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

Proceeding	92074788
Party	Plaintiff Abdul Rehman Karim Saleh
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

IN THE MATTER OF REGISTRATION NOS.)
4,998,527 (Issued July 12, 2016))
4,998,512 (Issued July 12, 2016))
2,077,773 (Issued July 8, 1997))
826,139 (Issued March 21, 1967))
310,430 (Issued February 27, 1934))
_____)

ABDUL REHMAN KARIM SALEH)
)
Petitioner,)
v.)
A. SULKA AND COMPANY LIMITED)
)
Registrant.)
_____)

Cancellation No. 92074788

**PETITIONER'S MOTION TO COMPEL DISCOVERY
PURSUANT TO 37 CFR § 2.120(f) AND
BRIEF IN SUPPORT THEREOF**

In accordance with 37 CFR § 2.120(f) and TBMP § 523, petitioner ABDUL REHMAN KARIM SALEH (“Saleh” or “Petitioner”) hereby moves to compel document production and interrogatory responses with regard to document requests and interrogatories previously served, production of unredacted versions of documents already produced in response to document requests, and in support of such motion states as follows:

1. Petitioner served document requests and interrogatories upon registrant A. SULKA AND COMPANY LIMITED (“Sulka” or “Registrant”) on January 30, 2021.

2. Sulka served objections and responses to the document requests and interrogatories upon Petitioner on March 1, 2021. Copies thereof are attached to this brief as Exhibits A and B, respectively.

3. Sulka failed to provide meaningful responses to numerous document requests and interrogatories.

4. Sulka produced documents in response to Petitioner's document requests on April 26, 2021. Sulka improperly redacted numerous documents that it produced. An exemplary redacted document is attached to this brief as Exhibit C.

5. Petitioner's counsel tried to resolve the issues in good faith with Registrant's counsel, including conferring with Registrant's counsel on April 8, 2021 and May 13, 2021.

6. Notwithstanding, Registrant's counsel does not agree with the resolution of the issues as requested herein.

WHEREFORE it is respectfully requested that an Order be entered compelling Registrant to provide full responses to the discovery referenced below and unredacted documents within a set time period (for example, two weeks) and extending the discovery schedule accordingly.

BACKGROUND

Sulka: Once a Successful Company, Now Long Out of Business

This proceeding involves a registrant that was once a successful, thriving retail luxury men's clothing and accessories business, but which for approximately the last twenty (20) years has been defunct, certainly at least in the United States.

As the Second Circuit Court of Appeals noted when the current dispute was before it, “[i]n the United States, the name ‘Sulka’ is associated with a now-defunct luxury menswear brand.” *Saleh v. Sulka Trading, Ltd.*, 957 F.3d 348, 351 (2d Cir. 2020).

Registrant and its predecessors were indeed venerable; two of its registrations that are the subject of this proceeding claim first use as early as 1893 and 1895! Decades ago, Sulka bragged that it clothed such famous personages as Henry Ford, Clark Gable, Winston Churchill, John F. Kennedy and the Duke of Windsor. But, as someone even more venerable than Registrant wrote, “[t]o everything there is a season, and a time to every purpose under the heaven. A time to be born, and a time to die.” Ecclesiastes 3:1-2.

And Sulka did die. Its business declined, and Sulka closed its last U.S. store in 2001. *See* Terry Pristin, *Sulka, Haberdasher to Royalty, Is to Close Its Last Shop in U.S.*, New York Times (Dec. 21, 2001).

Sulka’s registrations suggest as much. For example, Registration No. 2,077,773, registered in 1997, originally covered 24 different goods and services in four international classes¹, much that one would expect of a successful luxury apparel and accessories company. Sulka itself acknowledges that it abandoned *all of these*, save only “neckwear.” Similarly, the other registrations in this Petition also only currently cover clothing and clothing accessories, namely ties; or ties. (*See* Petition for

¹ These included cuff-links and jewelry in Class 14; luggage, briefcases and attache cases in Class 18; footwear, jackets, blazers, suits, pajamas, bathrobes, dressing gowns, shirts, neckwear, cardigans, sweaters, overcoats, raincoats, mufflers, socks, gloves, waistcoats in Class 25; and retail store and mail order services in the field of clothing and personal accessories in Class 42.

Cancellation, ¶ 8, Dkt. 1, listing all five registrations and current goods.) So, simply from reviewing the Principal Register, it would be fair to discern that a once successful clothier is now reduced to selling ties.

But in fact, even that is a total sham. The supposed commercial sale of ties by Sulka and its predecessors, at best, is nothing but token, sham sales “made merely to reserve a right in a mark,” 15 U.S.C. § 1127, in order to keep Sulka’s registrations alive. And these sham sales were used as a basis for renewals or new registrations.

Illustrating this sham, in January 2004, in connection with subject Registration No. 2,077,773, Sulka’s predecessor filed a Section 8 renewal, in which it claimed excusable non-use. Specifically, Sulka claimed non-use based on the fact that it “temporarily suspended sales in 2001 and closed its SULKA stores in the U.S. This decision was based on a temporary fashion trend, among customers for high-end men’s clothing, to prefer clothing by living designers, and a temporary economic downturn that cut into the discretionary spending of the typical high-end SULKA consumer.”

The Trademark Office (in March 2004) rejected that affidavit because the “nonuse of the mark appears to be within the control of the owner.”

Tellingly, in 2018 when Petitioner’s counsel challenged Sulka to provide proof of its continuing *bona fide* use, counsel was referred to a related company’s website that purported to carry Sulka ties – an offering in Euros, not dollars, with the site further stating that the Sulka product was “SOLD OUT” and that “[u]nfortunately, this item will not be back in stock.”

That Sulka's counsel was unable to refer Saleh to even one U.S. outlet, online or bricks-and-mortar, where a single Sulka product could be purchased, speaks volumes about what the real facts are.

In short, Sulka has for years been using false specimens and declarations of use to obtain or renew registrations for a defunct business, registrations, and renewals it was not entitled to.

Petitioner

In early 2018, Saleh began to explore starting an online clothing company and developed a business plan that would market apparel under the marks SULKA and PHULKA.

Saleh applied under Section 1(b) of the Trademark Act to register the trademark SULKA in connection with "luggage, wallets, purses, computer laptop cases, handheld PC cases" and "shirts, dresses, neckties, belts, pants, scarves," Serial No. 88/021619. The Trademark Office cited five Sulka registrations (the subject of this petition for cancellation) as a basis for refusal of Saleh's application under Section 2(d) of the Trademark Act.

Saleh filed this Petition, seeking to cancel the five blocking SULKA registrations. Abandonment is the only basis asserted for cancellation. Sulka's Answer denies most of the salient allegations.

The Discovery at Issue

Petitioner seeks the identity of documents and witnesses to evidence Sulka's abandonment of the SULKA mark. In order to evidence Sulka's abandonment, Petitioner propounded document requests and interrogatories. Yet, Sulka has stonewalled and refused to provide meaningful responses to numerous document requests and interrogatories. Petitioner has tried to resolve the issues in good faith with Registrant. But Sulka continues to be unwilling to comply with its discovery obligations. Accordingly, Petitioner requests that the Board compel Sulka to supplement its responses to document request Nos. 2, 5, 6, 7, 8, 9, 10, 12, 13, 14, 17, 18, 19, 20, 27, 28, 29, and 35 and interrogatory Nos. 1, 2, and 3; and produce unredacted documents.

ARGUMENT

I. Statement of Reasons that Motion Should be Granted

A. Document Requests

Document Request Nos. 2, 5, 6, 7, 8, 9, 10, 12, 13

Petitioner requested documents directed to the use in commerce (DR 2)², manufacture of goods (DR 5), purchase of goods (DR 6), offering for sale or sale of goods (DR 7), distribution of goods (DR 8), product development of goods (DR 9), advertisement of goods (DR10), continued or discontinued use of goods (DR 12), and rights, continued

² References to a document request will be to the initials "DR" followed by the cited request number.

rights, discontinued rights, abandonment, or loss of rights (DR 13) all in connection with the SULKA mark.

The only basis for this cancellation proceeding being abandonment, what could be more relevant for Sulka's defense than for it to prove that it did not abandon its rights by evidencing its *bona fide* use and continuing use of the SULKA mark. Yet Sulka is resisting production of such very proofs by asserting numerous objections. They will be taken up in order.

