "Date" means the exact day, month, and year if ascertainable, or, if not, the best available approximation (including relationship to other events).

7. "Describe" means set forth fully and unambiguously every fact relevant to the subject of the interrogatory, of which you (including your agents and representatives) have knowledge or information.

8. "Document" is synonymous in meaning and equal in scope to its usage in FRCP 34(a)(1)(A). The term "document" refers to any document now or at any time in Applicant's possession, custody, or control. A person is deemed in control of a document if the person has any ownership, possession, or custody of the document, or the right to secure the document or a copy thereof from any person or public or private entity having physical possession thereof.

9. "Identify" with respect to a person who is an individual means to state that person's full name, present or last known address, and current or last known place of employment.

10. "Identify" with respect to a person that is not an individual means to state its: full name,

legal form, date of organization, state of incorporation or organization or other business or license authority, present or last known address and telephone number, and the identity of its chief executive officer, partners, or persons in equivalent positions.

11. “Identify” with respect to a document means to give, to the extent known, the (a) type of document; (b) general subject matter; (c) date of the document; and (d) author(s), addressee(s) and recipient(s). In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Rule 33 of the Federal Rules of Civil Procedure.

12. “Identify” with respect to communications means to give, to the extent known, (a) a description of the substance of the communication; (b) the form of the communication (e.g., telephone, facsimile, email, etc.); (c) the identity of each person that was a party to and/or present at the time of the communication, as well as the full name, present or last known address, and the current or last known place of employment of each person; (d) the identity of the person whom you contend initiated the communication; and (e) the time, date, and place of the communication.

13. The term “mark” means any word, name, symbol, or device (including any key word or metatag) or any combination thereof.

14. The term “person” means any natural person or any legal entity, including, but not limited to, any business or governmental entity, organization, or association.

15. The terms “and” and “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of the interrogatory all responses that might otherwise fall outside the scope of this interrogatory.

16. The terms “all,” “any,” or “each” encompass any and all of the matter discussed.

17. The use of singular form includes plural, and vice versa.

18. The use of present tense includes past tense, and vice versa.

19. The masculine form shall also be construed to include the feminine and vice versa.

II. INSTRUCTIONS

1. All documents are to be produced as they are kept in the usual course of business with any identifying labels, file markings, or similar identifying features, or shall be organized and labeled to correspond to the categories requested herein. If there are no documents in response to a particular request or if you withhold any responsive documents or categories of documents based on any objections, you shall state so in writing.

2. Electronically stored information (ESI) must be produced in a form in which it is ordinarily maintained or in a reasonably usable form as required by Rule 34 of the Federal Rules of Civil Procedure.

3. These requests call for the production of all responsive documents in your possession, custody, or control, or in the possession, custody, or control of your employees, predecessors, successors, parents, subsidiaries, divisions, affiliates, partners, joint ventures, brokers, accountants, financial advisors, representatives, and agents or other persons acting on your behalf, without regard to the physical location of such documents.

4. In responding to these requests, include documents obtained on your behalf by your counsel, employees, agents, or any other persons acting on your behalf. If your response is that the documents are not within your possession or custody, describe in detail the unsuccessful efforts you made to locate each such document. If your response is that documents are not under your control, identify who has the control and the location of the documents.

5. If any document was, but no longer is, in your possession, subject to your control, or in existence, include a statement:

(a) identifying the document;

- (b) describing where the document is now;
- (c) identifying who has control of the document;
- (d) describing how the document became lost or destroyed or was transferred; and
- (e) identifying each of those persons responsible for or having knowledge of the loss, destruction, or transfer of this document from your possession, custody, or control.

6. Each request contemplates production of all documents in their entirety. If a portion of a document is responsive to one or more requests, the document shall be produced in its entirety.

7. If any document is withheld in whole or in part for any reason including, without limitation, a claim of privilege or other protection from disclosure such as the work product doctrine, business confidentiality, or trade secret protection, set forth separately with respect to each such document:

- (a) the ground of privilege or protection claimed;
- (b) each and every basis under which the document is withheld;
- (c) the type of document;
- (d) its general subject matter;
- (e) the document's date; and
- (f) other information sufficient to enable a full assessment of the applicability of the privilege or protection claims, as required by FRCP 26(b)(5) and TBMP § 406.04(c).

8. To the extent you assert that a document contains information that should be protected from disclosure (based on the attorney-client privilege, work product doctrine, or another protection) and non-privileged information, the non-privileged portions of the document must be produced. For each such document, indicate the portion of the document withheld by stamping the words "MATERIAL REDACTED" on the document in an appropriate location that does not obscure the remaining text.

9. For the convenience of the Board and the parties, each document request should be quoted in full immediately preceding the response.

10. These requests are continuing, and your response to these requests must be promptly supplemented when appropriate or necessary in accordance with Federal Rule of Civil Procedure 26(e) and TBMP § 408.03. If you receive or otherwise become aware of information responsive to any interrogatory after you have served your answers to these interrogatories, you must promptly supplement your answers to these interrogatories to provide such information.

III. REQUESTS

1. All documents identified in Petitioner's initial disclosures pursuant to Federal Rule of Civil Procedure 26(a).

2. All documents identified in response to Respondent's First Set of Interrogatories.

3. All documents relied upon, referred to, or quoted in Petitioner's Amended Petition for Cancellation.

4. All documents concerning Petitioner's adoption and selection to use the Seated Mark for use on or in connection with any goods or services.

5. All documents sufficient to show the corporate organization and structure associated with Petitioner's business, including but not limited to the persons that have been, are, or will be responsible for any product or service offered, marketed, and/or sold under the Seated Mark.

6. Documents sufficient to show the circumstances of Petitioner's first use of the Seated Mark in interstate commerce (as defined by the Lanham Act, 15 U.S.C. §§ 1051, et seq.), including, but not limited to, the time, place, and manner of such use.

7. Documents sufficient to show Petitioner's use of the Seated Mark on Petitioner's

websites and social media platforms, including representative samples of the Seated Mark's first use on these platforms and any changes of such use from then to the present.

8. Documents related to the development of all of Petitioner's mobile apps displaying the Seated Mark, including but not limited to documents identifying when Petitioner acquired the mobile app, when the app became operational, and when Petitioner first provided its goods and services on the app, and when Petitioner first conducted a transaction on the app.

9. Documents sufficient to identify all goods and services actually or planned or intended to be sold, offered, or licensed by Petitioner under or in connection with the Seated Mark.

10. Documents sufficient to identify all words, terms, phrases, and other designations used by Petitioner to categorize, describe, or define the goods and services actually or intended to be sold, offered, or licensed by Petitioner under or in connection with the Seated Mark.

11. Documents sufficient to show any plans for development or expansion of the goods or services that are offered, sold, provided, or licensed in connection with the Seated Marks.

12. Documents sufficient to identify all channels of trade in the United States through which Petitioner has offered for sale, sold, or intends to offer for sale or sell goods or services under or in connection with the Seated Mark, including, but not limited to, documents identifying any brokers, third parties or related business outlets that offer or will offer Petitioner's goods or services in connection with the Seated Mark.

13. Documents sufficient to identify the geographic scope in which Petitioner has or has caused to be advertised, promoted, offered for sale, or sold, any goods or services under or in connection with the Seated Mark.

14. Documents sufficient to show each visual, oral, and other manner in which Petitioner has presented or authorized the presentation of the Seated Mark, including, but not

limited to, all timesteps, fonts, typefaces, designs, shapes, graphics, and colors used for or in connection with the Seated Mark.

15. Representative samples of each type of advertisement and promotional material (e.g., print, radio, television, brochures, catalogues, flyers, press releases, website pages, website banners, in-store displays, point-of-sale promotional items) that have displayed or that will display the Seated Mark, including documents sufficient to show every manner of presentation of the Seated Mark in each type of advertisement or promotional material.

16. All newspaper, magazine, newsletter, trade journal, website, and other media coverage, in any form or medium (print, electronic, or other), concerning the Seated Mark, whether or not authored by any official member of the press.

17. Documents sufficient to identify the target purchasers or potential purchasers of goods or services actually or planned or intended to be sold, offered, distributed, or licensed by Petitioner under or in connection with the Seated Mark.

18. All documents concerning Petitioner's knowledge of Respondent or Respondent's use of the Seated Mark, including, but not limited to, all documents concerning communications about or with Respondent or about Petitioner's awareness of Respondent's use of the Seated Mark.

19. All documents concerning any trademark searches, trademark clearances, internet print-outs, and other inquiries conducted by or on behalf of Petitioner concerning the availability to use or register the Seated Mark.

20. All documents concerning any opinion letter, analysis, or other communication concerning whether Petitioner has the freedom, right, or ability to use or register the Seated Mark as a trademark, service mark, domain name, or other designation of origin, including the opinion document and documents sufficient to show the identity of the individual or entity that requested

the opinion, when the opinion was requested, and who prepared the opinion.

21. Any agreements concerning Petitioner's use of the Seated Mark.

22. All documents concerning any observations, perceptions, impressions, or inquiries of any person as to whether the goods or services actually or planned to be sold, offered, provided, or licensed by or on behalf of Petitioner under or in connection with the Seated Mark are produced, sponsored, or endorsed by, or in any manner associated or affiliated with, Respondent or any of Respondent's goods or services offered under or in connection with the Seated Mark.

23. All documents concerning any instances of actual or possible confusion, mistake, deception, or association of any kind between Respondent or Respondent's goods or services and Petitioner or Petitioner's goods or services.

24. Documents sufficient to show the volume (in dollars and units) of Petitioner's annual sales of all goods or services sold or licensed under or in connection with the Seated Mark for the last five years.

25. Documents sufficient to show, for each of the last five years, all costs and amounts expended by Petitioner and its licensees to promote, market, and advertise goods or services actually or planned or intended to be sold, offered, distributed, provided, or licensed under or in connection with the Seated Mark.

26. To the extent not produced in response to the foregoing requests, all documents that support or refute Petitioner's claims in this proceeding, including, but not limited to, any documents that support or refute any factual allegations or legal theories or conclusions Petitioner has presented or relied on or intends to present or rely on in connection with its case.

27. All documents concerning Petitioner's acquisition of the G GET SEATED trademark, US Reg. No. 5242626, including all correspondence sufficient to show the reasons for

acquiring the mark and cost of the acquisition.

28. All documents concerning any due diligence conducted by GuestFriend, Inc. prior to acquiring YouPik, Inc.

29. All documents concerning any financing or potential financing of this cancellation proceeding by another person and/or entity.

30. All documents concerning any attorneys' and/or investigatory fees that you allegedly incurred and/or paid for in connection with this cancellation proceeding.

31. All documents concerning past and current valuations of your business.

Dated: December 17, 2020

Respectfully submitted,

DISERIO MARTIN O'CONNOR &
CASTIGLIONI LLP

By: _____

Christina L. Winsor

Danielle B. Sullivan

cwinsor@dmoc.com

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

SEATED TECHNOLOGIES, INC.,
a Delaware corporation,

Petitioner,

v.

