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

Proceeding	92074339
Party	Plaintiff Abaa Incorporated
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Submission	Motion to Compel Discovery or Disclosure
Filer's Name	Abraham Lichy
Filer's email	alichy@lichylaw.com
Signature	/Abraham Lichy/
Date	02/09/2021
Attachments	BABYSMART - MOTION TO COMPEL - 2021_02_09 LICHY LAW.pdf(125391 bytes) Babysmart Motion to Compel Exhibits.pdf(440510 bytes)

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

ABAA INCORPORATED,)	
)	
)	
Petitioner,)	Opposition No. 92074339
)	
v.)	
)	
PB&J INNOVATIONS, LLC,)	
)	
Registrant.)	
)	
)	

PETITIONER’S MOTION TO COMPEL DISCOVERY

Petitioner, ABAA INCORPORATED (“Petitioner”), by its undersigned counsel, hereby moves pursuant to 37 CFR § 2.120(f) and TBMP § 523 to compel Registrant, PB&J INNOVATIONS, LLC, (“Registrant”) to fully respond to Petitioner’s requests for the production of documents and interrogatories.

I. INTRODUCTION

On December 17, 2020, Petitioner served its First Set of Interrogatories (*See* Exhibit A, attached hereto) and First Request for Production of Documents (*See* Exhibit B, attached hereto) upon Registrant (the “Requests”).

Pursuant to TBMP § 403.03 “[r]esponses to interrogatories and requests for production of documents and things must be served within 30 days after the date of service of the request for discovery.” Accordingly, Registrant’s responses to Petitioner’s Requests were due on January 18, 2021 (given that the 30 day deadline fell on a weekend).

On January 18, 2021, Petitioner did not receive any reply or response to the Requests from Registrant.

On January 21, 2021, counsel for Petitioner contacted Registrant's counsel (William Heedy) via E-Mail about Registrant's failure to respond to Petitioner's Requests. (*See* Exhibit C, attached hereto). Mr. Heedy did not respond.

Thereafter, on January 25, 2021, counsel for Petitioner attempted to contact Mr. Heedy's voicemail box and left a voicemail regarding Registrant's failure to respond to Petitioner's Request. Counsel for Petitioner followed up on the voice message with an email to Mr. Heedy. (*See* Exhibit D, attached hereto). Mr. Heedy did not respond to either.

Finally, on February 2, 2021, counsel for Petitioner contacted Mr. Heedy via telephone and again received Mr. Heedy's voicemail box, which noted that the caller may leave a message with Mr. Heedy's assistant, Joan Pearson. Counsel for Petitioner left a voice message for Ms. Pearson. Counsel then followed up the voice message with an E-Mail. (*See* Exhibit E, attached hereto). Once again, Registrant did not respond.

As of the date of this Motion, Registrant has not responded to the Requests or any of Petitioner's correspondence.

II. ARGUMENT

The Federal Rules of Civil Procedure provide that “[p]arties may obtain discovery regarding any matter, not privileged, which is relevant to the subject matter involved in the pending action.” Rule 26(b)(1), Fed. R. Civ. P. “The information sought need not be admissible at the trial if the information sought appears reasonably calculated to lead to discovery of admissible evidence.” *Id.* The Federal Rules allow broad and liberal discovery, and relevance is broadly construed.

TBMP § 403.03 provides “[r]esponses to interrogatories and requests for production of documents and things must be served within 30 days after the date of service of the request for discovery.” Accordingly, Registrant’s responses were due on January 18, 2021.

Registrant has altogether failed to respond to Petitioner’s Requests. A motion to compel may be filed when a party fails to produce requested documents, or fails to answer any question propounded in any interrogatory. *See e.g.*, § 37 C.F.R. 2.120(f)(1). If the non-moving party cannot show its neglect of its discovery obligations was excusable, the Board generally should order discovery responses be provided without objection. *See No Fear, Inc. v. Rule*, 54 USPQ 2d 1551, 1554 (TTAB 2000). Here, Registrant cannot show that its failure to comply with its discovery obligation was excusable. Indeed, Registrant has simply failed to reply at all. Accordingly, Petitioner requests the Board find Registrant acted unreasonably in its refusal to produce documents, or answer any question propounded in any interrogatory, and in doing so, order Registrant to fully respond to Petitioner’s Requests within 10 days from the date of the Board’s Order.

Further, “A party which fails to respond to a request during the time allowed therefore, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery on the merits.” TBMP § 403.03. Here, Registrant’s failure to respond to respond to Petitioner’s Requests was not the result of any misunderstanding or “excusable neglect.” As such, Registrant has forfeited his rights to object on the merits to Petitioner’s discovery.