Overbroad, Burdensome, Irrelevant

Initially Sulka responds that the document requests are burdensome, overbroad, and irrelevant in that it seeks production of "all" documents covering a period from 2004. 2004 is the year that Sulka told the U.S. Government, in support of its assertion of excusable non-use, that the SULKA mark is "temporarily not in use in commerce" and that Registrant "temporarily suspended sales in 2001 and closed its SULKA stores in the U.S." The Trademark Office rejected Sulka's assertion of excusable non-use.

When objecting on the basis of burdensome, overbroad, and irrelevant, Sulka may not rely on conclusory statements, but rather must state *specifically* the underlying basis for the objection. See *Medtronic, Inc. v. Pacesetter Sys., Inc.*, 222 USPQ 80, 83 (TTAB 1984) ("[I]t is incumbent upon a party who has been served with interrogatories to respond by articulating his objections (with particularity) to those interrogatories which he believes to be objectionable, and by providing information sought in those interrogatories which he believes to be proper."); see also Fed. R. Civ. P. 33(b)(4) ("The grounds for objecting to an interrogatory must be stated with specificity.") and Fed. R. Civ.

P. 34(b)(2)(B) (“For each item or category, the response must ... state with specificity the grounds for objecting to the request, including the reasons.”).

In other words, merely asserting boilerplate objections that the discovery sought is vague, ambiguous, overbroad, unduly burdensome, etc. without specifying how each request for production or interrogatory is deficient and without articulating the particular harm that would accrue if Sulka were required to respond to Petitioner’s discovery requests simply is not enough. Absent such a showing, Sulka is required to provide substantive responses. *Hewlett Packard Enterprise Development LP v. Arroware Industries, Inc.*, 2019 USPQ2d 158663, *11-13 (TTAB 2019).

Indeed, Sulka fails in every instance to say why the discovery is burdensome. How is it overly broad? For example, Sulka complains about the 17-year period during which it is asserted that Sulka has abandoned the mark. One would think Sulka would not want to hold back production of documents showing use, manufacture, purchase, offer for sale and sale of goods bearing the SULKA mark during that period so as to prove it recommenced and continued using the SULKA mark and defeat a showing of non-use for three consecutive years.

Petitioner Lacks Standing

Sulka’s objects that Petitioner “seeks documents unrelated to any rights or interests of Petitioner whose earliest claim of rights in the SULKA mark date back to its alleged first use date of May 31, 2018.” (*E.g.*, see Response to DR 2)

Petitioner’s burden is to show, for example, that Sulka’s use of the SULKA mark has been discontinued for at least three consecutive years. The documents sought in these requests to prove abandonment are directed to Sulka’s and its use/non-use of the

SULKA mark in a consecutive 3-year period; that period could conceivably range anywhere between 2004 and Petitioner's filing of the ITU application. Petitioner's standing is not a limitation with regard to this inquiry.

Requests Directed to SULKA Mark, Rather than to Sulka Registrations

Sulka objects that the requests seek documents pertaining to the SULKA mark, rather than the Sulka Registrations, stating “[t]he only relevant inquiry in this matter is whether Sulka abandoned rights in each of the Sulka registrations.” (*E.g.*, response to DR 2)

The Trademark Act provides for the cancellation of a registration if the registered mark has been abandoned. See Trademark Act Section 14, 15 U.S.C. § 1064. A mark is deemed abandoned if its use has been discontinued without intent to resume use. Trademark Act Section 45, 15 U.S.C. § 1127. Thus, whether a registration is to be cancelled depends on evidencing that the mark underlying the registration has been abandoned. This objection is also not well taken.

Following the assertion of the above objections, Sulka states it will produce specimens of use it used in support of the various renewals that are in the public record. Petitioner's position is that those documents and specimens constitute nothing more than token uses undertaken merely to preserve the registrations. The point of this Proceeding and the document requests specifically is to go behind such token uses and have Sulka produce documents that evidence its real and continuing commercial use since it went out of business over 20 years ago.

Thus, document request Nos. 2, 5, 6, 7, 8, 9, 10, 12, and 13, seek information which is proper, and documents responsive thereto should be produced.

Document Request Nos. 14, 17, 18, 19, 20

Petitioner seeks notes relating to and the file histories for the Sulka Registrations and Sulka's registrations that it abandoned in the relevant time period for the same SULKA mark and the same goods, including from the files of Sulka's in-house and outside counsel.

Sulka objects to these document requests on the basis of burdensome and overbroad, again without saying specifically why it is so. This objection is not well taken.

Sulka objects on the ground of privilege, yet no privilege log has been supplied.

Sulka proposes to produce copies of the USPTO file wrappers for the Sulka Registrations. This is just playing hide the ball. Petitioner is entitled to whatever contemporaneous notes were made, including those incorporated in Sulka's internal copies of such file wrappers, while filing, for example, renewals. What comments did Sulka make internally with regard to the specimens that it was supplying for filing with the USPTO? What investigations were undertaken to determine that there was actual continuing commercial use? If there are any such materials, Petitioner is entitled to it as it clearly is relevant to its claim of abandonment.

Turning, specifically to Request Nos. 17, 18, 19, and 20, Sulka objects that the identified. SULKA applications/registrations are not at issue in this Proceeding and thus the requests are irrelevant. Let's look, for example, at the application identified in Request No. 17, namely Application No, 77/633,199. That SULKA application was filed in December 2008 covering various classes, including class 25 for various items of clothing,

one of which was ties. In February 2010, all the initial clothing items, *except* ties, were deleted in support of a first request for extension of time. That extension of time asserted that Sulka had a continued bona fide intention to use the SULKA mark in commerce. Five requests for extension of time were eventually filed, until October 2012, when the applicant could no longer file any more requests for extension of time and the application was abandoned with no statement of use ever being filed for ties. So how is it, on the one hand, that this SULKA application was abandoned because Sulka could not provide a statement of use for *ties* while in the same time frame, on the other hand, in connection with SULKA Registration No. 310,430 in this Proceeding, Sulka was able to file a renewal in June 2013 for exactly the same goods, *ties*? These other SULKA registration are clearly relevant subject matter that will shed light on the abandonment issue here.

Thus, document request Nos. 14, 17, 18, 19, and 20 seek information which is proper, and documents responsive thereto should be produced.

Document Request Nos. 27, 28, 29

These requests are directed to Registrant's distribution, offer for sale, and sale of goods bearing the SULKA mark to Mr. Porter/Net-A-Porter, and Registrant's corporate relationship and agreements with Mr. Porter/Net-A-Porter.

Sulka's renewals and statements of use were *all* evidenced by offers to sell/sales by Mr. Porter/Net-A-Porter to consumers for the years of at least 2013 - 2017. Sulka and Mr. Porter/Net-a-Porter are corporate affiliates.

Sulka objects to these requests on the grounds of burdensome, overbroad, and duplicative. Again, without saying specifically why it is so. This objection is not well

taken.

Mr. Porter/Net-A-Porter is the company that purportedly offered for sale/sold apparel items bearing the SULKA mark to consumers, which offers for sale and sales Sulka relies on to prove its use and continuing use in support of its renewals and applications. Petitioner is entitled to view any documents *between* Sulka and Mr. Porter/Net-A-Porter that relates to the distribution and sales of apparel in connection with the SULKA mark that allowed Registrant to prove its use and continuing use in support of its renewals and applications.

Petitioner is also entitled to any documents reflecting exactly what the corporate relationship is between Sulka and Mr. Porter/Net-A-Porter, and if there are any agreements relating to Mr. Porter/Net-A-Porter's distribution of goods bearing the SULKA mark.

Thus, document request Nos. 27, 28, and 29 seek information which is proper, and documents responsive thereto should be produced.

Document Request No. 35

This request seeks assignment documents, since 2016, concerning the SULKA mark, and communications pertaining to same. In January 2019, a confirmatory assignment was filed in the USPTO against the Sulka Registrations which confirmed an assignment of June 27, 2016. The assignment was from one Richemont controlled Sulka entity to Registrant. Petitioner seeks the 2016 assignment and the communications pertaining to same.

Sulka objects to this request as burdensome and overbroad, again without saying

specifically why it is so. This objection is not well taken.