SEATED, INC.,
a Delaware corporation,

Respondent.

In the matter of U.S. Trademark
Application Serial No. 87/374456

Trademark: SEATED

Cancellation No. 92073434

I hereby certify that a true and correct copy of the foregoing *Respondent's First Request for Production of Documents to Petitioner*, is being served on the following parties as indicated below via electronic mail:

Jennifer L. Barry
LATHAM & WATKINS LLP
12670 High Bluff Drive
San Diego, CA 92130
Email: Jennifer.Barry@lw.com

Dated: December 17, 2020

Respectfully submitted,

DISERIO MARTIN O'CONNOR &
CASTIGLIONI LLP

By: /s/ Danielle B. Sullivan

Danielle B. Sullivan
dsullivan@dmoc.com
DISERIO MARTIN O'CONNOR
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EXHIBIT B

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

SEATED TECHNOLOGIES, INC.,
a Delaware corporation,

Petitioner,

v.

SEATED, INC.,
a Delaware corporation,

Respondent.

In the matter of U.S. Trademark
Application Serial No. 87/374456

Trademark: SEATED

Cancellation No. 92073434

RESPONDENT'S FIRST SET OF INTERROGATORIES TO PETITIONER

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Respondent, Seated, Inc., hereby requests that Petitioner, Seated Technologies, Inc., serve upon the undersigned attorneys answers, under oath, to each of the following interrogatories within thirty (30) days of service.

I. DEFINITIONS

1. "Petitioner", "you," or "your" means Seated Technologies, Inc., its subsidiaries, divisions, predecessor and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party, and/or each of the foregoing entities' employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any person who served in any such capacity at any time during the relevant time period specified herein.

2. "Respondent" means Seated, Inc., its subsidiaries, divisions, predecessor and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party, and/or each of the foregoing entities' employees, agents, officers, directors, representatives, consultants,

accountants, and attorneys, including any person who served in any such capacity at any time during the relevant time period specified herein.

3. “Seated Mark” means the trademark SEATED as used and registered by the Respondent in promoting and offering Respondent’s goods and services and/or as used by Petitioner in promoting and offering Petitioner’s goods and services.

4. “Concerning” means consisting of, referring to, relating to, reflecting, or being in any way logically or factually connected with the matter discussed.

5. “Communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

6. “Date” means the exact day, month, and year if ascertainable, or, if not, the best available approximation (including relationship to other events).

7. “Describe” means set forth fully and unambiguously every fact relevant to the subject of the interrogatory, of which you (including your agents and representatives) have knowledge or information.

8. “Document” is synonymous in meaning and equal in scope to its usage in FRCP 34(a)(1)(A). The term “document” refers to any document now or at any time in Applicant’s possession, custody, or control. A person is deemed in control of a document if the person has any ownership, possession, or custody of the document, or the right to secure the document or a copy thereof from any person or public or private entity having physical possession thereof.

9. “Identify” with respect to a person who is an individual means to state that person’s full name, present or last known address, and current or last known place of employment.

10. “Identify” with respect to a person that is not an individual means to state its: full name, legal form, date of organization, state of incorporation or organization or other business or license

authority, present or last known address and telephone number, and the identity of its chief executive officer, partners, or persons in equivalent positions.

11. “Identify” with respect to a document means to give, to the extent known, the (a) type of document; (b) general subject matter; (c) date of the document; and (d) author(s), addressee(s) and recipient(s). In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Rule 33 of the Federal Rules of Civil Procedure.

12. “Identify” with respect to communications means to give, to the extent known, (a) a description of the substance of the communication; (b) the form of the communication (e.g., telephone, facsimile, email, etc.); (c) the identity of each person that was a party to and/or present at the time of the communication, as well as the full name, present or last known address, and the current or last known place of employment of each person; (d) the identity of the person whom you contend initiated the communication; and (e) the time, date, and place of the communication.

13. The term “mark” means any word, name, symbol, or device (including any key word or metatag) or any combination thereof.

14. The term “person” means any natural person or any legal entity, including, but not limited to, any business or governmental entity, organization, or association.

15. The terms “and” and “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of the interrogatory all responses that might otherwise fall outside the scope of this interrogatory.

16. The terms “all,” “any,” or “each” encompass any and all of the matter discussed.

17. The use of singular form includes plural, and vice versa.

18. The use of present tense includes past tense, and vice versa.

19. The masculine form shall also be construed to include the feminine and vice versa.

II. INSTRUCTIONS

1. Answers to these interrogatories shall be served upon the undersigned attorneys within thirty (30) days of service of these interrogatories.

2. Each interrogatory is to be answered fully based on information in your possession, custody, or control, or in the possession, custody, or control of your representatives, agents, or attorneys.

3. If you object to any interrogatory or any portion of an interrogatory on the ground that the answer reflects or would reveal the substance of a privileged communication, identify:

(a) the nature of the privilege claimed;

(b) the person who made the communication, whether oral or in writing;

(c) if the communication was oral, all persons present while the communication was made;

(d) if the communication was written, the author, addressees, and any other recipients;

(e) the relationship of the author of the communication to each recipient;

(f) the relationship of the persons present to the person who made the communication;

(g) the date and place of the communication; and

(h) the general subject matter of the communication.

4. Unless otherwise stated herein, these interrogatories apply to activities in or in connection with the United States.

5. If you respond to an interrogatory by reference to documents pursuant to Federal Rule of Civil Procedure 33(d), identify the documents with specificity, including by identifying the applicable Bates Number range to the extent the documents are produced in response to document requests in this proceeding.

6. For the convenience of the Board and the parties, each interrogatory should be quoted in full immediately preceding the response.

7. These interrogatories are continuing in nature. If you receive or otherwise become aware of information responsive to any interrogatory after you have served your answers to these interrogatories, you must promptly supplement your answers to these interrogatories to provide such information, as required by Federal Rule of Civil Procedure 26(e) and TBMP § 408.03.

III. INTERROGATORIES

1. Identify all persons who participated in any way in the preparation of the responses to Respondent's interrogatories and specify the information which he or she provided.

2. Fully describe the facts surrounding Petitioner's adoption and selection to use the Seated Mark.

3. Identify each trademark search, investigation, or any other inquiry conducted by or for Petitioner concerning the availability to use or register the Seated Mark.

4. Identify each person involved in the review of any trademark search, investigation, or other inquiry conducted by or for Petitioner concerning the availability to use or register the Seated Mark.

5. Identify all goods and services that Petitioner has offered for sale, sold, or provided under or in connection with the Seated Mark in the United States.

6. Identify all websites and social media platforms displaying the Seated Mark, along with the date they were created or first available for public viewing and access, that are owned, operated, or controlled by Petitioner, and all persons who participated in or were or are responsible for the creation and development of each website or social media platform.

7. Identify all mobile apps displaying the Seated Mark, along with the first date they

were available to be used by the public, that are owned, operated, or controlled by Petitioner, and all persons who participated in or were or are responsible for the creation and development of each mobile app.

8. With respect to the goods and services identified in response to Interrogatory No. 5, state the date(s) of first use in interstate commerce (as defined by the Lanham Act, 15 U.S.C. §§ 1051 et seq.), and the date ranges of actual and planned use of the Seated Mark in connection with the goods and services.

9. Describe Petitioner's advertisements, promotional materials, and marketing materials (for example, newspaper advertisements, billboards, magazine advertisements, internet websites, social media platforms, television commercials, brochures), including by identifying the specific media (for example, *The New York Times*, Google.com, CBS Network television, NYC public transit) in which Petitioner is using, has used, or plans to use the Seated Mark.

10. Describe all market research conducted by or on behalf of Petitioner concerning the Seated Mark or any goods or services marketed or proposed to be marketed under the Seated Mark, including the results of such research.

11. Describe all channels of trade in the United States through which Petitioner has offered for sale, sold, or intends to offer for sale or sell goods or services under or in connection with the Seated Mark.

12. With respect to the goods and services identified in response to Interrogatory No. 5, identify the geographic scope in which Petitioner has or has caused to be advertised, promoted, marketed, offered for sale, or sold any goods or services under or in connection with the Seated Mark.

13. Identify and describe all expenditures incurred by you in connection with the

development, promotion, advertisement, and sale of any goods or services under the Seated Mark, including by identifying the nature and amount of each expenditure, by month and year since first use of the Seated Mark.

14. Describe the date and circumstances of Petitioner first becoming aware of Respondent's use and registration of the Seated Mark, including the date on which you first became aware of Respondent's use of the Seated Mark, and identify each document related to such facts and circumstances.

15. State whether, after Petitioner became aware of Respondent and Respondent's use of the Seated Mark, anyone affiliated with Petitioner, including any of Petitioner's third parties vendors or investors, questioned the priority of Petitioner's use of the Seated Mark, and identify the parties involved in such matters, the documents that evidences such matters, and any person who has knowledge about such matters.

16. Identify all surveys conducted by or on behalf of Petitioner concerning the Seated Mark or any other mark that incorporates the Seated Mark in whole or in part, by date, title, the entity conducting the survey, and the person requesting the survey.

17. Identify all agreements concerning Petitioner's use of the Seated Mark by date, parties to the agreement, and the subject matter of the agreement.

18. Describe in detail any communications between Petitioner and Respondent concerning the Seated Mark.

19. Describe any actions taken by Petitioner as a result of such communications identified in Interrogatory No. 18.

20. Describe in detail any communications between Petitioner and any third party concerning Respondent or the Seated Mark.

21. Describe each and every instance of which Petitioner is aware in which any person has been confused, mistaken, or deceived as to the origin or sponsorship of any goods or services sold or offered for sale under or in connection with the Seated Mark, believing that Petitioner's business and Respondent's business were related in some way.

22. Describe any inquiries or communications you received as to whether Petitioner's business is associated with, sponsored by, or in any manner connected with Respondent, including all relevant facts, circumstances and documents related to each incident.

23. Describe all facts that would support a contention that Petitioner owns any rights in the Seated Mark.

24. Describe all facts that would support your claim that Petitioner is being damaged, and will continue to be damaged, by the continued registration of the Seated Mark.

25. Describe in detail the reasons Petitioner acquired the G GET SEATED trademark, US Reg. No. 5242626.

Dated: December 17, 2020

Respectfully submitted,

DISERIO MARTIN O'CONNOR &
CASTIGLIONI LLP

By: 

Christina L. Winsor

Danielle B. Sullivan

cwinsor@dmoc.com

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

SEATED TECHNOLOGIES, INC.,
a Delaware corporation,

Petitioner,

v.

SEATED, INC.,
a Delaware corporation,

Respondent.