Lastly, Petitioner requests that the Board extend Petitioner’s discovery period for the period of days equal to the difference between January 18, 2021 (Registrant’s deadline to respond to Petitioner’s Requests) and the date on which Petitioner receives Registrant’s responses, so as to

allow Petitioner to review Registrant's anticipated responses, and request supplemental discovery, if any. To be clear, Petitioner is not seeking a wholesale extension of the discovery period, but rather, additional time for Petitioner **only** to review and request additional discovery from Registrant.

III. CONCLUSION

For the forgoing reasons, Petitioner respectfully requests the following relief:

- (a) that Registrant be required to respond fully and without objection to Petitioner's Requests within 10 days from the date of the Board's Order;
- (b) that the Board levy appropriate sanctions as allowed under Rule 37, including but not limited to, terminating this proceeding in favor of Petitioner; and
- (c) order any further relief the Board deems necessary and just.

TBMP § 523.02 CERTIFICATION

Petitioner's Counsel hereby certifies that, as exhibited herein, it has made a good faith effort, by correspondence, to resolve with Registrant the issues presented in the motion, and has been unable to reach agreement.

Respectfully submitted,

/Abraham Lichy
By: Abraham Lichy
The Lichy Law Firm, P.C.
Attorney for Petitioner
222 East 68th Street
New York, NY 10065
917-933-3895
alichy@lichylaw.com

CERTIFICATE OF SERVICE

I, Abraham Lichy, hereby certify that a true and complete copy of the foregoing Petitioner's Motion to Compel was served upon the Registrant's counsel by email at wheedy@vwlawfirm.com & jpearson@vwlawfirm.com on February __, 2021.

/Abraham Lichy/

By: Abraham Lichy
The Lichy Law Firm, P.C.
Attorney for Petitioner
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New York, NY 10065
917-933-3895
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EXHIBIT A

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

ABAA INCORPORATED,)	
)	
)	
Petitioner,)	
)	Cancellation No. 92074339
v.)	
)	
PB&J INNOVATIONS, LLC,)	
)	
Registrant.)	
)	

PETITIONER’S FIRST SET OF INTERROGATORIES TO REGISTRANT

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Petitioner, Abaa Incorporated (“Petitioner”) hereby requests that Registrant, PB&J Innovations, LLC (“Registrant”), by its undersigned counsel, answers, under oath, to each of the following interrogatories within thirty (30) days of service of these interrogatories.

DEFINITIONS

1. “Petitioner” means Abaa Incorporated, the Petitioner in the above-captioned proceeding.
2. “Registrant”, “you,” or “your” means PB&J Innovations, LLC, its affiliates, any partnership or joint venture to which it may be a party, and/or each of its 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. “Petitioner’s Mark” means the mark bearing U.S. Trademark Application Serial No. 87516926 and this proceeding.

4. “Registrant’s Mark” means the mark that is the subject of this proceeding, specifically, U.S. Trademark Registration No. 5623363.

5. “Document(s)” means all materials within the scope of FRCP 34, including, without limitation, all writings, drawings, graphs, charts, photographs, sound recordings, images, and other data or data compilations, including electronically-stored information (ESI), that are stored in any medium whatsoever from which information can be obtained either directly or, if necessary, after translation by the responding party into a reasonably usable form, as well as any tangible things. Documents include, but are not limited to, electronic mail or email, text messages, post cards, post-it notes, reports, logs, message slips, invoices, checks, paystubs, letters, memoranda, agreements, contracts, tax returns, bank statements, video and audio recordings, social media or other online content, computer programs, data generated and stored by devices connected to the Internet of Things (IoT), communications generated and stored in workplace collaboration tools or ephemeral messaging applications, and all other written, graphic, or electronic materials of any nature whatsoever. A draft or non-identical copy of a document is a separate document within the meaning of the term “document.” The term “document” refers to any document now or at any time in Plaintiff’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.

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

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

8. “Date” means the exact day, month, and year if ascertainable, or, if not, the best available approximation.

9. “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.

10. “Identify” with respect to a person who is an individual means to state the person’s (a) full name, (b) present or last known address, and (c) current or last known place of employment.

11. “Identify” with respect to a person that is an entity such as those listed in Definition No. 13 below, 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.

12. “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 document, together with identifying information sufficient to satisfy Rule 33 of the Federal Rules of Civil Procedure.

13. “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, e-mail, 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.

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

15. A “person” includes an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity and includes all of that person’s principals, employees, agents, attorneys, consultants, and other representatives.