Sulka further objects, relating back to request No. 4, that it will only produce assignment documents that it intends to rely on in the Proceeding. Registrant cannot produce only what it considers helpful documents and shield the same type of documents if it considers it to be unhelpful.

Thus, document request No. 35 seeks information which is proper, and documents responsive thereto should be produced.

B. Interrogatories

Interrogatory No. 1

This interrogatory asks Sulka to identify its management personnel since 2004, the year when it told the U.S. Government that it closed its retail business three years earlier in 2001.

Sulka objects to the interrogatory as burdensome and overbroad, the same objections Sulka has asserted with regard to many of its responses to document requests as shown above is meritless here for the same reasons.

Sulka objects that Petitioner does not have standing to challenge the registrations on the same grounds as it specified in its responses to document requests. For the same reasons argued with regard to the document requests, Petitioner asserts the objection is not well taken.

Sulka objects that this interrogatory is irrelevant to the extent it seeks identification of individuals with no knowledge of or relation to this Proceeding, again failing to specify why that would be the case. Who better than Registrant's

management would be knowledgeable if the company has really been commercially operating since it closed its business in 2001?

Sulka completes its objections by deflecting. It identifies an individual from a different company which it wants to put up for deposition as a substitute for identifying the management officers of Registrant so it can avoid producing personnel with first-hand knowledge.

Thus, interrogatory No. 1 seeks information which is proper, and responsive information should be produced.

Interrogatory No. 2

This interrogatory request the identity of the persons who authorized, provided instructions, or factual representations to trademark prosecution counsel with regard to the subject Sulka registrations and the abandoned registrations for the same SULKA mark and same goods.

Sulka objects to providing any response to the interrogatory on the basis of burdensome, overbroad, and irrelevant and refuses to identify any information responsive to this interrogatory. The identical objections have been discussed above and shown to be without merit.

Petitioner is entitled to determine what factual information and instructions were provided to counsel and who authorized the various filings and renewals. They are clearly relevant to understanding the circumstances pertaining to Sulka's commercial use of its mark.

Sulka completes its objections by deflecting. It identifies an individual from a

different company who it wants to put up for deposition as a substitute for identifying the management officers of Registrant so it can avoid producing personnel with first-hand knowledge.

Thus, interrogatory No. 2 seeks information which is proper, and responsive information should be produced.

Interrogatory No. 3

This, interrogatory seeks the identity of individuals who are knowledgeable about Sulka's commercial activities and abandonment, the same information requested in document request numbers 2, 5, 9, 10, 12, 13,14, 17, 18, and 19 which are also the subject of this motion.

Sulka objects to providing any response to the interrogatory on the basis of burdensome, overbroad, and irrelevant and refuses to identify any information responsive to this interrogatory. The objections are the identical objections that have been discussed above and shown to be without merit.

What could be more relevant than identifying persons knowledgeable about Sulka's commercial activities and abandonment.

Sulka completes its objections by deflecting. It identifies an individual from a different company who it wants to put up for deposition as a substitute for identifying the management officers of Registrant so it can avoid producing personnel with first-hand knowledge.

Indeed, it is inconceivable how there can be a fair and just resolution of whether Sulka abandoned use of the SULKA mark where the Registrant refuses to identify knowledgeable persons.

Thus, interrogatory No. 3 seeks information which is proper, and responsive information should be produced.

C. Redacted Documents

Sulka produced documents in response to Petitioner's document requests. Numerous of the produced documents contain various redacted portions. Sulka's counsel has advised that the redacted portions of the produced documents are directed to portions of the documents which are either irrelevant to the current proceeding or contain confidential information. In response, Petitioner's counsel argued that irrelevance is not a proper ground for redaction and that Petitioner is entitled to unredacted versions of all of these documents. Moreover, Petitioner contends that redacting portions of responsive documents on the ground that such redacted portions contain confidential information is also inappropriate because the Board's standard protective order is automatically applicable to this Proceeding.

Exhibit C (Registrant Bates no. SKG001761), one example of such a redacted document, appears to be an invoice from MrPorter.com, as indicated above a corporate affiliate of Registrant, reflecting the sale in 2016 of one Sulka tie with the invoice number, invoiced to, customer street address and post code, deliver to, customer street address and post code, order number, shipment number, customer number, product

description, total invoice price and unknown other information in the invoice having all been redacted.

Sulka is not entitled to redact information in its document production that it believes is irrelevant or non-responsive to Petitioner's document requests. *Intex Recreation Corp. v. The Coleman Company, Inc.*, 117 USPQ2D 1799 (TTAB 2016). Sulka's contention that redaction is appropriate because some of the redacted information is highly proprietary in nature is also without merit. *Id.*

Thus, Sulka's document redaction is proper, and the unredacted documents should be produced.

CONCLUSION

For the foregoing reasons, Petitioner's Motion to Compel Discovery should be granted, and Registrant ordered to serve its responses, without objection, to Petitioner's requests for production and interrogatories and produce unredacted documents.

CERTIFICATE OF CONFERENCE IN GOOD FAITH

Pursuant to 37 C.F.R. § 2.120(f), the undersigned counsel of record certifies he has made a good faith effort, by conference on April 8, 2021 and May 13, 2021, to resolve with Registrant's counsel each of the issues presented in the motion, and Registrant's counsel does not agree with the resolution of the motion as requested herein and thus the parties have been unable to reach agreement.

Dated: May 13, 2021
New York, New York

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Exhibit A

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

ABDUL REHMAN KARIM SALEH,

Petitioner,

v.

A. SULKA AND COMPANY LIMITED,

Registrant.

Cancellation No. 92074788

**SULKA’S OBJECTIONS AND RESPONSES TO
PETITIONER’S FIRST SET OF DOCUMENT REQUESTS**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 34 of the Federal Rules of Civil Procedure, A. Sulka and Company Limited (“Sulka”), by its counsel Fross Zelnick Lehrman & Zissu, P.C., responds as follows to Abdul Rehman Karim Saleh’s (“Petitioner”) First Set of Document Requests (the “Requests,” and each individually, a “Request”):

SULKA’S DEFINITIONS

A. “Burdensome” means that the Request seeks information or documents obtainable from another source that is more convenient or less expensive, or that the Request exposes Sulka to undue burden or expense in relation to its likely benefit and is, thus, not proportional to the needs of and issues in the case, taking into account the relief sought, the parties’ resources, and the importance of the proposed discovery in resolving the issues in the litigation.

B. “Duplicative” means that the Request is unreasonably cumulative or duplicative of another Request or that the requested information or documents have been previously provided.

C. “Irrelevant” means that the Request is not reasonably calculated to lead to the discovery of admissible or relevant evidence.

D. “Overbroad” means that the Request is not reasonably particular, seeks information or documents merely tangential to the matters at issue in the case, or is not limited to a particular time period or geographic region, such that it is not proportional to the needs of and issues in the case, taking into account the relief sought, the parties’ resources, and the importance of the proposed discovery in resolving the issues in the litigation.

E. “Privilege” means that the Request seeks information or documents that are protected by the attorney-client or attorney-work-product privilege.

F. “Vague” means that the wording of the Request is vague and/or ambiguous including, without limitation, due to the use of undefined terms.

G. “Confidentiality” means that the Request seeks information of a confidential nature and that any information or documents provided will be produced only pursuant to a Court-ordered protective order or other agreement regarding confidentiality among the parties.

OBJECTIONS TO PETITIONER’S DEFINITIONS AND INSTRUCTIONS

A. Sulka objects to the definition of the term “Sulka Mark” as Overbroad to the extent it encompasses marks other than those at issue in the above-captioned proceeding.

B. Sulka objects to the definition of the term “Sulka” as Overbroad to the extent it encompasses entities other than A. Sulka and Company Limited.

GENERAL OBJECTIONS TO THE REQUESTS

1. Sulka objects to the Requests to the extent they seek to impose greater burdens on Sulka than are permitted by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

2. Sulka’s responses and objections are without prejudice to, and Sulka does not waive, any evidentiary objections relating to any Requests or the response to any Request, and by

responding Sulka does not waive any claims or objections, including any right of privilege or confidentiality applicable.