In the matter of U.S. Trademark
Application Serial No. 87/374456

Trademark: SEATED

Cancellation No. 92073434

I hereby certify that a true and correct copy of the foregoing *Respondent's First Set of Interrogatories to Petitioner*, is being served on the following parties as indicated below via electronic mail:

Jennifer L. Barry
LATHAM & WATKINS LLP
12670 High Bluff Drive
San Diego, CA 92130
Email: Jennifer.Barry@lw.com

Dated: December 17, 2020

Respectfully submitted,

DISERIO MARTIN O'CONNOR &
CASTIGLIONI LLP

By: /s/ Danielle B. Sullivan

Danielle B. Sullivan
dsullivan@dmoc.com
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EXHIBIT C

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

SEATED TECHNOLOGIES, INC.,
a Delaware corporation,

Petitioner,

v.

SEATED, INC.,
a Delaware corporation,

Respondent.

In the matter of U.S. Trademark
Application Serial No. 87/374456

Trademark: SEATED

Cancellation No. 92073434

RESPONDENT’S FIST SET OF REQUESTS FOR ADMISSIONS TO PETITIONER

Pursuant to Rules 26(b) and 36 of the Federal Rules of Civil Procedure and Rule 407 of the TBMP, Respondent, Seated, Inc., hereby requests that Petitioner, Seated Technologies, Inc., respond to the following requests for admission separately and fully in writing and under oath, within thirty (30) days from the date of service.

I. DEFINITIONS

1. “Petitioner”, “you,” or “your” means Seated Technologies, Inc., its subsidiaries, divisions, predecessor and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party, and/or each of the foregoing entities’ employees, agents, officers, directors, representatives, consultants, accountants, and attorneys, including any person who served in any such capacity at any time during the relevant time period specified herein.

2. “Respondent” means Seated, Inc., its subsidiaries, divisions, predecessor and successor companies, affiliates, parents, any partnership or joint venture to which it may be a party, and/or each of the foregoing entities’ employees, agents, officers, directors, representatives, consultants,

accountants, and attorneys, including any person who served in any such capacity at any time during the relevant time period specified herein.

3. “Seated Mark” means the trademark SEATED as used and registered by the Respondent in promoting and offering Respondent’s goods and services and/or as used by Petitioner in promoting and offering Petitioner’s goods and services.

4. “Concerning” means consisting of, referring to, relating to, reflecting, or being in any way logically or factually connected with the matter discussed.

5. “Communication” means the transmittal of information (in the form of facts, ideas, inquiries, or otherwise).

6. “Date” means the exact day, month, and year if ascertainable, or, if not, the best available approximation (including relationship to other events).

7. “Describe” means set forth fully and unambiguously every fact relevant to the subject of the interrogatory, of which you (including your agents and representatives) have knowledge or information.

8. “Document” is synonymous in meaning and equal in scope to its usage in FRCP 34(a)(1)(A). The term “document” refers to any document now or at any time in Petitioner’s possession, custody, or control. A person is deemed in control of a document if the person has any ownership, possession, or custody of the document, or the right to secure the document or a copy thereof from any person or public or private entity having physical possession thereof.

9. “Identify” with respect to a person who is an individual means to state that person’s full name, present or last known address, and current or last known place of employment.

10. “Identify” with respect to a person that is not an individual means to state its: full name, legal form, date of organization, state of incorporation or organization or other business or license

authority, present or last known address and telephone number, and the identity of its chief executive officer, partners, or persons in equivalent positions.

11. “Identify” with respect to a document means to give, to the extent known, the (a) type of document; (b) general subject matter; (c) date of the document; and (d) author(s), addressee(s) and recipient(s). In the alternative, the responding party may produce the documents, together with identifying information sufficient to satisfy Rule 33 of the Federal Rules of Civil Procedure.

12. “Identify” with respect to communications means to give, to the extent known, (a) a description of the substance of the communication; (b) the form of the communication (e.g., telephone, facsimile, email, etc.); (c) the identity of each person that was a party to and/or present at the time of the communication, as well as the full name, present or last known address, and the current or last known place of employment of each person; (d) the identity of the person whom you contend initiated the communication; and (e) the time, date, and place of the communication.

13. The term “mark” means any word, name, symbol, or device (including any key word or metatag) or any combination thereof.

14. The term “person” means any natural person or any legal entity, including, but not limited to, any business or governmental entity, organization, or association.

15. The terms “and” and “or” shall be construed either conjunctively or disjunctively as necessary to bring within the scope of the interrogatory all responses that might otherwise fall outside the scope of this interrogatory.

16. The terms “all,” “any,” or “each” encompass any and all of the matter discussed.

17. The use of singular form includes plural, and vice versa.

18. The use of present tense includes past tense, and vice versa.

19. The masculine form shall also be construed to include the feminine and vice versa.

II. INSTRUCTIONS

1. To the extent permitted by Rule 26 of the Federal Rules of Civil Procedure, these requests for admission are to be deemed continuing, and the responses are to be supplemented promptly upon acquisition of further or additional information.

2. The use of a verb in any tense shall be construed as the use of the verb in all other tenses, wherever necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.

3. A plural noun shall be construed as a singular noun, and a singular noun shall be construed as a plural noun, wherever necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.

4. Definitions provided herein apply to any grammatical variant of the term or phrase definition.

5. Each Request for Admission set forth should be construed independently, and not in reference to any other Request for purposes of limitation.

6. In answering the following Requests for Admission, all information available to you shall be furnished and you are to designate any information that is not within your personal knowledge, and as to that information, state the name and address of each person from whom it was received, or if the source of the information is documentary, a full description of the document including its title and location.

7. Where a Request requires a description of an act or action, omission, meeting, conference, discussion, occurrence, happening, instance, or event, please provide a full description thereof, including statements setting forth: (a) the date and place thereof; (b) the identity of each oral communication involved and each document which refers to or which was prepared or made

during the course thereof or as a consequence thereof; and (c) the identity of all persons who were witnesses or participants.

8. Any references to any specified trademark is to be interpreted broadly and without regard to formatting elements, such as font, capitalization, or italics.

9. All responses to a Request shall be answered completely, in writing, and under oath and signed by the person providing the answers. If, after reasonable diligence, any Request cannot be answered completely, please provide a complete answer as possible explaining the details why a full answer cannot be provided, including a statement as to what is needed to provide a full answer.

10. If any objection is made to any Request, state the reason for the objection with reasonable particularity and answer the Request to the extent that it is not objectionable.

11. If you contend that you are entitled to withhold any information requested in these Requests on the basis of the work product doctrine, the attorney-client privilege, or on any other ground, please provide: (a) the identity of each person who has knowledge of the information or who now has possession, custody, or control of any document relating thereto; and (b) state the basis upon which you contend that you are entitled to withhold the information with sufficient specificity to enable the Court to determine whether the information should be produced.

III. REQUESTS FOR ADMISSION

1. Admit that a software application called VocoLife, run by a company called YouPik, Inc. had rebranded its services to the name “Seated” in June 2017.

2. Admit that on or about February 2019, YouPik, Inc., reincorporated as Seated Technologies, Inc.

3. Admit that a company called Guestfriend, Inc. acquired YouPik, Inc.

4. Admit that on September 26, 2019, Respondent issued a “cease and desist” letter to

Petitioner, regarding Petitioner's use of the Seated Mark, requesting a response by October 4, 2019.

5. Admit that on October 4, 2019, Petitioner informed Respondent that it was investigating claims and Respondent confirmed receipt of Petitioner's correspondence, thereby allowing an extension of time for Petitioner to respond to its letter.

6. Admit that between October 7, 2019 and October 10, 2019, Petitioner filed a number of international trademark applications for the mark "SEATED" in the same classes of goods and services as Respondent, including the same goods and services as Respondent.

7. Admit that Petitioner did not and/or does not have a bona fide intent to use the mark "SEATED" in connection to the goods and services it applied for in the international jurisdictions.

8. Admit that on December 3, 2019, Bo Peabody told David McKay that the reason Petitioner filed the international trademark applications in Respondent's classes of goods and services was in response to Respondent's submission of notice and takedowns requests of Petitioner's social media accounts, and he "didn't love" filing the applications, but he only did so because Respondent "drew first blood" when Respondent sent the cease and desist.

9. Admit that on November 27, 2019, Respondent informed Petitioner that Respondent has been using the Seated mark since April 2017 across multiple web properties and subdomains on Seated.com, including go.seated.com and support.seated.com, as well as on its clients' and partners' websites.

10. Admit that on November 27, 2019, Respondent informed Petitioner that Respondent's specimen submitted in connection with the registered Seated Mark showed screenshots of actual use in commerce as well as URL links to the displayed webpages.

11. Admit that on November 27, 2019, Respondent informed Petitioner that

Respondent limited its B2B services to an exclusive group of invited clients, but that Respondent has never limited the access of its services to public consumers and that as of June 2018, Respondent's ticket sales directly to consumers were in the millions of dollars.

12. Admit that on September 26, 2019 and on November 27, 2019, Respondent informed Petitioner that various instances of actual confusion existed between Respondent's business and Petitioner's business and on November 27, 2019 gave Petitioner at least 5 examples.

13. Admit that Petitioner was aware of Respondent's registered Seated Mark when Petitioner adopted the use of the "SEATED" mark.

14. Admit that when purchasing its *seatedapp.io* domain, Petitioner knew that the *seated.com* domain was already purchased.

15. Admit that Petitioner knew Respondent owned the *seated.com* domain when it purchased *seatedapp.io*.

16. Admit that Respondent's specimen submitted in connection with the Seated Mark's registration was reviewed and accepted by the USPTO.

17. Admit that Petitioner has promoted and offered tickets to events with live entertainment.

18. Admit that Petitioner has promoted its own services by promoting Respondent's competitors services, like StubHub, as part of Petitioner's rewards programs.

19. Admit that Petitioner has received communications displaying the existence of actual confusion between Petitioner's and Respondent's companies.

20. Admit that Petitioner and Respondent offer their services through similar distribution channels.

21. Admit that Petitioner submitted their app on the Google Play store under the

Respondent's company name, "Seated, Inc."

22. Admit that Petitioner promoted their app on the Google Play store under Respondent's company name "Seated, Inc." for more than 2 years.

23. Admit that Petitioner used Respondent's company name "Seated, Inc." in their company's legal documents including privacy policy and terms of service.

24. Admit that Petitioner used Respondent's company name, "Seated, Inc." in the footer of their website.

25. Admit that on or about December 2019, Bo Peabody told David McKay that Petitioner has \$25M on their balance sheet and plans to use the company's financial resources to acquire Respondent's domain and trademark "through legal means."

26. Admit that on or about December 2019, Petitioner acquired the trademark G GET SEATED.

27. Admit that Petitioner has refused Respondents requests to use the GET SEATED mark for Petitioner's services.

28. Admit that on or about August 18, 2020, Petitioner publicly announced that it raised \$30M in additional funding and that this announcement was factual.

29. Admit that on or about August 18, 2020, Petitioner publicly announced that it acquired a company called VenueBook.

30. Admit that on or about August 18, 2020, Petitioner publicly announced the launch of an offering called "Seated Events."