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

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

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

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

INSTRUCTIONS

1. Answers to these interrogatories shall be served upon the undersigned attorneys at 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 cover the time period from June 2, 2013 up to and including the present.

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

6. 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 Defendant's document requests in this action.

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

8. 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).

INTERROGATORIES

INTERROGATORY NO. 1: Identify the names and addresses of Registrant's officers and their positions specifically those officers with knowledge of and with authority to make decisions concerning the Registrant's Mark.

INTERROGATORY NO. 2: Identify any agreements concerning the Registrant's Mark by date, parties to the agreement, and the subject matter of the agreement.

INTERROGATORY NO. 3: Identify any agreements concerning the term "BABYSMART" by date, parties to the agreement, and the subject matter of the agreement.

INTERROGATORY NO. 4: Describe in detail the origin and meaning of the term "BABYSMART" in connection with Registrant's Mark.

INTERROGATORY NO. 5: Describe in detail the origin and meaning of the term "UTENSILS" in connection with Registrant's Mark.

INTERROGATORY NO. 6: Describe in detail the origin and meaning of the term "Product(s)" as used in combination with the term "BABYSMART" in Registrant's owned domain, www.babysmartproducts.com.

INTERROGATORY NO. 7: Describe in detail the facts and circumstances involved in the creation, selection, and adoption of Registrant's Mark.

INTERROGATORY NO. 8: Identify the name of each person(s) involved in the creation, selection, and adoption of Registrant's Mark.

INTERROGATORY NO. 9: Identify each person who participated in any decision to add the ellipses (i.e., "...") between the names "BABYSMART" and "utensils".

INTERROGATORY NO. 10: Provide a narrative response regarding the decision to include an ellipses between the words "BABYSMART" and "utensils" in Registrant's Mark.

INTERROGATORY NO. 11: Provide a narrative response regarding Registrant's Trademark search process in connection with Registrant's Mark prior to applying for the registration for example, internet search, USPTO data base, or other steps, to determine protectability of own Mark and or not infringe on a possible prior or senior user of the term "BABYSMART" being the dominant term in Registrant's application.

INTERROGATORY NO. 12: Identify the name and contact information of Registrant's attorney that represented Registrant in connection with the trademark application process for Registrant's Mark.

INTERROGATORY NO. 13: Identify name and contact information of Registrant's attorney that conducted the clearance search for the term "BABYSMART...utensils" in connection with the trademark application process for Registrant's Mark.

INTERROGATORY NO. 14: Provide a representative sampling of the trademark search conducted in the USPTO database and for common law marks in connection with Registrant's Mark sufficient to show the results of the search process conducted by Registrant's attorney, representatives, third parties, and/or Registrant (without comment or opinion).

INTERROGATORY NO. 15: Identify the name and contact information of Registrant's attorney that represented the Registrant in obtaining Patent No. 9924815.

INTERROGATORY NO. 16: Describe in detail any information concerning Registrant's awareness of third-party use and/or registration of the term "BABYSMART" (without performing an investigation) prior to Registrant's application date of 03/05/2017.

INTERROGATORY NO. 17: Identify the approximate date on which Registrant first became aware of Petitioner's use in commerce of Petitioner's Mark "BabySmart" in connection with its goods and/or services.

INTERROGATORY NO. 18: Identify the approximate date on which Registrant first became aware of the domain name www.babysmart.com, the source identifier for goods and services offered for sale by Petitioner.

INTERROGATORY NO. 19: Identify the approximate date on which Registrant first became aware of Petitioner's registered trademark for the term "COOSHEE" (Reg. No. 4870100), as a source identifier for booster seats.

INTERROGATORY NO. 20: Identify the approximate date on which Registrant first became aware of Petitioner's use of the term "BABYSMART" as a source identifier for the phrase "The home of the COOSHEE®", as used on the www.babysmart.com URL.

INTERROGATORY NO. 21: Identify all goods and services offered for sale by Registrant using the term "BABYSMART", in whole or in part.

INTERROGATORY NO. 22: Identify the date on which Registrant first sold or offered to sell baby spoons in connection with Registrant's Mark.

INTERROGATORY NO. 23: Identify the date on which Registrant first sold or offered to sell table forks in connection with Registrant's Mark.

INTERROGATORY NO. 24: Identify the date on which Registrant first sold or offered to sell table knives in connection with Registrant's Mark.

INTERROGATORY NO. 25: Identify the first state in which Registrant first sold baby spoons, table forks, and/or table knives in interstate commerce in connection with Registrant's Mark, including the date on which such sale was first made.