3. Sulka has not concluded its investigation of the facts relating to this case and has not completed formal discovery or preparation for trial. Accordingly, there may exist information or documents responsive to the Requests that Sulka does not yet have knowledge of or has not yet located, identified, or reviewed. All of the following responses are therefore based on such information or documents currently known or available to Sulka after a reasonable inquiry. Sulka reserves the right to alter, amend, or supplement its responses to the Requests.

4. Nothing contained in any response to any Request shall be construed as an admission by Sulka relative to the existence or non-existence of any information or documents, and no such response shall be construed as an admission with respect to the relevance or admissibility of any information or document, or the truth or accuracy of any statement or characterization contained in any Request.

5. Sulka will produce any documents to be provided in response to these Requests on a rolling basis.

6. All of the foregoing general objections are incorporated into each and every response to the Requests as if fully stated therein.

SPECIFIC OBJECTIONS AND RESPONSES TO DOCUMENT REQUESTS

Document Request No. 1

All documents disclosed or required to be disclosed in Sulka's initial disclosures.

Response to Document Request No. 1:

Subject to and without waiving the foregoing general objections, Sulka states that no documents were disclosed in its initial disclosures.

Document Request No. 2

All documents concerning the Use in Commerce of the Sulka Mark for the years 2004 to the present.

Response to Document Request No. 2:

Sulka objects to Request No. 2 as Burdensome, Overbroad and Irrelevant to the extent it seeks the production of “all” documents of the requested type, requests documents covering a 17-year period from 2004 forward, seeks documents unrelated to any rights or interests of Petitioner whose earliest claim of rights in the SULKA mark date back to its alleged first use date of May 31, 2018 and seeks documents pertaining to the SULKA Mark rather than the Sulka Registrations as defined in Petitioner’s Definitions and Instructions in its First Set of Document Requests. The only relevant inquiry in this matter is whether Sulka abandoned rights in each of the Sulka Registrations.

Two of the Sulka Registrations, Reg. Nos. 4998527 and 4998512 (herein the “2016 Registrations”), were not even registered until 2016, making documents from 2004 until 2016 Irrelevant. Subject to and without waiving the foregoing objections, with regard to the 2016 Registrations, Sulka will produce documents sufficient to demonstrate that as of the registration date for each, Sulka was using the applied-for mark in connection with the goods in each challenged registration and that Sulka has not abandoned.

For the other three registrations at issue, Reg. Nos. 2077773, 826139 and 310430 (the “Pre-2016 Registrations”), those have been registered for decades, and it is Overbroad and Burdensome to request “all documents” from 2004 forward. This is particularly true where Petitioner’s own priority date is no earlier than May 31, 2018. Petitioner has not set forth any basis for considering any other period of time where it would have standing to challenge the Sulka Registrations for non-use. Moreover, each of these registrations has been renewed and/or Sulka has submitted specimens of use to support the registrations that have been accepted by the

Patent & Trademark Office. As such, those submissions provide Sulka with *prima facie* evidence of continued use of the marks in connection with the registrations at issue as of their filing, and Petitioner has not alleged with any specificity any facts to overcome such *prima facie* evidence. Petitioner cannot discharge its burden of overcoming these presumptions by serving discovery that is nothing more than a fishing expedition and that is not supported by any specific allegations.

Subject to and without waiving the foregoing objections, with regard to the Pre-2016 Registrations, Sulka will produce publicly available documents supporting the last renewal and/or declaration of use and specimen of use for each registration at issue, as well as documents sufficient to demonstrate that since the last such renewal, Sulka has continued use of the registered mark in connection with the goods in each challenged registration and has not abandoned.

Document Request No. 3

All licenses for the Sulka Mark that pertain in any way to U.S. Commerce that were signed in or cover any parts of the years 2004 to the present.

Response to Document Request No. 3:

For the reasons set forth in response to Request No. 2, this request is Overbroad, Burdensome and Irrelevant with regard to the 2016 Registrations. With regard to the Pre-2016 Registrations, for the same reasons stated in response to Request No. 2, this request is Overbroad, Burdensome and Irrelevant. Subject to and without waiving the foregoing objections, Sulka will produce any licenses upon which it intends to rely in this proceeding to demonstrate that it has not abandoned rights in the Sulka Registrations, if any.

Document Request No. 4

All other agreements concerning the Sulka Mark that pertain in any way to U.S. Commerce that were signed in or cover any part of the years 2004 to the present, including all agreements, contracts, and transfers or assignments of rights and/or goodwill pertaining to such mark.

Response to Document Request No. 4:

Sulka re-states and incorporates its objections to Document Request No. 3 as if fully set forth herein. Subject to and without waiving the foregoing objections, Sulka will produce any agreements, contracts, and transfers or assignments of rights and/or goodwill pertaining to the SULKA mark upon which it intends to rely in this proceeding, if any.

Document Request No. 5

For the years 2004 to the present, all documents concerning the manufacture of or orders for manufacturing any goods bearing or in connection with the Sulka Mark, which goods were intended to be distributed in U.S. Commerce.

Response to Document Request No. 5:

With regard to the 2016 Registrations, Sulka objects to Request No. 5 as Burdensome and Overbroad and Irrelevant for the same reasons as stated in Response to Request No. 2. With regard to the Pre-2016 Registrations, Sulka objects to this request as Overbroad, Burdensome and Irrelevant because, read literally, this calls for every single document over a 17-year period that pertains in any way to the manufacture of or orders related to the SULKA mark. That is obviously disproportionate to the needs of this case. Moreover, as explained in other objections and relied upon here, Petitioner had no standing to challenge the Sulka Registrations prior to May 31, 2018. Subject to and without waiving the foregoing general and specific objections, with regard to the

2016 Registrations, Sulka will produce documents sufficient to demonstrate that as of the registration date for each, Sulka was using the applied-for mark in connection with the goods in each challenged registration and that Sulka has not abandoned. Subject to and without waiving the foregoing objections, with regard to the Pre-2016 Registrations, Sulka will produce publicly available documents supporting the last renewal and/or declaration of use and specimen of use for each registration at issue, as well as documents sufficient to demonstrate that since the last such renewal, Sulka has continued use of the registered mark in connection with the goods in each challenged registration and has not abandoned.

Document Request No. 6

For the years 2004 to the present, all documents concerning the purchase of any goods bearing or in connection with the Sulka Mark, which goods were intended to be distributed in U.S. Commerce.

Response to Document Request No. 6:

See Response to Document Request No. 5, which is incorporated herein by reference.

Document Request No. 7

For the years 2004 to the present, all documents concerning the offering for sale or sale of any goods bearing or in connection with the Sulka Mark in U.S. Commerce.

Response to Document Request No. 7:

With regard to the 2016 Registrations, Sulka objects to Request No. 7 as Burdensome and Overbroad and Irrelevant for the same reasons as stated in Response to Request No. 2. With regard to the Pre-2016 Registrations, Sulka objects to this request as Overbroad, Burdensome and Irrelevant because, read literally, this calls for every single document over a 17-year period that pertains in any way to the offering for sale or sale of any goods bearing or in connection with the Sulka Mark (again using the Overbroad term Sulka Mark rather than the proper Sulka

Registrations). That is obviously disproportionate to the needs of this case. Moreover, as explained in other objections and relied upon here, Petitioner had no standing to challenge the Sulka Registrations prior to May 31, 2018. Subject to and without waiving the foregoing general and specific objections, with regard to the 2016 Registrations, Sulka will produce documents sufficient to demonstrate that as of the registration date for each, Sulka was using the applied-for mark in connection with the goods in each challenged registration and that Sulka has not abandoned. Subject to and without waiving the foregoing objections, with regard to the Pre-2016 Registrations, Sulka will produce publicly available documents supporting the last renewal and/or declaration of use and specimen of use for each registration at issue, as well as documents sufficient to demonstrate that since the last such renewal, Sulka has continued use of the registered mark in connection with the goods in each challenged registration and has not abandoned.

Document Request No. 8

For the years 2004 to the present, all documents concerning the distribution of any goods bearing or in connection with the Sulka Mark in U.S. Commerce.

Response to Document Request No. 8:

Sulka objects to Request No. 8 as Burdensome and Overbroad to the extent it seeks the production of “all” documents of the requested type. Sulka further objects to Request No. 8 as Duplicative of information or documents sought in Request Nos. 6 and 7. Subject to and without waiving the foregoing general and specific objections, Sulka incorporates by reference its response to Request Nos. 6 and 7 as if fully restated herein.