Dated: December 17, 2020

Respectfully submitted,

DISERIO MARTIN O'CONNOR &
CASTIGLIONI LLP



By: _____

Christina L. Winsor

Danielle B. Sullivan

cwinsor@dmoc.com

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

SEATED TECHNOLOGIES, INC.,
a Delaware corporation,

Petitioner,

v.

SEATED, INC.,
a Delaware corporation,

Respondent.

In the matter of U.S. Trademark
Application Serial No. 87/374456

Trademark: SEATED

Cancellation No. 92073434

I hereby certify that a true and correct copy of the foregoing *Respondent's First Set of Requests for Admissions to Petitioner*, is being served on the following parties as indicated below via electronic mail:

Jennifer L. Barry
LATHAM & WATKINS LLP
12670 High Bluff Drive
San Diego, CA 92130
Email: Jennifer.Barry@lw.com

Dated: December 17, 2020

Respectfully submitted,

DISERIO MARTIN O'CONNOR &
CASTIGLIONI LLP

By: /s/ Danielle B. Sullivan

Danielle B. Sullivan
dsullivan@dmoc.com
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EXHIBIT D

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

Seated Technologies, Inc.,
a Delaware corporation,

Petitioner,

v.

Seated, Inc.,
a Delaware corporation,

Respondent.

Cancellation No. 92073434

Trademark: SEATED

Serial Number 87/374456

Registration No. 5,337,225

**SEATED TECHNOLOGIES, INC.’S RESPONSES AND OBJECTIONS TO
RESPONDENT’S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

Seated Technologies, Inc. (“Petitioner”), hereby responds to Seated, Inc.’s (“Respondent”) First Set of Documents Requests (the “Requests”) as follows:

PRELIMINARY STATEMENT

Specific objections to each of the Requests for Production of Documents by Respondent are made on an individual basis in the responses below. In addition to these specific objections, Petitioner makes certain continuing objections (“General Objections”) to each Request. These General Objections are hereby incorporated by reference into the responses made with respect to each separate Request. For particular emphasis, Petitioner has, from time to time, expressly included one or more of the General Objections in certain of its responses below. Petitioner’s response to each individual Request is submitted without prejudice to, and without in any respect waiving, any General Objections not expressly set forth in that specific response. Accordingly, the inclusion of any specific objection in a response to a Request below is neither intended as, nor shall in any way be deemed to be, a waiver of any General Objections or of any other specific objection made herein or that may be asserted at a later date.

GENERAL OBJECTIONS

1. Petitioner objects to the Requests as unduly burdensome and not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

2. Petitioner objects to any Request, definition, or instruction to the extent that it seeks to impose any obligations or burdens upon Petitioner different from or in addition to what is required by the Trademark Trial and Appeal Board Rules of Practice, the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), or any governing rules or case law.

3. Petitioner objects to any Request to the extent it seeks information that is protected by the attorney-client privilege, work-product doctrine, or any other common law or statutory privilege or protection, including common interest or joint defense privileges or protections, or seeks other information that is otherwise protected from discovery or disclosure.

4. Petitioner objects to any Requests as unduly burdensome, oppressive, and harassing to the extent they seek information already in Respondent's possession, custody, or control, that is equally or more accessible to Respondent than to Petitioner, or information that may be derived or ascertained from publicly available documents.

5. Petitioner objects to any Request that is overly broad, unduly burdensome, directed to matters that are not reasonably calculated to lead to the discovery of admissible evidence, and/or would require undue expense to answer.

6. Petitioner objects to each Request to the extent it exceeds the scope of permissible discovery by calling for information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

7. Petitioner objects to any Request that is vague, ambiguous, or confusing, by failing to adequately define terms or by using terms the meaning of which is not readily available or decipherable.

8. Petitioner objects to each Request to the extent it seeks information outside of Petitioner's possession, custody, or control, or calls for Petitioner to prepare documents and/or things that do not already exist.

9. Petitioner objects to each Request to the extent it seeks information protected from disclosure by law or court order or seeks confidential and proprietary information, including trade secrets and competitively sensitive business information, where any purported marginal benefits of production of the requested information are outweighed by the burden or risk associated with producing such highly sensitive materials.

10. These objections should not be construed as confirming the existence, or continued existence, of any requested documents.

11. Petitioner objects to each Request to the extent multiple subparts are asserted as a single Request. Petitioner further objects the Requests to the extent the Requests, including subparts, exceed the limit specified in 37 C.F.R. § 2.120(e) and TBMP §§ 406.05(a)-(e).

12. Petitioner objects to each Request to the extent it calls for legal conclusions, presents questions of pure law, or calls for Petitioner or its counsel to disclose its opinions and/or work product.

13. Petitioner objects to these Requests to the extent that they seek to impose an obligation to identify or search for information or documents at any location or from any source other than where they would reasonably be expected to be stored in the ordinary course of business.

14. Petitioner objects to each Request to the extent it calls for the interpretations of documents, the terms of which speak for themselves.

15. Petitioner objects to the Requests to the extent that they call for the disclosure of third-party confidential information and/or the invasion of the right to privacy of third parties.

16. Petitioner objects to the production of documents or information responsive to these Requests to the extent that Petitioner is prohibited from producing such documents or information pursuant to any agreement with any third party.

17. Petitioner generally objects to the Requests to the extent that they call for production of multiple copies of identical documents.

18. Petitioner objects to the Definitions and Instructions to the extent that they: (i) are vague, ambiguous, overbroad, or unduly burdensome; (ii) are inconsistent with the ordinary and customary meaning of the words or phrases they purport to define; (iii) seek to impose obligations different from, or in excess of, those created by the Federal Rules of Civil Procedure, TBMP, or any other applicable law; (iv) include assertions of purported facts that are inaccurate or at the very least are disputed in this action; and/or (v) incorporate other purported definitions that suffer from such defects. Petitioner's responses to these Requests shall not be construed in any way as an admission that any definition provided by Respondent is either factually correct or legally binding upon Petitioner, or as a waiver of any of Petitioner's objections, including but not limited to objections regarding discoverability of documents or other evidence.

19. Petitioner incorporates these general objections by reference in to each of the specific responses set forth below.

**RESPONSES AND SPECIFIC OBJECTIONS TO REQUESTS FOR
PRODUCTION OF DOCUMENTS**

REQUEST NO. 1:

All documents identified in Petitioner's initial disclosures pursuant to Federal Rule of Civil Procedure 26(a).

RESPONSE TO REQUEST NO. 1:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner further objects to the Request to the extent that it calls for information that is

protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege. Petitioner additionally objects to this Request to the extent it seeks information already in Respondent's possession, custody, or control, that is equally or more accessible to Respondent than to Petitioner, or information that may be derived or ascertained from publicly available documents.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

After a reasonable inquiry, to the extent that Petitioner understands the Request, and to the extent any such documents exist, Petitioner will produce non-privileged documents responsive to this Request in his possession, custody, or control.

REQUEST NO. 2:

All documents identified in response to Respondent's First Set of Interrogatories.

RESPONSE TO REQUEST NO. 2:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner further objects to the Request as overly broad. Petitioner further objects to the Request to the extent that it calls for information that is protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

After a reasonable inquiry, to the extent that Petitioner understands the Request, and to the extent any such documents exist, Petitioner will produce non-privileged documents responsive to this Request in his possession, custody, or control.

REQUEST NO. 3:

All documents relied upon, referred to, or quoted in Petitioner's Amended Petition for Cancellation.

RESPONSE TO REQUEST NO. 3:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner further objects to the Request to the extent that it calls for information that is protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege. Petitioner additionally objects to this Request to the extent it seeks information already in Respondent's possession, custody, or control, that is equally or more accessible to Respondent than to Petitioner, or information that may be derived or ascertained from publicly available documents.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

After a reasonable inquiry, to the extent that Petitioner understands the Request, and to the extent any such documents exist, Petitioner will produce non-privileged documents responsive to this Request in his possession, custody, or control.

REQUEST NO. 4:

All documents concerning Petitioner's adoption and selection to use the Seated Mark for use on or in connection with any goods or services.

RESPONSE TO REQUEST NO. 4:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 5:

All documents sufficient to show the corporate organization and structure associated with Petitioner's business, including but not limited to the persons that have been, are, or will be responsible for any product or service offered, marketed, and/or sold under the Seated Mark.

RESPONSE TO REQUEST NO. 5:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 6:

Documents sufficient to show the circumstances of Petitioner's first use of the Seated Mark in interstate commerce (as defined by the Lanham Act, 15 U.S.C. §§ 1051, et seq.), including, but not limited to, the time, place, and manner of such use.

RESPONSE TO REQUEST NO. 6:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 7:

Documents sufficient to show Petitioner's use of the Seated Mark on Petitioner's websites and social media platforms, including representative samples of the Seated Mark's first use on these platforms and any changes of such use from then to the present.

RESPONSE TO REQUEST NO. 7:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and

without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 8:

Documents related to the development of all of Petitioner's mobile apps displaying the Seated Mark, including but not limited to documents identifying when Petitioner acquired the mobile app, when the app became operational, and when Petitioner first provided its goods and services on the app, and when Petitioner first conducted a transaction on the app.

RESPONSE TO REQUEST NO. 8:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 9:

Documents sufficient to identify all goods and services actually or planned or intended to be sold, offered, or licensed by Petitioner under or in connection with the Seated Mark.

RESPONSE TO REQUEST NO. 9:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 10:

Documents sufficient to identify all words, terms, phrases, and other designations used by Petitioner to categorize, describe, or define the goods and services actually or intended to be sold, offered, or licensed by Petitioner under or in connection with the Seated Mark.

RESPONSE TO REQUEST NO. 10:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 11:

Documents sufficient to show any plans for development or expansion of the goods or services that are offered, sold, provided, or licensed in connection with the Seated Marks.

RESPONSE TO REQUEST NO. 11:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither

relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 12:

Documents sufficient to identify all channels of trade in the United States through which Petitioner has offered for sale, sold, or intends to offer for sale or sell goods or services under or in connection with the Seated Mark, including, but not limited to, documents identifying any brokers, third parties or related business outlets that offer or will offer Petitioner's goods or services in connection with the Seated Mark.

RESPONSE TO REQUEST NO. 12:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 13:

Documents sufficient to identify the geographic scope in which Petitioner has or has caused to be advertised, promoted, offered for sale, or sold, any goods or services under or in connection with the Seated Mark.

RESPONSE TO REQUEST NO. 13:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 14:

Documents sufficient to show each visual, oral, and other manner in which Petitioner has presented or authorized the presentation of the Seated Mark, including, but not limited to, all typestyles, fonts, typefaces, designs, shapes, graphics, and colors used for or in connection with the Seated Mark.

RESPONSE TO REQUEST NO. 14:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and

without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 15:

Representative samples of each type of advertisement and promotional material (e.g., print, radio, television, brochures, catalogues, flyers, press releases, website pages, website banners, in-store displays, point-of-sale promotional items) that have displayed or that will display the Seated Mark, including documents sufficient to show every manner of presentation of the Seated Mark in each type of advertisement or promotional material.