INTERROGATORY NO. 26: Identify the name of the person and/or entity who first purchased goods from Registrant bearing Registrant's Mark, state to which such goods were shipped to, and the quantity and price of the products sold.

INTERROGATORY NO. 27: Describe the amount of gross revenues received by Registrant to date in connection with the sale of goods bearing Registrant's Mark.

INTERROGATORY NO. 28: Identify the person and/or entity responsible for the design of the packaging and labeling for Registrant's goods bearing Registrant's Mark.

INTERROGATORY NO. 29: Provide a narrative response as to Registrant's opinion regarding the reasoning for the USPTO's denial of Registrant's first specimen submitted in connection with Registrant's Mark on January 30, 2018 ("First Specimen").

INTERROGATORY NO. 30: Identify the name of the person who submitted the First Specimen.

INTERROGATORY NO. 31: Identify the name and contact information of the manufacturer who produced the final packaging used in connection with the first use sale of Registrant's goods bearing Registrant's Mark.

INTERROGATORY NO. 32: Provide a narrative response as to the reason Registrant uses the term "BabySmart®" separate and apart from the term "A Babysmart... utensils" on Registrant's website where it reads "BabySmart® Interactive Educational Utensils".

INTERROGATORY NO. 33: Provide a narrative response as to the reason Registrant uses the ® symbol on its logo, as it appears on Registrant's product packaging, website, Instagram page and Facebook page, directly after the word "BABYSMART" and not "Utensils".

INTERROGATORY NO. 34: Provide a narrative response regarding the decision, creation and adoption of the domain name babysmartproducts.com used in connection with the sale of the goods sold under Registrant's Mark.

INTERROGATORY NO. 35: Identify each person who participated in any way in the decision to acquire the domain name www.babysmartproducts.com.

INTERROGATORY NO. 36: Provide a narrative response regarding Registrant's decision not to acquire the domain name www.babysmartutensils.com.

INTERROGATORY NO. 37: Identify each person who participated in any decision to not acquire the domain name [babysmartutensils.com](http://www.babysmartutensils.com).

INTERROGATORY NO. 38: Provide a narrative response regarding Registrant's concern that the consumer impression would be potentially confusing and misleading related to the source identity of the products sold on Registrant's domain, www.babysmartproducts.com, and Petitioner's domain, www.babysmart.com.

INTERROGATORY NO 39: Identify all media channels on which Registrant advertises and/or promotes the goods Registrant sells bearing the term "BABYSMART", in whole or in part.

INTERROGATORY NO. 40: Provide a narrative response as to Registrant's opinion regarding the importance of social media, i.e., Instagram and Facebook, as a channel of trade in connection with the sale of products for which Registrant's Mark is registered.

INTERROGATORY NO. 41: Provide a narrative response regarding Registrant's use of the hashtag #babysmart on Registrant's social media pages, namely Instagram and Facebook.

INTERROGATORY NO. 42: Provide a narrative response as to Registrant's opinion regarding the similarity in commercial impression between the term "BABYSMART" and the collective terms "BABYSMART...utensils".

INTERROGATORY NO. 43: Provide a narrative response as to Registrant's opinion regarding the term "BABYSMART" being the dominant term of Registrant's Mark.

INTERROGATORY NO. 44: Provide a narrative response as to your opinion regarding the similarities in the phonetic, sound and connotation of the term "BABYSMART", as used in connection with Registrant's Mark.

INTERROGATORY NO. 45: Provide a narrative response regarding the differences in the types of consumers who purchase baby spoons, on the one hand, and booster seats, on the other hand.

INTERROGATORY NO. 46: Describe the channels of trade in which Registrant sells its products bearing Registrant's Mark.

INTERROGATORY NO. 47: Describe the class of consumers to which Registrant sells its products bearing Registrant's Mark.

INTERROGATORY NO. 48: Identify any registered trademarks with the USPTO containing the term "BABYSMART", in whole or in part.

INTERROGATORY NO. 49: Identify any uses by third parties of which Registrant is aware that used the term "BABYSMART", in whole or in part, prior to Registrant's Application Date, to market and/or sell goods or services within the same channels of distribution as Registrant does in connection with Registrant's Mark.

INTERROGATORY NO. 50: Provide a narrative response regarding the phrase "the first generation of Babysmart Products..." as used in full phrase "the first generation of Baby Smart products is known as the 'Carrington' line" on Registrant's About Us page on www.babysmartproducts.com.

INTERROGATORY NO. 51: Identify all persons that furnished information for the response to these interrogatories, designating the number of each interrogatory for which such persons furnished information.

INTERROGATORY NO. 52: Identify each person who participated in any way in the preparation of the responses to these interrogatories.