Document Request No. 9

For the years 2004 to the present, all documents concerning product development of any goods bearing or in connection with the Sulka Mark, which goods were intended to be distributed

in U.S. Commerce.

Response to Document Request No. 9:

With regard to the 2016 Registrations, Sulka objects to Request No. 9 as Burdensome and Overbroad and Irrelevant for the same reasons as stated in Response to Request No. 2. With regard to the Pre-2016 Registrations, Sulka objects to this request as Overbroad, Burdensome and Irrelevant because, read literally, this calls for every single document over a 17-year period that pertains in any way to the offering for sale or sale of any goods bearing or in connection with the Sulka Mark (again using the Overbroad term Sulka Mark rather than the proper Sulka Registrations). That is obviously disproportionate to the needs of this case. Moreover, as explained in other objections and relied upon here, Petitioner had no standing to challenge the Sulka Registrations prior to May 31, 2018. Finally, Sulka is not obligated to produce documents related to product development where the issue at hand is whether Sulka abandoned rights in its Sulka Registrations.

Subject to and without waiving the foregoing general and specific objections, with regard to the 2016 Registrations, Sulka will produce documents sufficient to demonstrate that as of the registration date for each, Sulka was using the applied-for mark in connection with the goods in each challenged registration and that Sulka has not abandoned. Subject to and without waiving the foregoing objections, with regard to the Pre-2016 Registrations, Sulka will produce publicly available documents supporting the last renewal and/or declaration of use and specimen of use for each registration at issue, as well as documents sufficient to demonstrate that since the last such renewal, Sulka has continued use of the registered mark in connection with the goods in each challenged registration and has not abandoned.

Document Request No. 10

For the years 2004 to the present, all documents concerning the advertisement in U.S.

Commerce of any goods bearing or in connection with the Sulka Mark.

Response to Document Request No. 10:

With regard to the 2016 Registrations, Sulka objects to Request No. 10 as Burdensome and Overbroad and Irrelevant for the same reasons as stated in Response to Request No. 2. With regard to the Pre-2016 Registrations, Sulka objects to this request as Overbroad, Burdensome and Irrelevant because, read literally, this calls for every single document over a 17-year period that pertains in any way to the offering for sale or sale of any goods bearing or in connection with the Sulka Mark (again using the Overbroad term Sulka Mark rather than the proper Sulka Registrations). That is obviously disproportionate to the needs of this case. Moreover, as explained in other objections and relied upon here, Petitioner had no standing to challenge the Sulka Registrations prior to May 31, 2018. Subject to and without waiving the foregoing general and specific objections, with regard to the 2016 Registrations, Sulka will produce documents sufficient to demonstrate any advertising the Sulka did for its SULKA brand products as of the registration date and forward for each of the 2016 Registrations. Subject to and without waiving the foregoing objections, with regard to the Pre-2016 Registrations, Sulka will produce documents sufficient to show historical examples of advertising over the past five years.

Document Request No. 11

To the extent not covered by another request, for the years 2004 to the present, any documents concerning the use in U.S. Commerce of the Sulka Mark.

Response to Document Request No. 11:

Sulka objects to Request No. 11 as Burdensome, Overbroad to the extent it seeks the production of “all” documents of the requested type. Sulka further objects to Request No. 11 in that it is Duplicative of prior requests. Sulka hereby incorporates its responses to Requests Nos. 2 through 10.

Document Request No. 12

For the years 2004 to the present, all documents concerning the continued use, or discontinued use, of the Sulka Mark, with respect to any goods or categories of goods.

Response to Document Request No. 12:

With regard to the 2016 Registrations, Sulka objects to Request No. 12 as Burdensome and Overbroad and Irrelevant for the same reasons as stated in Response to Request No. 2. With regard to the Pre-2016 Registrations, Sulka objects to this request as Overbroad, Burdensome and Irrelevant because, read literally, this calls for every single document over a 17-year period that pertains in any way to the offering for sale or sale of any goods bearing or in connection with the Sulka Mark (again using the Overbroad term Sulka Mark rather than the proper Sulka Registrations). That is obviously disproportionate to the needs of this case. Moreover, this Request is objectionable in requesting evidence of discontinued use of the SULKA mark in connection with any goods rather than the goods in connection with which the Sulka Registrations are currently registered. Subject to and without waiving the foregoing general and specific objections, with regard to the 2016 Registrations, Sulka will produce publicly available documents supporting the last renewal and/or declaration of use and specimen of use for each registration at issue, as well as documents sufficient to demonstrate that since the last such renewal, Sulka has continued use of the registered mark in connection with the goods in each challenged registration and has not abandoned.

Document Request No. 13

For the years 2004 to the present, all notes, memoranda, or other documents concerning Sulka's, or any other parties', rights in the Sulka Mark, continued rights in such mark, discontinued rights in such mark, and/or the abandonment or loss of rights in such mark.

Response to Document Request No. 13:

Sulka objects to Request No. 13 as Burdensome, Overbroad and Irrelevant. This appears to be a classic fishing expedition. For the reasons already stated, for the 2016 Registrations, nothing prior to their registration date is relevant, and for the Pre-2016 Registrations, any loss of rights in goods that have been deleted from the existing Pre-2016 Registrations are Irrelevant. Sulka further objects to Request No. 13 as Privileged to the extent it seeks the production of documents protected by the attorney-client privilege or work product doctrine. Sulka further objects to Request No. 13 as Irrelevant to the extent it seeks the production of documents relating to any party other than Sulka. Sulka will not produce documents responsive to this Request as it cannot see how any could be relevant to this matter.

Document Request No. 14

All notes and all file histories concerning each of the Sulka Registrations, including any renewals thereof, and including all such notes and file histories of Sulka's in-house counsel and outside counsel.

Response to Document Request No. 14:

Sulka objects to Request No. 14 as Burdensome and Overbroad to the extent it seeks the production of "all" documents of the requested type. Sulka further objects to Request No. 14 as Privileged to the extent it seeks the production of documents protected by the attorney-client privilege or work product doctrine. Sulka re-states its objection to responding over a 17-year period, particularly where two of the registrations at issue did not register until 2016, and hereby incorporates its earlier objections. Subject to and without waiving the foregoing general and specific objections, Sulka will produce the file wrappers maintained by the United States Patent and Trademark Office for the Sulka Registrations.

Document Request No. 15

For the years 2004 to the present, all documents identifying, constituting, and concerning the source(s) or derivation of each specimen submitted in support of any of the applications to register or renew any of the Sulka Registrations.

Response to Document Request No. 15:

Sulka objects to Request No. 15 as Burdensome, Overbroad and Irrelevant to the extent it seeks the production of “all” documents of the requested type. Sulka further objects to Request No. 15 as Vague because it is unclear from the context of the request what is meant by the phrase “identifying, constituting, and concerning the source(s) or derivation of each specimen.” Subject to and without waiving the foregoing general and specific objections, Sulka will produce the file wrappers maintained by the United States Patent and Trademark Office for the Sulka Registrations, and documents sufficient to show sales of products relied upon to obtain or maintain those registrations since 2016.

Document Request No. 16

All documents concerning the use in U.S. Commerce of the Sulka Mark reflected in the specimens identified in the prior document request.

Response to Document Request No. 16:

Sulka objects to Request No. 16 as Burdensome, Overbroad and Irrelevant to the extent it seeks the production of “all” documents of the requested type. Sulka further objects to Request No. 15 as Vague because it is unclear from the context of the request what is meant by the phrase “identifying, constituting, and concerning the source(s) or derivation of each specimen.” Subject to and without waiving the foregoing general and specific objections, Sulka will produce the file wrappers maintained by the United States Patent and Trademark Office for the Sulka Registrations, and documents sufficient to show sales of products relied upon to obtain or maintain those registrations since 2016.

Document Request No. 17

All notes and all file histories concerning the application to register the Sulka Mark in Trademark Office Application No. 77/633,199, including all such notes and file histories of Sulka's in-house counsel and outside counsel.