RESPONSE TO REQUEST NO. 15:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 16:

All newspaper, magazine, newsletter, trade journal, website, and other media coverage, in any form or medium (print, electronic, or other), concerning the Seated Mark, whether or not authored by any official member of the press.

RESPONSE TO REQUEST NO. 16:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither

relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 17:

Documents sufficient to identify the target purchasers or potential purchasers of goods or services actually or planned or intended to be sold, offered, distributed, or licensed by Petitioner under or in connection with the Seated Mark.

RESPONSE TO REQUEST NO. 17:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 18:

All documents concerning Petitioner's knowledge of Respondent or Respondent's use of the Seated Mark, including, but not limited to, all documents concerning communications about or with Respondent or about Petitioner's awareness of Respondent's use of the Seated Mark.

RESPONSE TO REQUEST NO. 18:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 19:

All documents concerning any trademark searches, trademark clearances, internet print-outs, and other inquiries conducted by or on behalf of Petitioner concerning the availability to use or register the Seated Mark.

RESPONSE TO REQUEST NO. 19:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 20:

All documents concerning any opinion letter, analysis, or other communication concerning whether Petitioner has the freedom, right, or ability to use or register the Seated Mark as a trademark, service mark, domain name, or other designation of origin, including the opinion document and documents sufficient to show the identity of the individual or entity that requested the opinion, when the opinion was requested, and who prepared the opinion.

RESPONSE TO REQUEST NO. 20:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 21:

Any agreements concerning Petitioner's use of the Seated Mark.

RESPONSE TO REQUEST NO. 21:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and

without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 22:

All documents concerning any observations, perceptions, impressions, or inquiries of any person as to whether the goods or services actually or planned to be sold, offered, provided, or licensed by or on behalf of Petitioner under or in connection with the Seated Mark are produced, sponsored, or endorsed by, or in any manner associated or affiliated with, Respondent or any of Respondent's goods or services offered under or in connection with the Seated Mark.

RESPONSE TO REQUEST NO. 22:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 23:

All documents concerning any instances of actual or possible confusion, mistake, deception, or association of any kind between Respondent or Respondent's goods or services and Petitioner or Petitioner's goods or services.

RESPONSE TO REQUEST NO. 23:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither

relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 24:

Documents sufficient to show the volume (in dollars and units) of Petitioner's annual sales of all goods or services sold or licensed under or in connection with the Seated Mark for the last five years.

RESPONSE TO REQUEST NO. 24:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 25:

Documents sufficient to show, for each of the last five years, all costs and amounts expended by Petitioner and its licensees to promote, market, and advertise goods or services actually or planned or intended to be sold, offered, distributed, provided, or licensed under or in connection with the Seated Mark.

RESPONSE TO REQUEST NO. 25:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 26:

To the extent not produced in response to the foregoing requests, all documents that support or refute Petitioner's claims in this proceeding, including, but not limited to, any documents that support or refute any factual allegations or legal theories or conclusions Petitioner has presented or relied on or intends to present or rely on in connection with its case.

RESPONSE TO REQUEST NO. 26:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner further objects to the Request to the extent that it calls for information that is protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege. Petitioner additionally objects to this Request to the extent it seeks information already in Respondent's possession, custody, or control, that is equally or more accessible to Respondent than to Petitioner, or information that may be derived or ascertained from publicly available documents.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and

without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

After a reasonable inquiry, to the extent that Petitioner understands the Request, and to the extent any such documents exist, Petitioner will produce non-privileged documents responsive to this Request in his possession, custody, or control.

REQUEST NO. 27:

All documents concerning Petitioner's acquisition of the G GET SEATED trademark, US Reg. No. 5242626, including all correspondence sufficient to show the reasons for acquiring the mark and cost of the acquisition.

RESPONSE TO REQUEST NO. 27:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 28:

All documents concerning any due diligence conducted by GuestFriend, Inc. prior to acquiring YouPik, Inc.

RESPONSE TO REQUEST NO. 28:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither

relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 29:

All documents concerning any financing or potential financing of this cancellation proceeding by another person and/or entity.

RESPONSE TO REQUEST NO. 29:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 30:

All documents concerning any attorneys' and/or investigatory fees that you allegedly incurred and/or paid for in connection with this cancellation proceeding.

RESPONSE TO REQUEST NO. 30:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither

relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

REQUEST NO. 31:

All documents concerning past and current valuations of your business.

RESPONSE TO REQUEST NO. 31:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner will not produce documents responsive to this Request.

Dated: January 15, 2021



Jennifer L. Barry
LATHAM & WATKINS LLP
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San Diego, CA 92130
(858) 523-5400 / (858) 523-5450 Fax
jennifer.barry@lw.com; ipdocket@lw.com

Counsel for Petitioner
SEATED TECHNOLOGIES, INC.

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2021, a true and correct copy of the foregoing:

**SEATED TECHNOLOGIES, INC.'S RESPONSES AND OBJECTIONS TO
RESPONDENT'S FIRST SET OF REQUESTS FOR PRODUCTION OF DOCUMENTS**

was sent via email to the following:

Christina L. Winsor
DISERIO MARTIN O'CONNOR & CASTIGLIONI LLP
1010 Washington Blvd., Suite 800
Stamford, CT 06901
Email: cwinsor@dmoc.com

Counsel for Respondent Seated, Inc.

/s/ Jennifer Barry

Jennifer L. Barry

EXHIBIT E

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

Seated Technologies, Inc.,
a Delaware corporation,

Petitioner,

v.

Seated, Inc.,
a Delaware corporation,

Respondent.

Cancellation No. 92073434

Trademark: SEATED

Serial Number 87/374456

Registration No. 5,337,225

**SEATED TECHNOLOGIES, INC.’S RESPONSES AND OBJECTIONS TO
RESPONDENT’S FIRST SET OF INTERROGATORIES**

Seated Technologies, Inc. (“Petitioner”), hereby responds to Seated, Inc.’s (“Respondent”) First Set of Interrogatories (the “Interrogatories”) as follows:

PRELIMINARY STATEMENT

Petitioner has not completed its investigation and discovery relating to this case and has not completed its preparation for trial. Accordingly, the following responses are based upon, and necessarily limited by, the records and information still in existence, presently recollected, and thus far discovered in the course of preparing the responses after reasonable inquiry. The following responses are given without prejudice to Petitioner’s right to produce all evidence, whenever discovered, relating to the proof of facts subsequently discovered to be material. In addition, Petitioner reserves the right to produce and refer to at trial, or at any other hearing, any evidence, facts, documents or information not yet discovered or not yet determined to be relevant by Petitioner or its counsel.

Specific objections to each of these interrogatories are made on an individual basis in the responses below. In addition to these specific objections, Petitioner makes certain continuing objections (“General Objections”) to the Interrogatories. These General Objections are hereby incorporated by reference into the responses made with respect to each separate interrogatory.

For particular emphasis, Petitioner has, from time to time, expressly included one or more of the General Objections in certain of its responses below. Petitioner's response to each individual interrogatory is submitted without prejudice to, and without in any respect waiving, any General Objections not expressly set forth in that specific response. Accordingly, the inclusion of any specific objection in a response to an interrogatory below is neither intended as, nor shall in any way be deemed to be, a waiver of any General Objections or of any other specific objection made herein or that may be asserted at a later date. In addition, the failure to include at this time any continuing or specific objection to an interrogatory is neither intended as, nor shall in any way be deemed to be, a waiver of Petitioner's right to assert that or any other objection at a later date.

No incidental or implied admissions are intended by the responses herein. Petitioner's response and/or objections to a particular interrogatory shall not be taken as an admission that Petitioner accepts or admits the existence of any "fact" set forth in or assumed by that interrogatory.

GENERAL OBJECTIONS

1. Petitioner objects to the Interrogatories as unduly burdensome and not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

2. Petitioner objects to any Interrogatory, definition, or instruction to the extent that it seeks to impose any obligations or burdens upon Petitioner different from or in addition to what is required by the Trademark Trial and Appeal Board Rules of Practice, the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), or any governing rules or case law.

3. Petitioner objects to any Interrogatory to the extent it seeks information protected by the attorney-client privilege, work-product doctrine, or any other common law or statutory

privilege or protection, including common interest or joint defense privileges or protections, or seeks other information otherwise protected from discovery or disclosure.

4. Petitioner objects to any Interrogatory as unduly burdensome, oppressive, and harassing to the extent that it seeks information already in Petitioner's possession, custody, or control, that is equally or more accessible to Petitioners than to Petitioner, or information that may be derived or ascertained from publicly available documents.

5. Petitioner objects to any Interrogatory that is overly broad, unduly burdensome, directed to matters not reasonably calculated to lead to the discovery of admissible evidence, and/or would require undue expense to answer.

6. Petitioner objects to each Interrogatory to the extent it exceeds the scope of permissible discovery by calling for information that is neither relevant to any claim or defense in this cancellation, nor reasonably calculated to lead to the discovery of admissible evidence.

7. Petitioner objects to any Interrogatory that is vague, ambiguous, or confusing, by failing to adequately define terms or by using terms the meaning of which is not readily available or decipherable.

8. Petitioner objects to each Interrogatory to the extent it seeks information outside of Petitioner's possession, custody, or control, or calls for Petitioner to prepare documents and/or things that do not already exist.

9. Petitioner objects to each Interrogatory to the extent it seeks information protected from disclosure by law or court order or seeks confidential and proprietary information, including trade secrets and competitively sensitive business information, where any purported marginal benefits of production of the requested information are outweighed by the burden or risk associated with producing such highly sensitive materials.

10. Petitioner objects to each Interrogatory to the extent multiple subparts are asserted as a single Request. Petitioner further objects the Interrogatories to the extent the Interrogatories, including subparts, exceed the limit specified in 37 C.F.R. § 2.120(e) and TBMP §§ 406.05(a)-

(e).

11. Petitioner objects to each Interrogatory to the extent it calls for legal conclusions, presents questions of pure law, or calls for Petitioner or its counsel to disclose its opinions and/or work product.

12. Petitioner objects to the Interrogatories to the extent that they call for the disclosure of third-party confidential information and/or the invasion of the right to privacy of third parties.

13. Petitioner objects to each Interrogatory to the extent it is argumentative, based on unsupported assumptions of fact or law, or otherwise lacks a factual or legal foundation.

14. Petitioner objects to each Interrogatory to the extent it calls for the interpretations of documents, the terms of which speak for themselves.

15. Petitioner objects to the Definitions and Instructions to the extent that they: (i) are vague, ambiguous, overbroad, or unduly burdensome; (ii) are inconsistent with the ordinary and customary meaning of the words or phrases they purport to define; (iii) seek to impose obligations different from, or in excess of, those created by the Federal Rules of Civil Procedure, TBMP, or any other applicable law; (iv) include assertions of purported facts that are inaccurate or at the very least are disputed in this action; and/or (v) incorporate other purported definitions that suffer from such defects. Petitioner's responses to these Requests shall not be construed in any way as an admission that any definition provided by Respondent is either factually correct or legally binding upon Petitioner, or as a waiver of any of Petitioner's objections, including but not limited to objections regarding discoverability of documents or other evidence.