INTERROGATORY NO. 53: Provide a narrative response as to Registrant's opinion regarding the commercial impression and potential consumer confusion a consumer perceives when a

consumer searches the internet via any internet search engine searching for Babysmart products using the dominant term “Babysmart” as used on both Petitioner’s website, www.babysmart.com, and Registrant’s website, www.babysmartproducts.com.

DATED: December 17, 2020
NEW YORK, NEW YORK

By: /Abraham Lichy/
Abraham Lichy
The Lichy Law Firm, P.C.
Attorney for Petitioner
222 East 68th Street
New York, NY 10065
917-933-3895
alichy@lichylaw.com

CERTIFICATE OF SERVICE

I, Abraham Lichy, hereby certify that a true and complete copy of the foregoing First Set of Interrogatories was served upon Registrant's counsel by email at wheedy@vwlawfirm.com & jpearson@vwlawfirm.com on December 17, 2020.

/Abraham Lichy/

By: Abraham Lichy

The Lichy Law Firm, P.C.

Attorney for Petitioner

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EXHIBIT B

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

ABAA INCORPORATED,)	
)	
)	
Petitioner,)	
)	Cancellation No. 92074339
v.)	
)	
PB&J INNOVATIONS, LLC,)	
)	
Registrant.)	
)	

PETITIONER’S FIRST REQUEST FOR PRODUCTION OF DOCUMENTS

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.120, Petitioner, Abaa Incorporated (“Petitioner”) hereby requests that Registrant, PB&J Innovations (“Registrant”), by its undersigned counsel, 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 to the offices of Petitioner’s attorneys, within thirty (30) days of service of this request.

DEFINITIONS

1. “Petitioner” means Abaa Incorporated, the Petitioner in the above-captioned proceeding.
2. “Registrant”, “you,” or “your” means PB&J Innovations, LLC, its affiliates, any partnership or joint venture to which it may be a party, and/or each of its 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. “Petitioner’s Mark” means the mark bearing U.S. Trademark Application Serial No. 87516926 and this proceeding.

4. “Registrant’s Mark” means the mark that is the subject of this proceeding, specifically, U.S. Trademark Registration No. 5623363.

5. “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 Registrant’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.

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

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

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

9. A reference to a “person” includes an individual, corporation, partnership, joint venture, limited liability company, governmental authority, unincorporated organization, trust, association, or other entity and includes all of that person’s principals, employees, agents, attorneys, consultants, and other representatives.

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

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

12. The use of singular form includes plural, and vice versa.
13. The use of present tense includes past tense, and vice versa.

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 its original native format with its accompanying metadata.

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 venturers, 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 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. Unless otherwise stated herein, all documents requested are for the period commencing January 1, 2017 up to and including the present.

10. Unless otherwise stated herein, all document requests apply to activities in or in connection with the United States.

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

12. 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.

DOCUMENTS REQUESTED

DOCUMENT REQUEST NO. 1: All Documents identified in response to Petitioner’s First Set of Interrogatories, dated December 17, 2020.

DOCUMENT REQUEST NO. 2: All Documents concerning Registrant’s knowledge of the facts alleged in the Notice of Cancellation and Registrant’s Answer thereto, including, but not limited to, the circumstances surrounding Registrant’s acquisition of this knowledge.

DOCUMENT REQUEST NO. 3: All Documents referred to or quoted in the Answer to the Notice of Cancellation.

DOCUMENT REQUEST NO. 4: All Documents relied upon by Registrant in drafting the Answer.

DOCUMENT REQUEST NO. 5: All Documents concerning the response in paragraph 18 of the Answer that Registrant “claims a first use in commerce date of at least as early as 11/15/2017”.

DOCUMENT REQUEST NO. 6: All Documents concerning Registrant's consideration, selection, conception, creation, or adoption of the Registrant's Mark and/or the term "BABYSMART" for use on or in connection with any goods or services.

DOCUMENT REQUEST NO. 7: Documents sufficient to identify all persons who were responsible for, participated in, or have information or were consulted concerning the consideration, selection, conception, creation, or adoption of the Registrant's Mark and/or the term "BABYSMART" for use on or in connection with any of Registrant's goods or services.

DOCUMENT REQUEST NO. 8: Documents sufficient to show the circumstances of Registrant's first use of the Registrant's Mark anywhere in the United States.

DOCUMENT REQUEST NO. 9: Documents sufficient to show the circumstances of Registrant's first use of the Registrant's Mark in United States commerce.

DOCUMENT REQUEST NO. 10: All Documents concerning Registrant's consideration, selection, conception, creation, or adoption of the term "BABYSMART" for use on or in connection with any goods or services.