Response to Document Request No. 17:

Sulka objects to Request No. 17 as Burdensome and Overbroad to the extent it seeks the production of "all" documents of the requested type. Sulka further objects to Request No. 17 as Privileged to the extent it seeks the production of documents protected by the attorney-client privilege or work product doctrine. Sulka further rejects to Request No. 17 as Irrelevant to the extent it seeks the production of documents concerning a trademark, trademark application, or trademark registration that is not at issue in the above-captioned proceeding. Subject to and without waving the foregoing general and specific objections, Sulka will not produce documents in response to the request.

Document Request No. 18

Response to All notes and all file histories concerning the application to register the Sulka Mark in Trademark Office Application No. 85/848,871, including all such notes and file histories of Sulka's in-house counsel and outside counsel.

Response to Document Request No. 18:

Sulka objects to Request No. 18 as Burdensome and Overbroad to the extent it seeks the production of "all" documents of the requested type. Sulka further objects to Request No. 18 as Privileged to the extent it seeks the production of documents protected by the attorney-client privilege or work product doctrine. Sulka further rejects to Request No. 18 as Irrelevant to the extent it seeks the production of documents concerning a trademark, trademark application, or trademark registration that is not at issue in the above-captioned proceeding. Subject to and

without waving the foregoing general and specific objections, Sulka will not produce documents in response to the request.

Document Request No. 19

All notes and all file histories concerning the application to register the Sulka Mark in Trademark Office Registration No. 827,153, including all such notes and file histories of Sulka's in-house counsel and outside counsel.

Response to Document Request No. 19:

Sulka objects to Request No. 19 as Burdensome and Overbroad to the extent it seeks the production of "all" documents of the requested type. Sulka further objects to Request No. 19 as Privileged to the extent it seeks the production of documents protected by the attorney-client privilege or work product doctrine. Sulka further rejects to Request No. 19 as Irrelevant to the extent it seeks the production of documents concerning a trademark, trademark application, or trademark registration that is not at issue in the above-captioned proceeding. Subject to and without waving the foregoing general and specific objections, Sulka will not produce documents in response to the request.

Document Request No. 20

All notes and all file histories concerning the application to register the Sulka Mark in Trademark Office Application No. 88/104,231, including all such notes and file histories of Sulka's in-house counsel and outside counsel.

Response to Document Request No. 20:

Sulka objects to Request No. 20 as Burdensome and Overbroad to the extent it seeks the production of "all" documents of the requested type. Sulka further objects to Request No. 20 as Privileged to the extent it seeks the production of documents protected by the attorney-client privilege or work product doctrine. Sulka further rejects to Request No. 20 as Irrelevant to the

extent it seeks the production of documents concerning a trademark, trademark application, or trademark registration that is not at issue in the above-captioned proceeding. Subject to and without waving the foregoing general and specific objections, Sulka will not produce documents in response to the request.

Document Request No. 21

The original of the specimens filed in support of the declaration of use under § 8, declaration executed 1/7/2004 in Registration No. 2,077,773.

Response to Document Request No. 21:

Sulka objects to Request No. 21 as Vague because it is unclear from the context of the request what is meant by the phrase “original of the specimens.” Sulka further objects to Request No. 21 as Overbroad, Burdensome and Irrelevant in that it asks for a specimen from 17 years ago, long before any priority date on which Petitioner may rely for standing. Moreover, the registration at issue covers far fewer goods than it did in 2004, and was renewed in 2017 for ties. Subject to and without waving the foregoing general and specific objections, Sulka will produce documents sufficient to show that the specimen submitted in 2017 by Sulka reflected continued use of the registered mark in connection with the registered goods.

Document Request No. 22

The original of the specimens filed in support of the combined declaration of use in commerce/application for renewal of registration under §§ 8 and 9, declaration executed 12/12/2017 in Registration No. 2,077,773.

Response to Document Request No. 22:

Sulka incorporates its response to Request No. 21.

Document Request No. 23

The original of the specimens filed in support of the Allegation of Use, declaration

executed 4/20/2016 in Registration No. 4,998,512.

Response to Document Request No. 23:

Sulka objects to Request No. 23 as Vague because it is unclear from the context of the request what is meant by the phrase “original of the specimens.” Subject to and without waiving the foregoing general and specific objections, Sulka will produce documents sufficient to show that the specimen submitted on 4/20/2016 by Sulka reflected continued use of the registered mark in connection with the registered goods.

Document Request No. 24

The original of the specimens filed in support of Allegation of Use, declaration executed 4/20/2016 in Registration No. 4,998,527.

Response to Document Request No. 24:

Sulka objects to Request No. 24 as Vague because it is unclear from the context of the request what is meant by the phrase “original of the specimens.” Subject to and without waiving the foregoing general and specific objections, Sulka will produce documents sufficient to show that the specimen submitted on 4/20/2016 by Sulka reflected continued use of the registered mark in connection with the registered goods.

Document Request No. 25

The original of the specimens filed in support of the Allegation of Use, declaration executed 1/6/2016 in Registration No. 826,139.

Response to Document Request No. 25:

Sulka objects to Request No. 25 as Vague because it is unclear from the context of the request what is meant by the phrase “original of the specimens.” Subject to and without waiving the foregoing general and specific objections, Sulka will produce documents sufficient to show that the specimen submitted on 1/6/2016 by Sulka reflected continued use of the registered mark

in connection with the registered goods.

Document Request No. 26

The original of the specimens filed in support of the Declaration of Use, declaration executed 11/6/2013 in Registration No. 310,430.

Response to Document Request No. 26:

Sulka objects to Request No. 26 as Vague because it is unclear from the context of the request what is meant by the phrase “original of the specimens.” Sulka further objects to this Request as Burdensome, Overbroad and Irrelevant in that it seeks information from eight years ago, and long prior to any priority date upon which Petitioner may rely. Subject to and without waiving the foregoing general and specific objections, to the extent that records exist dating back to 2013, Sulka will produce documents sufficient to show that the specimen submitted on 11/6/2013 by Sulka reflected continues of the registered mark in connection with the registered goods.

Document Request No. 27

All documents concerning the distribution, offer for sale, and sale of any goods bearing the Sulka Mark to Mr. Porter/Net-A-Porter, from the years 2010 to the present.

Response to Document Request No. 27:

Sulka objects to Request No. 27 as Burdensome and Overbroad to the extent it seeks the production of “all” documents of the requested type. Sulka further objects to Request No. 27 as Irrelevant to the extent it seeks the production of documents concerning the SULKA mark as used in connection with goods that are not at issue in the above-captioned proceeding. Sulka further objects to Request No. 27 as Duplicative of other requests to prove ongoing use of the SULKA mark. Sulka further objects to Request No. 27 as Burdensome, Overbroad and not Relevant to the extent it seeks the production covering a 10-year period from 2010 forward, and seeks documents

unrelated to any rights or interests of Petitioner whose earliest claim of rights in the SULKA mark date back to its alleged first use date of May 31, 2018. Sulka further objects to Request No. 27 as Irrelevant to the extent it seeks information having nothing to do this proceeding. Subject to and without waving the foregoing general and specific objections, Sulka will not produce documents in response to the request.

Document Request No. 28

Documents sufficient to show the corporate relationship between Sulka and Mr. Porter/Net-A-Porter.

Response to Document Request No. 28:

Sulka objects to Request No. 28 as Vague because it is unclear from the context of the request what is meant by the phrase “corporate relationship.” Sulka further objects to Request No. 28 as Irrelevant to the extent it seeks information having nothing to do this proceeding. Subject to and without waving the foregoing general and specific objections, Sulka will not produce documents in response to the request.

Document Request No. 29

All agreements between Sulka and Mr. Porter/Net-A-Porter from the years 2004 to the present.

Response to Document Request No. 29:

Sulka objects to Request No. 29 as Irrelevant to the extent it seeks information having nothing to do this proceeding. Sulka further objects to Request No. 29 as Overbroad and Burdensome in that it seeks documents over a 17-year period, and documents that do not even relate to the SULKA mark. Subject to and without waving the foregoing general and specific objections, Sulka will not produce documents in response to the request.

Document Request No. 30

All documents concerning any claim of “excusable nonuse” with respect to the renewal of Registration No. 2,077,773 in 2004.