16. Petitioner incorporates these general objections by reference in to each of the specific responses set forth below.

RESPONSES AND SPECIFIC OBJECTIONS TO INTERROGATORIES

INTERROGATORY NO. 1:

Identify all persons who participated in any way in the preparation of the responses to Respondent's interrogatories and specify the information which he or she provided.

RESPONSE TO INTERROGATORY NO. 1:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner further objects to the Interrogatory to the extent that it calls for information that is protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner identifies Bo Peabody, CEO of Seated Technologies, Inc. On September 26, 2019, Mr. Peabody received a cease and desist letter from Respondent. Mr. Peabody was also notified that Respondent had submitted takedown requests on various social media sites.

INTERROGATORY NO. 2:

Fully describe the facts surrounding Petitioner's adoption and selection to use the Seated Mark.

RESPONSE TO INTERROGATORY NO. 2:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 3:

Identify each trademark search, investigation, or any other inquiry conducted by or for Petitioner concerning the availability to use or register the Seated Mark.

RESPONSE TO INTERROGATORY NO. 3:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 4:

Identify each person involved in the review of any trademark search, investigation, or other inquiry conducted by or for Petitioner concerning the availability to use or register the Seated Mark.

RESPONSE TO INTERROGATORY NO. 4:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is

neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 5:

Identify all goods and services that Petitioner has offered for sale, sold, or provided under or in connection with the Seated Mark in the United States.

RESPONSE TO INTERROGATORY NO. 5:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 6:

Identify all websites and social media platforms displaying the Seated Mark, along with the date they were created or first available for public viewing and access, that are owned, operated, or controlled by Petitioner, and all persons who participated in or were or are responsible for the creation and development of each website or social media platform.

RESPONSE TO INTERROGATORY NO. 6:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 7:

Identify all mobile apps displaying the Seated Mark, along with the first date they were available to be used by the public, that are owned, operated, or controlled by Petitioner, and all persons who participated in or were or are responsible for the creation and development of each mobile app.

RESPONSE TO INTERROGATORY NO. 7:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 8:

With respect to the goods and services identified in response to Interrogatory No. 5, state the date(s) of first use in interstate commerce (as defined by the Lanham Act, 15 U.S.C. §§ 1051 et seq.), and the date ranges of actual and planned use of the Seated Mark in connection with the goods and services.

RESPONSE TO INTERROGATORY NO. 8:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 9:

Describe Petitioner's advertisements, promotional materials, and marketing materials (for example, newspaper advertisements, billboards, magazine advertisements, internet websites, social media platforms, television commercials, brochures), including by identifying the specific media (for example, *The New York Times*, Google.com, CBS Network television, NYC public transit) in which Petitioner is using, has used, or plans to use the Seated Mark.

RESPONSE TO INTERROGATORY NO. 9:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 10:

Describe all market research conducted by or on behalf of Petitioner concerning the Seated Mark or any goods or services marketed or proposed to be marketed under the Seated Mark, including the results of such research.

RESPONSE TO INTERROGATORY NO. 10:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 11:

Describe all channels of trade in the United States through which Petitioner has offered for sale, sold, or intends to offer for sale or sell goods or services under or in connection with the Seated Mark.

RESPONSE TO INTERROGATORY NO. 11:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is

neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 12:

With respect to the goods and services identified in response to Interrogatory No. 5, identify the geographic scope in which Petitioner has or has caused to be advertised, promoted, marketed, offered for sale, or sold any goods or services under or in connection with the Seated Mark.

RESPONSE TO INTERROGATORY NO. 12:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 13:

Identify and describe all expenditures incurred by you in connection with the development, promotion, advertisement, and sale of any goods or services under the Seated

Mark, including by identifying the nature and amount of each expenditure, by month and year since first use of the Seated Mark.

RESPONSE TO INTERROGATORY NO. 13:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 14:

Describe the date and circumstances of Petitioner first becoming aware of Respondent's use and registration of the Seated Mark, including the date on which you first became aware of Respondent's use of the Seated Mark, and identify each document related to such facts and circumstances.

RESPONSE TO INTERROGATORY NO. 14:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 15:

State whether, after Petitioner became aware of Respondent and Respondent's use of the Seated Mark, anyone affiliated with Petitioner, including any of Petitioner's third parties vendors or investors, questioned the priority of Petitioner's use of the Seated Mark, and identify the parties involved in such matters, the documents that evidences such matters, and any person who has knowledge about such matters.

RESPONSE TO INTERROGATORY NO. 15:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 16:

Identify all surveys conducted by or on behalf of Petitioner concerning the Seated Mark or any other mark that incorporates the Seated Mark in whole or in part, by date, title, the entity conducting the survey, and the person requesting the survey.

RESPONSE TO INTERROGATORY NO. 16:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 17:

Identify all agreements concerning Petitioner's use of the Seated Mark by date, parties to the agreement, and the subject matter of the agreement.

RESPONSE TO INTERROGATORY NO. 17:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 18:

Describe in detail any communications between Petitioner and Respondent concerning the Seated Mark.

RESPONSE TO INTERROGATORY NO. 18:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner further objects to this Interrogatory as it seeks information already in Respondent's possession, custody, or control, that is equally or more accessible to Respondent than to Petitioner. Petitioner also objects to this Interrogatory as it seeks the disclosure of

information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 19:

Describe any actions taken by Petitioner as a result of such communications identified in Interrogatory No. 18.

RESPONSE TO INTERROGATORY NO. 19:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner also objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 20:

Describe in detail any communications between Petitioner and any third party concerning Respondent or the Seated Mark.

RESPONSE TO INTERROGATORY NO. 20:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner further objects to this Interrogatory as overly broad and unduly burdensome.

Petitioner also objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 21:

Describe each and every instance of which Petitioner is aware in which any person has been confused, mistaken, or deceived as to the origin or sponsorship of any goods or services sold or offered for sale under or in connection with the Seated Mark, believing that Petitioner's business and Respondent's business were related in some way.

RESPONSE TO INTERROGATORY NO. 21:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner also objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 22:

Describe any inquiries or communications you received as to whether Petitioner's business is associated with, sponsored by, or in any manner connected with Respondent, including all relevant facts, circumstances and documents related to each incident.

RESPONSE TO INTERROGATORY NO. 22:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner also objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 23:

Describe all facts that would support a contention that Petitioner owns any rights in the Seated Mark.

RESPONSE TO INTERROGATORY NO. 23:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner also objects to this Interrogatory as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

INTERROGATORY NO. 24:

Describe all facts that would support your claim that Petitioner is being damaged, and will continue to be damaged, by the continued registration of the Seated Mark.

RESPONSE TO INTERROGATORY NO. 24:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner further objects to the Interrogatory to the extent that it calls for information that is protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

On September 26, 2019, Petitioner received a cease and desist letter from Respondent asserting rights in the word mark SEATED. The September 26, 2019 letter threatened litigation, including claims for injunctive relief, profits, damages, attorneys' fees and costs.

Further, Respondent submitted numerous takedown requests to third party social media sites, citing rights in the SEATED mark based on its fraudulently-obtained registration. As a result, Petitioner was harmed and will continue to be harmed so long as Respondent claims rights in its fraudulently-obtained registration.

INTERROGATORY NO. 25:

Describe in detail the reasons Petitioner acquired the G GET SEATED trademark, US Reg. No. 5242626.

RESPONSE TO INTERROGATORY NO. 25:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner also objects to this Interrogatory as it seeks the disclosure of information that

is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Interrogatory, Petitioner states as follows:

Petitioner will not respond to this Interrogatory.

Dated: January 15, 2021



Jennifer L. Barry
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(858) 523-5400 / (858) 523-5450 Fax
jennifer.barry@lw.com; ipdocket@lw.com

Counsel for Petitioner
SEATED TECHNOLOGIES, INC.

CERTIFICATE OF SERVICE

I hereby certify that on January 19, 2021, a true and correct copy of the foregoing:

**SEATED TECHNOLOGIES, INC.'S RESPONSES AND OBJECTIONS TO
RESPONDENT'S FIRST SET OF INTERROGATORIES**

was sent via email to the following:

Christina L. Winsor
DISERIO MARTIN O'CONNOR & CASTIGLIONI LLP
1010 Washington Blvd., Suite 800
Stamford, CT 06901
Email: cwinsor@dmoc.com

Counsel for Respondent Seated, Inc.

/s/ Jennifer Barry

Jennifer L. Barry

EXHIBIT F

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

Seated Technologies, Inc.,
a Delaware corporation,

Petitioner,

v.

Seated, Inc.,
a Delaware corporation,

Respondent.

Cancellation No. 92073434

Trademark: SEATED

Serial Number 87/374456

Registration No. 5,337,225

**SEATED TECHNOLOGIES, INC.’S RESPONSES AND OBJECTIONS TO
RESPONDENT’S FIRST SET OF REQUESTS FOR ADMISSIONS**

Seated Technologies, Inc. (“Petitioner”), hereby responds to Seated, Inc.’s (“Respondent”) First Set of Requests for Admissions (the “Requests”) as follows:

PRELIMINARY STATEMENT

Petitioner has not completed its investigation and discovery relating to this case and has not completed its preparation for trial. Accordingly, the following responses are based upon, and necessarily limited by, the records and information still in existence, presently recollected, and thus far discovered in the course of preparing the responses after reasonable inquiry. The following responses are given without prejudice to Petitioner’s right to produce all evidence, whenever discovered, relating to the proof of facts subsequently discovered to be material. In addition, Petitioner reserves the right to produce and refer to at trial, or at any other hearing, any evidence, facts, documents or information not yet discovered or not yet determined to be relevant by Petitioner or its counsel.

Specific objections to each of these Requests are made on an individual basis in the responses below. In addition to these specific objections, Petitioner makes certain continuing objections (“General Objections”) to the Requests. These General Objections are hereby incorporated by reference into the responses made with respect to each separate Request. For

particular emphasis, Petitioner has, from time to time, expressly included one or more of the General Objections in certain of its responses below. Petitioner's response to each individual interrogatory is submitted without prejudice to, and without in any respect waiving, any General Objections not expressly set forth in that specific response. Accordingly, the inclusion of any specific objection in a response to an interrogatory below is neither intended as, nor shall in any way be deemed to be, a waiver of any General Objections or of any other specific objection made herein or that may be asserted at a later date. In addition, the failure to include at this time any continuing or specific objection to a Request is neither intended as, nor shall in any way be deemed to be, a waiver of Petitioner's right to assert that or any other objection at a later date.

No incidental or implied admissions are intended by the responses herein. Petitioner's response and/or objections to a particular interrogatory shall not be taken as an admission that Petitioner accepts or admits the existence of any "fact" set forth in or assumed by that interrogatory.