DOCUMENT REQUEST NO. 11: All Documents concerning United States Trademark Registration No. 5623363, including, but not limited to, copies of all documents submitted to or received from the United States Patent and Trademark Office in connection with the registration.

DOCUMENT REQUEST NO. 12: All Documents concerning any state trademark registrations sought or obtained by Registrant for the Registrant's Mark, including, but not limited to, copies of all documents submitted to or received from any state trademark registration agency.

DOCUMENT REQUEST NO. 13: Documents sufficient to identify all goods and services actually or planned or intended to be sold, offered, or licensed by Registrant under or in connection with the Registrant's Mark and/or in connection with the term "BABYSMART".

DOCUMENT REQUEST NO. 14: Documents sufficient to show any planned or future development of any goods or services to be sold, offered, or licensed in connection with the Registrant's Mark and/or the term "BABYSMART".

DOCUMENT REQUEST NO. 15: Documents sufficient to identify all channels of trade through which Registrant advertises, promotes, distributes, sells, offers, or licenses, or plans or intends to advertise, promote, distribute, sell, offer, or license, any goods or services under or in connection with the Registrant's Mark and/or the term "BABYSMART", including, but not limited to, documents identifying the distributors, retail, or other business outlets that offer or will offer Registrant's goods or services in connection with the Registrant's Mark and/or the term "BABYSMART".

DOCUMENT REQUEST NO. 16: Documents sufficient to identify the geographic regions in the United States in which Registrant has or has caused to be advertised, promoted, distributed, sold, offered, or licensed, or plans or intends to advertise, promote, market, display, distribute, sell, offer, or license any goods or services under or in connection with the Registrant's Mark and/or the term "BABYSMART".

DOCUMENT REQUEST NO. 17: Documents sufficient to show each visual, oral, and other manner in which Registrant has presented, or licensed or permitted the presentation of, the Registrant's Mark including, but not limited to, all pronunciations of and typestyles, fonts, typefaces, designs, shapes, graphics, and colors used in connection with the Registrant's Mark and/or the term "BABYSMART".

DOCUMENT REQUEST NO. 18: 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 has

displayed or that will display the Registrant's Mark and/or the term "BABYSMART", including documents sufficient to show every manner of presentation of the Registrant's Mark and/or the term "BABYSMART" in each type of advertisement or promotional material.

DOCUMENT REQUEST NO. 19: Representative samples of all tags, labels, signs, and packaging that have displayed or that will display the Registrant's Mark and/or the term "BABYSMART", including documents sufficient to show every manner of presentation of the Registrant's Mark and/or the term "BABYSMART" in such materials.

DOCUMENT REQUEST NO. 20: All newspaper, magazine, newsletter, trade journal, website, and other media coverage concerning the Registrant's Mark and/or the term "BABYSMART" or any goods or services offered in connection with the Registrant's Mark and/or the term "BABYSMART", whether or not authored by any official member of the press.

DOCUMENT REQUEST NO. 21: Documents sufficient to identify any person actually or intended to be employed, retained, or engaged by Registrant to advertise or promote the Registrant's Mark and/or the term "BABYSMART" or any goods or services under or in connection with the Registrant's Mark and/or the term "BABYSMART" and all communications between Registrant and such persons.

DOCUMENT REQUEST NO. 22: Documents sufficient to describe the actual and target purchasers of goods or services actually or planned or intended to be sold, offered, or licensed by Registrant under or in connection with the Registrant's Mark and/or the term "BABYSMART".

DOCUMENT REQUEST NO. 23: Documents sufficient to identify any person to or with whom Registrant has marketed, sold, offered, distributed, or licensed, or intends to market, sell, offer, distribute, or license, any goods or services under or in connection with the Registrant's Mark and/or the term "BABYSMART".

DOCUMENT REQUEST NO. 24: Documents sufficient to identify any graphic, package, product, or other designers contacted or engaged by Registrant with respect to the preparation of any materials bearing or otherwise using the Registrant's Mark and/or the term "BABYSMART", and all communications between Registrant and each designer.

DOCUMENT REQUEST NO. 25: All Documents concerning Registrant's previous or current ownership of the domain name babysmartproducts.com.

DOCUMENT REQUEST NO. 26: All Documents concerning Registrant's use of the term "BABYSMART" followed by the TM symbol and/or ® symbol.

DOCUMENT REQUEST NO. 27: All Documents concerning any complaint, petition, demand, objection, civil action, or administrative proceeding relating to the Registrant's Mark.

DOCUMENT REQUEST NO. 28: All Documents concerning Registrant's decision to use or not use the domain name babysmartutensils.com.