Response to Document Request No. 30:

Sulka objects to Request No. 30 as Burdensome and Overbroad to the extent it seeks the production of “all” documents of the requested type. Sulka further objects to Request No. 30 as Privileged to the extent it seeks the production of documents protected by the attorney-client privilege or work product doctrine. Sulka further objects to Request No. 30 as Duplicative of information sought in Request No. 14. Subject to and without waiving the foregoing general and specific objections, Sulka incorporates by reference its response to Request No. 14 as if fully restated herein.

Document Request No. 31

All documents concerning any recommencement of use of the Sulka Mark by Sulka in or around 2004 with respect to any goods in International Class 25, including pajamas, bathrobes, and neckwear.

Response to Document Request No. 31:

Sulka objects to Request No. 31 as Burdensome, Overbroad and not Relevant to the extent it seeks the production of “all” documents of the requested type, requests documents from 17 years ago and that are completely Irrelevant to the Pre-2016 Registrations. Sulka further objects that this Request seeks documents unrelated to any rights or interests of Petitioner whose earliest claim of rights in the SULKA mark date back to its alleged first use date of May 31, 2018. Sulka further objects to Request No. 31 as Vague because it is unclear from the context of the request what is meant by the term “recommencement.” Moreover, each of these registrations at issue has been renewed and/or Sulka has submitted specimens of use to support the registrations that have been accepted by the Patent & Trademark Office. As such, those submissions provide Sulka with

prima facie evidence of continued use of the marks in connection with the registrations at issue as of their filing, and Petitioner has not alleged with any specificity any facts to overcome such *prima facie* evidence. Petitioner cannot discharge its burden of overcoming these presumptions by serving discovery that is nothing more than a fishing expedition and that is not supported by any specific allegations.

Subject to and without waiving the foregoing objections, with regard to the Pre-2016 Registrations, Sulka will produce publicly available documents supporting the last renewal and/or declaration of use and specimen of use for each registration at issue, as well as documents sufficient to demonstrate that since the last such renewal, Sulka has continued use of the registered mark in connection with the goods in each challenged registration and has not abandoned. Subject to and without waiving the foregoing objections, with regard to the 2016 Registrations, Sulka will produce documents sufficient to demonstrate that as of the registration date for each, Sulka was using the applied-for mark in connection with the goods in each challenged registration and that Sulka has not abandoned.

Document Request No. 32

An exemplary tie sold or offered for sale under the Sulka Mark in each of the years 2015 to the present.

Response to Document Request No. 32:

Sulka objects to Request No. 32 as Burdensome, Overbroad and not Relevant to the extent it seeks exemplary ties sold prior to any claim of rights in the SULKA mark that Petitioner may have. Sulka further objects to Request No. 32 as Vague because it is unclear from the context of the request what is meant by the term “exemplary tie.” Subject to and without waiving the foregoing objections, Petitioner will produce publicly available documents showing the ties used to renew or obtain the registrations at issue in this proceeding.

Document Request No. 33

All documents concerning that the “launch [of SULKA brand products] is imminent” in Sulka’s counsel’s letter of September 14, 2018 to Petitioner’s counsel.

Response to Document Request No. 33:

Sulka objects to Request No. 33 as Burdensome and Overbroad to the extent it seeks the production of “all” documents of the requested type. Subject to and without waiving the foregoing general and specific objections, Sulka will produce documents sufficient to show the imminent launch of SULKA-branded products in or around September, 2018.

Document Request No. 34

Unredacted copies of each document which includes any redactions and is attached to Sulka’s counsel’s letter of September 14, 2018 to Petitioner’s counsel.

Response to Document Request No. 34:

Sulka objects to Request No. 34 as the redactions contain confidential client information not subject to legal disclosure.

Document Request No. 35

All assignment documents concerning and covering the SULKA mark in the U.S., including for the corresponding five SULKA registrations identified in the Complaint and communications regarding same, from 2016 to the present.

Response to Document Request No. 35:

Sulka objects to Request No. 35 as Burdensome and Overbroad to the extent it seeks the production of “all” documents of the requested type. Sulka further objects to Request No. 35 as Duplicative of information or documents sought in Request No. 4. Subject to and without waiving the foregoing general and specific objections, Sulka incorporates by reference its response to Request No. 4 as if fully restated herein.

Document Request No. 36

All documents concerning CTC International Group and/or Lisa Roth concerning Petitioner, the investigation of Petitioner, and/or the mark SULKA or PHULKA.

Response to Document Request No. 36:

Sulka objects to Request No. 36 as Burdensome and Overbroad to the extent it seeks the production of “all” documents of the requested type. Sulka further objects to Request No. 36 as Irrelevant to the extent it seeks the production of documents that are not related to the claims or defenses asserted in the above-captioned proceeding. Sulka also objects to the extent that any such documents are privileged and/or work product. Subject to and without waiving the foregoing general and specific objections, Sulka does not recognize the names CTC International Group or Lisa Roth and would require further clarification to be able to respond to this Request.

Document Request No. 37

All documents identified in or required to be identified in Sulka’s responses to Petitioner’s First Set of Interrogatories.

Response to Document Request No. 37:

Subject to and without waiving the foregoing general objections, no documents are identified in Sulka’s responses and objections to Petitioner’s First Set of Interrogatories.

Dated: New York, New York
March 1, 2021

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

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*Attorneys for Registrant A. Sulka and Company
Limited*

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March 2021, I caused a true and correct copy of the foregoing **SULKA’S OBJECTIONS AND RESPONSES TO PETITIONER’S FIRST SET OF DOCUMENT REQUESTS** to be sent by email to Petitioner’s counsel of record at *ms@springutlaw.com* and *tbenschar@springutlaw.com*.

/John P. Margiotta/

John P. Margiotta

Exhibit B

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

ABDUL REHMAN KARIM SALEH,

Petitioner,

v.

A. SULKA AND COMPANY LIMITED,

Registrant.

Cancellation No. 92074788

**REGISTRANT’S OBJECTIONS AND RESPONSES TO
PETITIONER’S FIRST SET OF INTERROGATORIES**

Pursuant to Rule 2.120 of the Trademark Rules of Practice and Rules 26 and 33 of the Federal Rules of Civil Procedure, A. Sulka and Company Limited (“Sulka”), by its counsel Fross Zelnick Lehrman & Zissu, P.C., responds as follows to Abdul Rehman Karim Saleh’s (“Petitioner”) First Set of Interrogatories (the “Interrogatories,” and each individually, an “Interrogatory”):

SULKA’S DEFINITIONS

A. “Burdensome” means that the Interrogatory seeks information or documents obtainable from another source that is more convenient or less expensive, or that the Interrogatory exposes Sulka to undue burden or expense in relation to its likely benefit and is, thus, not proportional to the needs of and issues in the case, taking into account the relief sought, the parties’ resources, and the importance of the proposed discovery in resolving the issues in the litigation.

B. “Duplicative” means that the Interrogatory is unreasonably cumulative or duplicative of another Interrogatory or that the requested information or documents have been previously provided.

C. “Irrelevant” means that the Interrogatory is not reasonably calculated to lead to the discovery of admissible or relevant evidence.

D. “Overbroad” means that the Interrogatory is not reasonably particular, seeks information or documents merely tangential to the matters at issue in the case, or is not limited to a particular time period or geographic region, such that it is not proportional to the needs of and issues in the case, taking into account the relief sought, the parties’ resources, and the importance of the proposed discovery in resolving the issues in the litigation.

E. “Privilege” means that the Interrogatory seeks information or documents that are protected by the attorney-client or attorney-work-product privilege.

F. “Vague” means that the wording of the Interrogatory is vague and/or ambiguous including, without limitation, due to the use of undefined terms.

G. “Confidentiality” means that the Interrogatory seeks information of a confidential nature and that any information or documents provided will be produced only pursuant to a Court-ordered protective order or other agreement regarding confidentiality among the parties.

OBJECTIONS TO PETITIONER’S DEFINITIONS AND INSTRUCTIONS

The objections to definitions and instructions contained in Sulka’s Objections and Responses to Petitioner’s First Set of Document Requests are repeated and reincorporated as if fully set forth herein.

GENERAL OBJECTIONS TO THE INTERROGATORIES

1. Sulka objects to the Interrogatories to the extent they seek to impose greater burdens on Sulka than are permitted by the Federal Rules of Civil Procedure and the Trademark Rules of Practice.