GENERAL OBJECTIONS

1. Petitioner objects to the Requests as unduly burdensome and not proportional to the needs of the case, considering the importance of the issues at stake in the action, the amount in controversy, the parties' relative access to relevant information, the parties' resources, the importance of the discovery in resolving the issues, and whether the burden or expense of the proposed discovery outweighs its likely benefit.

2. Petitioner objects to any Request, definition, or instruction to the extent that it seeks to impose any obligations or burdens upon Petitioner different from or in addition to what is required by the Trademark Trial and Appeal Board Rules of Practice, the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), or any governing rules or case law.

3. Petitioner objects to any Request to the extent it seeks information protected by the attorney-client privilege, work-product doctrine, or any other common law or statutory privilege or protection, including common interest or joint defense privileges or protections, or

seeks other information otherwise protected from discovery or disclosure.

4. Petitioner objects to any Request as unduly burdensome, oppressive, and harassing to the extent that it seeks information already in Petitioner's possession, custody, or control, that is equally or more accessible to Petitioners than to Petitioner, or information that may be derived or ascertained from publicly available documents.

5. Petitioner objects to any Request that is overly broad, unduly burdensome, directed to matters not reasonably calculated to lead to the discovery of admissible evidence, and/or would require undue expense to answer.

6. Petitioner objects to each Request to the extent it exceeds the scope of permissible discovery by calling for information that is neither relevant to any claim or defense in this cancellation, nor reasonably calculated to lead to the discovery of admissible evidence.

7. Petitioner objects to any Request that is vague, ambiguous, or confusing, by failing to adequately define terms or by using terms the meaning of which is not readily available or decipherable.

8. Petitioner objects to each Request to the extent it seeks information outside of Petitioner's possession, custody, or control, or calls for Petitioner to prepare documents and/or things that do not already exist.

9. Petitioner objects to each Request to the extent it seeks information protected from disclosure by law or court order or seeks confidential and proprietary information, including trade secrets and competitively sensitive business information, where any purported marginal benefits of production of the requested information are outweighed by the burden or risk associated with producing such highly sensitive materials.

10. Petitioner objects to each Request to the extent it calls for legal conclusions, presents questions of pure law, or calls for Petitioner or its counsel to disclose its opinions and/or work product.

11. Petitioner objects to the Requests to the extent that they call for the disclosure of

third-party confidential information and/or the invasion of the right to privacy of third parties.

12. Petitioner objects to each Request to the extent it is argumentative, based on unsupported assumptions of fact or law, or otherwise lacks a factual or legal foundation.

13. Petitioner objects to each Request to the extent it calls for the interpretations of documents, the terms of which speak for themselves.

14. Petitioner objects to the Definitions and Instructions to the extent that they: (i) are vague, ambiguous, overbroad, or unduly burdensome; (ii) are inconsistent with the ordinary and customary meaning of the words or phrases they purport to define; (iii) seek to impose obligations different from, or in excess of, those created by the Federal Rules of Civil Procedure, TBMP, or any other applicable law; (iv) include assertions of purported facts that are inaccurate or at the very least are disputed in this action; and/or (v) incorporate other purported definitions that suffer from such defects. Petitioner's responses to these Requests shall not be construed in any way as an admission that any definition provided by Respondent is either factually correct or legally binding upon Petitioner, or as a waiver of any of Petitioner's objections, including but not limited to objections regarding discoverability of documents or other evidence.

15. Petitioner incorporates these general objections by reference in to each of the specific responses set forth below.

RESPONSES AND SPECIFIC OBJECTIONS TO
REQUESTS FOR ADMISSIONS

REQUEST FOR ADMISSION NO. 1:

Admit that a software application called VocoLife, run by a company called YouPik, Inc. had rebranded its services to the name “Seated” in June 2017.

RESPONSE TO REQUEST FOR ADMISSION NO. 1:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner’s right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner’s current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation to respond to this Request, as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 2:

Admit that on or about February 2019, YouPik, Inc., reincorporated as Seated Technologies, Inc.

RESPONSE TO REQUEST FOR ADMISSION NO. 2:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant

to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation to respond to this Request, as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 3:

Admit that a company called Guestfriend, Inc. acquired YouPik, Inc.

RESPONSE TO REQUEST FOR ADMISSION NO. 3:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation to respond to this Request, as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor

reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 4:

Admit that on September 26, 2019, Respondent issued a “cease and desist” letter to Petitioner, regarding Petitioner’s use of the Seated Mark, requesting a response by October 4, 2019.

RESPONSE TO REQUEST FOR ADMISSION NO. 4:

Petitioner hereby incorporates by reference each of its General Objections set forth above.

Without prejudice to Petitioner’s right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner’s current understanding of the Request, Petitioner states as follows:

Admitted.

REQUEST FOR ADMISSION NO. 5:

Admit that on October 4, 2019, Petitioner informed Respondent that it was investigating claims and Respondent confirmed receipt of Petitioner’s correspondence, thereby allowing an extension of time for Petitioner to respond to its letter.

RESPONSE TO REQUEST FOR ADMISSION NO. 5:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation to respond to this Request, as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 6:

Admit that between October 7, 2019 and October 10, 2019, Petitioner filed a number of international trademark applications for the mark "SEATED" in the same classes of goods and services as Respondent, including the same goods and services as Respondent.

RESPONSE TO REQUEST FOR ADMISSION NO. 6:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation to respond to this Request, as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor

reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 7:

Admit that Petitioner did not and/or does not have a bona fide intent to use the mark “SEATED” in connection to the goods and services it applied for in the international jurisdictions.

RESPONSE TO REQUEST FOR ADMISSION NO. 7:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner’s right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner’s current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation to respond to this Request, as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 8:

Admit that on December 3, 2019, Bo Peabody told David McKay that the reason Petitioner filed the international trademark applications in Respondent’s classes of goods and services was in response to Respondent’s submission of notice and takedowns requests of Petitioner’s social media accounts, and he “didn’t love” filing the applications, but he only did so because Respondent “drew first blood” when Respondent sent the cease and desist.

RESPONSE TO REQUEST FOR ADMISSION NO. 8:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation to respond to this Request, as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 9:

Admit that on November 27, 2019, Respondent informed Petitioner that Respondent has been using the Seated mark since April 2017 across multiple web properties and subdomains on Seated.com, including go.seated.com and support.seated.com, as well as on its clients' and partners' websites.

RESPONSE TO REQUEST FOR ADMISSION NO. 9:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation to respond to this Request, as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 10:

Admit that on November 27, 2019, Respondent informed Petitioner that Respondent's specimen submitted in connection with the registered Seated Mark showed screenshots of actual use in commerce as well as URL links to the displayed webpages.

RESPONSE TO REQUEST FOR ADMISSION NO. 10:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

After a reasonable investigation of the facts available to Petitioner, Petitioner cannot confirm that Respondent's specimen shows actual use in commerce or that the URL links to the displayed pages are genuine. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 11:

Admit that on November 27, 2019, Respondent informed Petitioner that Respondent limited its B2B services to an exclusive group of invited clients, but that Respondent has never limited the access of its services to public consumers and that as of June 2018, Respondent's ticket sales directly to consumers were in the millions of dollars.

RESPONSE TO REQUEST FOR ADMISSION NO. 11:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 12:

Admit that on September 26, 2019 and on November 27, 2019, Respondent informed Petitioner that various instances of actual confusion existed between Respondent's business and Petitioner's business and on November 27, 2019 gave Petitioner at least 5 examples.

RESPONSE TO REQUEST FOR ADMISSION NO. 12:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither

relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 13:

Admit that Petitioner was aware of Respondent's registered Seated Mark when Petitioner adopted the use of the "SEATED" mark.

RESPONSE TO REQUEST FOR ADMISSION NO. 13:

Petitioner hereby incorporates by reference each of its General Objections set forth above.

Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 14:

Admit that when purchasing its *seatedapp.io* domain, Petitioner knew that the *seated.com* domain was already purchased.

RESPONSE TO REQUEST FOR ADMISSION NO. 14:

Petitioner hereby incorporates by reference each of its General Objections set forth above.

Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 15:

Admit that Petitioner knew Respondent owned the *seated.com* domain when it purchased *seatedapp.io*.

RESPONSE TO REQUEST FOR ADMISSION NO. 15:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 16:

Admit that Respondent's specimen submitted in connection with the Seated Mark's registration was reviewed and accepted by the USPTO.

RESPONSE TO REQUEST FOR ADMISSION NO. 16:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner further objects to the Request to the extent that it calls for information that is protected by the attorney-client privilege, the work product doctrine, or any other applicable privilege. Petitioner additionally objects to this Request to the extent it seeks information already in Respondent's possession, custody, or control, that is equally or more accessible to Respondent than to Petitioner, or information that may be derived or ascertained from publicly available documents.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

After a reasonable investigation of the facts available to Petitioner, Petitioner has no knowledge of whether the USPTO reviewed and accepted Respondent's specimen or not. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 17:

Admit that Petitioner has promoted and offered tickets to events with live entertainment.

RESPONSE TO REQUEST FOR ADMISSION NO. 17:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 18:

Admit that Petitioner has promoted its own services by promoting Respondent's competitors services, like StubHub, as part of Petitioner's rewards programs.

RESPONSE TO REQUEST FOR ADMISSION NO. 18:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither

relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 19:

Admit that Petitioner has received communications displaying the existence of actual confusion between Petitioner's and Respondent's companies.

RESPONSE TO REQUEST FOR ADMISSION NO. 19:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 20:

Admit that Petitioner and Respondent offer their services through similar distribution channels.

RESPONSE TO REQUEST FOR ADMISSION NO. 20:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 21:

Admit that Petitioner submitted their app on the Google Play store under the Respondent's company name, "Seated, Inc."

RESPONSE TO REQUEST FOR ADMISSION NO. 21:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner’s right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner’s current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 22:

Admit that Petitioner promoted their app on the Google Play store under Respondent’s company name “Seated, Inc.” for more than 2 years.

RESPONSE TO REQUEST FOR ADMISSION NO. 22:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner’s right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner’s current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 23:

Admit that Petitioner used Respondent's company name "Seated, Inc." in their company's legal documents including privacy policy and terms of service.

RESPONSE TO REQUEST FOR ADMISSION NO. 23:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 24:

Admit that Petitioner used Respondent's company name, "Seated, Inc." in the footer of their website.

RESPONSE TO REQUEST FOR ADMISSION NO. 24:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner’s right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner’s current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 25:

Admit that on or about December 2019, Bo Peabody told David McKay that Petitioner has \$25M on their balance sheet and plans to use the company’s financial resources to acquire Respondent’s domain and trademark “through legal means.”

RESPONSE TO REQUEST FOR ADMISSION NO. 25:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner’s right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner’s current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 26:

Admit that on or about December 2019, Petitioner acquired the trademark G GET SEATED.