DOCUMENT REQUEST NO. 29: Documents sufficient to show any complaint, petition, demand, objection, or civil action or administrative proceeding made or brought by or against Registrant in which any trademark, trade dress, dilution, unfair competition, copyright, or domain name claims were asserted.

DOCUMENT REQUEST NO. 30: All Documents concerning any objection by Registrant to any third party involving the Registrant's Mark or any mark similar to, or that Registrant has at any time been alleged to be similar to, the Registrant's Mark.

DOCUMENT REQUEST NO. 31: All Documents concerning Registrant's knowledge of any third party's use, attempted registration, or registration of the Registrant's Mark or any mark similar to, or that Registrant has at any time alleged or believed to be similar to, the Registrant's Mark.

DOCUMENT REQUEST NO. 32: All Documents concerning any consumer, governmental, or other complaints or investigations concerning the goods or services sold or offered under or in connection with Registrant's Mark.

DOCUMENT REQUEST NO. 33: All Documents concerning any instances of actual or possible confusion, mistake, deception, or association of any kind between Petitioner, Registrant's Mark, or Petitioner's goods and Registrant, the Registrant's Mark or Registrant's goods or services.

DOCUMENT REQUEST NO. 33: All agreements between Registrant and any other person involving the term "BABYSMART", or the actual, planned, or intended manufacturing, advertising, promotion, marketing, distribution, sale, offering, or licensing of any goods or services under or in connection with the term "BABYSMART".

DOCUMENT REQUEST NO. 34: Documents sufficient to show the volume (in dollars and units) of annual sales of, and any service or license fees or royalties for, all goods or services sold, offered, or licensed, directly or indirectly, by or on behalf of Registrant under or in connection with the Registrant's Mark for each of the last two (2) years.

DOCUMENT REQUEST NO. 35: Documents sufficient to show the projected volume (in dollars and units) of annual sales of, and any service or license fees or royalties for, goods or services sold, offered, or licensed, or planned or intended to be sold, offered, or licensed, directly or indirectly, by or on behalf of Registrant under or in connection with the Registrant's Mark, including, but not limited to, Documents sufficient to show the information on which such calculations are based.

DOCUMENT REQUEST NO. 36: Documents sufficient to show, for each of the last two (2) years, all costs and expenses incurred annually by Registrant to promote, market, and advertise goods or services actually or planned or intended to be sold, offered, or licensed under or in connection with the Registrant's Mark.

DOCUMENT REQUEST NO. 37: All Documents concerning any communications in which any person inquired about, commented on, or mentioned Petitioner, Petitioner's Mark, or Petitioner's goods in any way.

DOCUMENT REQUEST NO. 38: All agreements between Registrant and any other person involving the Registrant's Mark, or the actual, planned, or intended manufacturing, advertising, promotion, marketing, distribution, sale, offering, or licensing of any goods or services under or in connection with the Registrant's Mark.

DOCUMENT REQUEST NO. 39: Documents sufficient to identify all third parties that did, do, or will manufacture, sell, offer, distribute, or license goods or services under or in connection with the Registrant's Mark.

DOCUMENT REQUEST NO. 40: All Documents concerning Registrant's registration, licensing, current or previous ownership, or transfer of any domain name that incorporates the term "BABYSMART", in whole or in part.

DOCUMENT REQUEST NO. 41: All Documents concerning Registrant or any goods or services sold, offered, distributed, or licensed, directly or indirectly, by or on behalf of Registrant under or in connection with Registrant's Mark and/or the term "BABYSMART" that are not responsive to or that you are otherwise not producing in response to any other request contained herein.

DOCUMENT REQUEST NO. 42: To the extent not produced in response to the foregoing requests, all Documents that support or refute Registrant's contentions in this proceeding, including, but not limited to, any Documents that support or refute any factual allegations or legal theories or conclusions Registrant has presented or relied on or intends to present or rely on in connection with such contentions.

DATED: December 17, 2020
NEW YORK, NEW YORK

By: /Abraham Lichy/
Abraham Lichy
The Lichy Law Firm, P.C.
Attorney for Petitioner
222 East 68th Street
New York, NY 10065
917-933-3895
alichy@lichylaw.com

CERTIFICATE OF SERVICE

I, Abraham Lichy, hereby certify that a true and complete copy of the foregoing First Set of Request for Production of Documents was served upon Registrant's counsel, William G. Heedy, by email at WHeedy@vwlawfirm.com, and to jpearson@vwlawfirm.com, on December 17, 2020.

/Abraham Lichy/

By: Abraham Lichy

The Lichy Law Firm, P.C.

Attorney for Petitioner

222 East 68th Street

New York, NY 10065

917-933-3895

alichy@lichylaw.com

EXHIBIT C

Subject: Re: Cancellation No. 92074339 - Discovery Requests
Date: Thursday, January 21, 2021 at 4:07:17 PM Eastern Standard Time
From: Abraham Lichy
To: William G. Heedy, jpearson@vwlawfirm.com
Priority: High

Hi William,

Following up on the below. As you know the responses are past due. With the discovery deadline looming it's imperative we receive your client's production and responses immediately. Can you advise on when we can expect them?

Best,
Abe

--

Abraham Lichy
The Lichy Law Firm, P.C
222 East 68th Street
New York, New York 10065
917-933-3895
www.lichylaw.com

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From: Abraham Lichy <alichy@lichylaw.com>
Date: Thursday, December 17, 2020 at 8:27 PM
To: "William G. Heedy" <WHeedy@vwlawfirm.com>, "jpearson@vwlawfirm.com" <jpearson@vwlawfirm.com>
Subject: Cancellation No. 92074339 - Discovery Requests

Counsel,

Please see attached.

Best,
Abe

--

Abraham Lichy
The Lichy Law Firm, P.C
222 East 68th Street
New York, New York 10065
917-933-3895
[linkedin](#)

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EXHIBIT D

Subject: Re: Cancellation No. 92074339 - Discovery Requests
Date: Monday, January 25, 2021 at 3:26:16 PM Eastern Standard Time
From: Abraham Lichy
To: William G. Heedy, jpearson@vwlawfirm.com

Hi William,

I just tried your phone line. I got your voicemail and left a message regarding the below.

Best,
Abe

--
Abraham Lichy
The Lichy Law Firm, P.C
222 East 68th Street
New York, New York 10065
917-933-3895
www.lichylaw.com

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From: Abraham Lichy <alichy@lichylaw.com>
Date: Thursday, January 21, 2021 at 4:16 PM
To: "William G. Heedy" <WHeedy@vwlawfirm.com>, "jpearson@vwlawfirm.com" <jpearson@vwlawfirm.com>
Subject: Re: Cancellation No. 92074339 - Discovery Requests

Hi William,

Following up on the below. As you know the responses are past due. With the discovery deadline looming it's imperative we receive your client's production and responses immediately. Can you advise on when we can expect them?

Best,
Abe

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From: Abraham Lichy <alichy@lichylaw.com>
Date: Thursday, December 17, 2020 at 8:27 PM
To: "William G. Heedy" <WHeedy@vwlawfirm.com>, "jpearson@vwlawfirm.com" <jpearson@vwlawfirm.com>
Subject: Cancellation No. 92074339 - Discovery Requests

Counsel,

Please see attached.

Best,
Abe

--

Abraham Lichy
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EXHIBIT E

Subject: Re: Cancellation No. 92074339 - Discovery Requests
Date: Tuesday, February 2, 2021 at 10:51:17 AM Eastern Standard Time
From: Abraham Lichy
To: William G. Heedy, jpearson@vwlawfirm.com

Hi William,

I just tried your line again as well as Joan's. I left a voicemail for Joan.

Can you please advise if your client intends on responding to our Discovery Requests?

Abe

--

Abraham Lichy
The Lichy Law Firm, P.C
222 East 68th Street
New York, New York 10065
917-933-3895
www.lichylaw.com

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From: Abraham Lichy <alichy@lichylaw.com>
Date: Monday, January 25, 2021 at 3:32 PM
To: "William G. Heedy" <WHeedy@vwlawfirm.com>, "jpearson@vwlawfirm.com" <jpearson@vwlawfirm.com>
Subject: Re: Cancellation No. 92074339 - Discovery Requests

Hi William,

I just tried your phone line. I got your voicemail and left a message regarding the below.

Best,
Abe

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Abraham Lichy
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Date: Thursday, January 21, 2021 at 4:16 PM
To: "William G. Heedy" <WHeedy@vwlawfirm.com>, "jpearson@vwlawfirm.com" <jpearson@vwlawfirm.com>
Subject: Re: Cancellation No. 92074339 - Discovery Requests

Hi William,

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From: Abraham Lichy <alichy@lichylaw.com>
Date: Thursday, December 17, 2020 at 8:27 PM
To: "William G. Heedy" <WHeedy@vwlawfirm.com>, "jpearson@vwlawfirm.com" <jpearson@vwlawfirm.com>
Subject: Cancellation No. 92074339 - Discovery Requests

Counsel,

Please see attached.

Best,
Abe

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