RESPONSE TO REQUEST FOR ADMISSION NO. 26:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 27:

Admit that Petitioner has refused Respondent's requests to use the GET SEATED mark for Petitioner's services.

RESPONSE TO REQUEST FOR ADMISSION NO. 27:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 28:

Admit that on or about August 18, 2020, Petitioner publicly announced that it raised \$30M in additional funding and that this announcement was factual.

RESPONSE TO REQUEST FOR ADMISSION NO. 28:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 29:

Admit that on or about August 18, 2020, Petitioner publicly announced that it acquired a company called VenueBook.

RESPONSE TO REQUEST FOR ADMISSION NO. 29:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

REQUEST FOR ADMISSION NO. 30:

Admit that on or about August 18, 2020, Petitioner publicly announced the launch of an offering called "Seated Events."

RESPONSE TO REQUEST FOR ADMISSION NO. 30:

Petitioner hereby incorporates by reference each of its General Objections set forth above. Petitioner objects to this request as it seeks the disclosure of information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence.

Without prejudice to Petitioner's right to amend, supplement, or change this response in response to additional information discovered during the course of this litigation, subject to and without waiving the foregoing objections, and based on Petitioner's current understanding of the Request, Petitioner states as follows:

Petitioner has conducted no investigation as this Request seeks information that is neither relevant to any claim or defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. Petitioner therefore denies the Request.

Dated: January 15, 2021



Jennifer L. Barry
LATHAM & WATKINS LLP
12670 High Bluff Drive
San Diego, CA 92130
(858) 523-5400 / (858) 523-5450 Fax
jennifer.barry@lw.com; ipdocket@lw.com

Counsel for Petitioner
SEATED TECHNOLOGIES, INC.

CERTIFICATE OF SERVICE

I hereby certify that on January 15, 2021 a true and correct copy of the foregoing:

**SEATED TECHNOLOGIES, INC.'S RESPONSES AND OBJECTIONS TO
RESPONDENT'S FIRST SET OF REQUESTS FOR ADMISSIONS**

was sent via email to the following:

Christina L. Winsor
DISERIO MARTIN O'CONNOR & CASTIGLIONI LLP
1010 Washington Blvd., Suite 800
Stamford, CT 06901
Email: cwinsor@dmoc.com

Counsel for Respondent Seated, Inc.

/s/ Jennifer Barry

Jennifer L. Barry

EXHIBIT G

Jonathan J. Kelson

From: Jonathan J. Kelson
Sent: Friday, March 5, 2021 5:14 PM
To: 'Dennis.Mai@lw.com'
Cc: Jennifer.Barry@lw.com; Christina L. Winsor; Samantha L. Garrison; Danielle Sullivan; Shirley Maldonado; Rashmi.Borah@lw.com
Subject: RE: Seated Technologies, Inc. v. Seated, Inc. - Meet and Confer

Dennis,
Please advise on this. Thank you.

Jon

Jonathan J. Kelson

Diserio Martin O'Connor & Castiglioni LLP
(203) 358-0800 x 3346

From: Dennis.Mai@lw.com <Dennis.Mai@lw.com>
Sent: Friday, February 19, 2021 6:33 PM
To: Jonathan J. Kelson <JKelson@dmoc.com>
Cc: Jennifer.Barry@lw.com; Christina L. Winsor <CWinsor@dmoc.com>; Samantha L. Garrison <SGarrison@dmoc.com>; Danielle Sullivan <DSullivan@dmoc.com>; Shirley Maldonado <SMaldonado@dmoc.com>; Rashmi.Borah@lw.com
Subject: RE: Seated Technologies, Inc. v. Seated, Inc. - Meet and Confer

Hi Jon,

Thanks for your patience. We're researching these issues and will be prepared to discuss them with you in the near future.

Best,
Dennis

Dennis Mai

Pronouns: he/him/his

LATHAM & WATKINS LLP

885 Third Avenue | New York, NY 10022-4834
D: +1.212.906.1774

From: Jonathan J. Kelson <JKelson@dmoc.com>
Sent: Friday, February 19, 2021 2:20 PM
To: Mai, Dennis (NY) <Dennis.Mai@lw.com>
Cc: Barry, Jennifer (SD) <Jennifer.Barry@lw.com>; Christina L. Winsor <CWinsor@dmoc.com>; Samantha L. Garrison <SGarrison@dmoc.com>; Danielle Sullivan <DSullivan@dmoc.com>; Shirley Maldonado <SMaldonado@dmoc.com>
Subject: Seated Technologies, Inc. v. Seated, Inc. - Meet and Confer

Dennis,
Please advise as the email below. Thank you.

Jon

Jonathan J. Kelson

Diserio Martin O'Connor & Castiglioni LLP
One Atlantic Street, Stamford, CT 06901
Main: (203) 358-0800 x 3346
Email: jkelson@dmoc.com

From: Jonathan J. Kelson

Sent: Friday, February 5, 2021 4:57 PM

To: Dennis.Mai@lw.com

Cc: Jennifer.Barry@lw.com; Christina L. Winsor <CWinsor@dmoc.com>; Samantha L. Garrison <SGarrison@dmoc.com>; Danielle Sullivan <DSullivan@dmoc.com>; Shirley Maldonado <SMaldonado@dmoc.com>

Subject: Seated Technologies, Inc. v. Seated, Inc. - Meet and Confer

Dennis,

After review of STI's Responses and Objections to Seated's Discovery Demands, dated 1/15/21, we find STI's responses deficient. STI refuses to participate in discovery and fails to respond to essentially any of Seated's discovery demands by STI's claimed reasoning of irrelevancy. Seated disagrees with your objection that all requests seek the disclosure of information that is neither relevant to any claim of defense in this cancellation nor reasonably calculated to lead to the discovery of admissible evidence. We offer the following in response to your objections and in support of our requests:

All requests regarding the adoption, selection, development and use of the Seated Mark on websites, social media and apps, as well as those regarding first use and expenditures (RFPs, 4, 6, 7, 8/Interrogatories 2, 6, 7, 8, 13), seek relevant information and/or information that is reasonably calculated to lead to the discovery of admissible evidence. STI's Amended Petition alleges that it offers a "popular mobile app called SEATED that provides rewards for dining out," and further alleges that STI "owns longstanding rights in the SEATED mark based on its use of the mark in connection with mobile apps since 2017." (Amended Petition, ¶¶ 1-2.) STI's Amended Petition also references Seated's September 2019 cease and desist letter "claiming that Petitioner's SEATED mark infringed Respondent's SEATED mark." (Amended Petition, ¶ 3.) Thus, the referenced discovery requests are clearly relevant to the issues raised in your client's petition, particularly in light of STI's allegations of "longstanding rights in the SEATED mark" and its "use ... since 2017." They are also particularly relevant to Seated's affirmative defense of priority. Responses to such requests are relevant to the allegations that Respondent has priority of the Seated Mark over Petitioner's use and that Petitioner is barred from seeking cancellation of Respondent's trademark. We ask that you withdraw your objections and fully and completely respond to these requests.

All requests regarding the identity of certain individuals (RFP 5/Interrogatories 4, 15) seek relevant information and/or information that is reasonably calculated to lead to the discovery of admissible evidence, particularly as to Respondent's right to know the identity of those with knowledge or interest in this matter in order to seek additional documents or information in support of its defenses. We ask that you withdraw your objections and fully and completely respond to these requests.

All requests regarding the goods and services being offered, through what channels of trade and geographical areas, as well as the use of the mark in promotional material and agreements and the targeted purchasers (RFPs 9, 10, 12, 13, 14, 15, 16, 17, 21/Interrogatories 5, 9, 11, 12) seek relevant information and/or information that is reasonably calculated to lead to the discovery of admissible evidence. As discussed above, STI's Amended Petition alleges, among other things, that STI "owns longstanding rights in the SEATED mark" based on its "use ... since 2017." Thus, the referenced discovery requests are clearly relevant to the issues raised in your client's petition. They are also particularly relevant to Seated's affirmative defense of priority. Responses to such requests are relevant to the allegations that Petitioner's services and goods directly encroach on Respondent's mark in connection with the goods and services offered well before Petitioner. We ask that you withdraw your objections and fully and completely respond to these requests.

All requests regarding the plan for development and future use of the Seated Mark, as well as requests relating to G GET SEATED and any international trademarks (RFP 11, 27/ Interrogatory 25), seek relevant information and/or information that is reasonably calculated to lead to the discovery of admissible evidence. As discussed above, STI's Amended Petition alleges, among other things, that STI "owns longstanding rights in the SEATED mark" based on its "use ... since 2017." Thus, the referenced discovery requests are clearly relevant to the issues raised in your client's petition. They are also particularly relevant to Seated's affirmative defense of unclean hands. We ask that you withdraw your objections and fully and completely respond to these requests.

All requests regarding any clearance searches conducted, knowledge of availability or confusion (RFPs 18, 19, 20, 22, 23, 28/Interrogatories 3, 10, 14, 15, 21, 22, 23) seek relevant information and/or information that is reasonably calculated to lead to the discovery of admissible evidence, particularly as to STI's allegations concerning its alleged longstanding rights in the SEATED mark and its use since 2017. They are also relevant to Seated's affirmative defenses of priority and unclean hands, and go to Petitioner's knowledge of Respondent's use of the mark prior to Petitioner's adoption and use. We ask that you withdraw your objections and fully and completely respond to these requests.

All requests regarding communications between Petitioner and Respondent and Petitioner and Third Parties regarding Respondent and/or the Seated Mark (Interrogatories 17, 18, 19, 20) seek relevant information and/or information that is reasonably calculated to lead to the discovery of admissible evidence, particularly as to STI's allegations concerning its alleged longstanding rights in the SEATED mark and its use since 2017. They are also relevant as to Seated's affirmative defenses of priority and unclean hands. Responses to such requests are relevant to Petitioner's knowledge of Respondent's ownership and use of the mark as well as Petitioner's alleged bad faith in filing this cancellation proceeding as well as other trademark applications. We ask that you withdraw your objections and fully and completely respond to these requests.

As to STI's Responses and Objections to Seated's First Set of Requests for Admission (RFAs), STI effectively responded to just three of the thirty RFAs (4, 10, 16). As to the others, STI "conducted no investigation," apparently based on a relevancy objection, and then "denie[d]" the RFAs. That is insufficient and the objections and responses are improper. All RFAs are relevant to claims, allegations and defenses asserted in the Amended Petition and Seated's defenses. We ask that you withdraw your objections and fully and completely respond to the RFAs.

We reserve all rights as to all of STI's objections and responses, and lack of compliance with the Discovery Demands.

Please let us know your position on these issues, and your availability to meet and confer by telephone on same. Thank you.

Jon

Jonathan J. Kelson



Diserio Martin O'Connor & Castiglioni LLP
1010 Washington Blvd., Suite 800, Stamford, CT 06901
Main: (203) 358-0800 x 3346
Email: jkelson@dmoc.com

[Email](#) [Bio](#) [Map](#) [dmoc.com](#)

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