2. Sulka’s responses and objections are without prejudice to, and Sulka does not waive, any evidentiary objections relating to any Interrogatory or the response to any

Interrogatory, and by responding Sulka does not waive any claims or objections, including any right of privilege or confidentiality applicable.

3. Sulka has not concluded its investigation of the facts relating to this case and has not completed formal discovery or preparation for trial. Accordingly, there may exist information responsive to the Interrogatories that Sulka does not yet have knowledge of or has not yet located, identified, or reviewed. All of the following responses are therefore based on such information currently known or available to Sulka after a reasonable inquiry. Sulka reserves the right to alter, amend, or supplement its responses at any time.

4. Nothing contained in any response to any Interrogatory shall be construed as an admission by Sulka relative to the existence or non-existence of any information, and no such response shall be construed as an admission respecting the relevance or admissibility of any information, or the truth or accuracy of any statement or characterization contained in any Interrogatory.

5. Sulka will produce any documents to be provided in response to these Interrogatories on a rolling basis.

6. All of the foregoing general objections are incorporated into each and every response to the Interrogatories as if fully stated therein.

SPECIFIC OBJECTIONS AND RESPONSES TO INTERROGATORIES

Interrogatory No. 1

Identify all officers, directors, managing agents, or other management personnel of Sulka for the years 2004 to the present, specifying as to each such identified person, his or her title and the dates when the person acted in such capacity for Sulka.

Response to Interrogatory No. 1:

Sulka objects to Interrogatory No. 1 as Burdensome and Overbroad to the extent it

requests identification of “all” such individuals because the number of “officers, directors, managing agents, or other management personnel of Sulka for the years 2004 to the present” is extensive. Moreover, this Interrogatory seeks information that is not proportionate to the needs of this case, and randomly assigns a response period of seventeen years, and approximately 14 years before Petitioner would have had standing to challenge the registrations in this matter. Indeed, two of the Sulka Registrations, Reg. Nos. 4998527 and 4998512 (herein the “2016 Registrations”), were not even registered until 2016, making any years prior to their registration Irrelevant. For the other three registrations at issue, Reg. Nos. 2077773, 826139 and 310430 (the “Pre-2016 Registrations”), those have been registered for decades, and it is Overbroad and Burdensome to request all of the identities of officers, directors, managing agents, or other management personnel over a 17-year period. This is particularly true where Petitioner’s own priority date is no earlier than May 31, 2018. Petitioner has not set forth any basis for considering any other period of time where it would have standing to challenge the Sulka Registrations for non-use. Finally, Sulka further objects to Interrogatory No. 1 as Irrelevant to the extent it seeks the identification of individuals who have no knowledge of or relation to this proceeding or the legal claims and defenses asserted herein. Subject to and without waiving the foregoing general and specific objections, Sulka identifies the following individual on whom Sulka intends to rely on this action:

Anne Delliere, Group Marketing and Strategic Planning Director for Richemont Holding France.

Interrogatory No. 2

With respect to each of the following subject matters, identify all persons who authorized, and/or provided instructions or factual representations to, trademark prosecution counsel:

- a. the filing and prosecution of the applications to register the Sulka Mark, including the filing of any renewals, for each of the Sulka Registrations.

- b. the filing and prosecution of the application to register the Sulka Mark, including the filing of any renewals, in Trademark Office Application No. 77/633,199.
- c. the filing and prosecution of the application to register the Sulka Mark, including the filing of any renewals, in Trademark Office Application No. 85/848,871.
- d. the filing and prosecution of the application to register the Sulka Mark, including the filing of any renewals, in Trademark Office Application No. 72/241817.
- e. the filing and prosecution of the application to register the Sulka Mark, including the filing of any renewals, in Trademark Office Application No. 88/104,231.
- f. The filing and prosecution of the application to register the Sulka Mark, including the filing of any renewals, in Trademark Office Application No. 88/296,269.

Such persons shall include, without limitation, any persons who authorized or provided instructions to trademark prosecution counsel with respect to any aspect of such applications/registrations, including the filing thereof, the renewal thereof, the abandonment thereof, and any representations made to the Trademark Office in the course of the pendency of such applications/registrations.

Response to Interrogatory No. 2:

Sulka objects to Interrogatory No. 2 as Burdensome and Overbroad to the extent it seeks the identification of “all” such individuals. Sulka further objects to Interrogatory No. 2 as Irrelevant to the extent it seeks the identification of individuals who corresponded with trademark prosecution counsel but did not make any material or relevant communications. Sulka further objects to Interrogatory No. 2 as Irrelevant to the extent it seeks information relating to U.S. Trademark Application Serial Nos. 77633199, 85848871, 72241817, 88104231, or 88296269 since none of these applications or trademarks are at issue in the above-captioned proceeding. Sulka will not provide information responsive to this Interrogatory since it has no bearing on the

registrations at issue in this matter.

Interrogatory No. 3

Identify all persons with knowledge of the following:

- a. the continued use of the Sulka Mark by Sulka in or about 2004 with respect to any goods in International Class 25, including pajamas, robes, and neckwear.
- b. the Use in U.S. Commerce of the Sulka Mark for the years 2004 to the present.
- c. any manufacturing or orders for the manufacture of any goods bearing or in connection with the Sulka Mark for the years 2004 to the present in U.S. Commerce.
- d. any advertising of any goods bearing or in connection with the Sulka Mark for the years 2004 to the present in U.S. Commerce.
- e. any product development of any goods bearing or in connection with the Sulka Mark for the years 2004 to the present which goods were intended to be distributed in U.S. Commerce.
- f. the continued use, or discontinued use, of the Sulka Mark, with respect to any goods or categories of types of goods, for the years 2004 to the present in U.S. Commerce.
- g. the filing and prosecution of applications to register the Sulka Mark, including the filing of any renewals, for each of the Sulka Registrations.
- h. the filing and prosecution of the application to register the Sulka Mark, including the filing of any renewals, in Trademark Office Application No. 77/633,199.
- i. the filing and prosecution of the application to register the Sulka Mark, including the filing of any renewals, in Trademark Office Application No. 85/848,871.
- j. the filing and prosecution of the application to register the Sulka Mark, including

the filing of any renewals, in Trademark Office Registration No. 827,153.

Response to Interrogatory No. 3:

Sulka objects to each sub-part of Interrogatory No. 3 as Burdensome, Overbroad and Irrelevant to the extent it seeks the identification of “all” such individuals and is either unlimited in time or goes back 17 years to 2004, even for registrations that were only obtained in 2018. Such a lookback is not proportionate to the needs of the case, and seeks information that is not likely to lead to the discovery of admissible evidence. Sulka further objects to sub-parts “h” through “j” of Interrogatory No. 3 as Irrelevant to the extent they seek information relating to U.S. Trademark Application Serial Nos. 77633199 and 85848871 or U.S. Trademark Registration No. 827153 since none of these marks are at issue in the above-captioned proceeding. Subject to and without waiving the foregoing general and specific objections, Sulka will rely on the testimony of Anne Delliere, Group Marketing and Strategic Planning Director for Richemont Holding France, to establish that it has not abandoned rights in the registrations challenged in this proceeding.

Dated: New York, New York
March 1, 2021

FROSS ZELNICK LEHRMAN & ZISSU, P.C.

By: /John P. Margiotta/
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*Attorneys for Registrant A. Sulka and Company
Limited*

CERTIFICATE OF SERVICE

I hereby certify that on this 1st day of March 2021, I caused a true and correct copy of the foregoing **REGISTRANT'S OBJECTIONS AND RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES** to be sent by email to Petitioner's counsel of record at *ms@springutlaw.com* and *tbenschar@springutlaw.com*.

/John P. Margiotta/

John P. Margiotta

Exhibit C

MRPORTER.COM

INVOICE

GIFT

Invoice Number: [REDACTED]

Invoice Date: 4th April 2016

INVOICE TO [REDACTED]
ADDRESS [REDACTED]
CITY Williamsville
POST CODE [REDACTED] COUNTRY United States

DELIVER TO [REDACTED]
ADDRESS [REDACTED]
CITY Williamsville
POST CODE [REDACTED] COUNTRY United States

Order Number: [REDACTED]
Shipment Number: [REDACTED]
Customer Number: [REDACTED]

	DESCRIPTION	QUANTITY	UNIT PRICE	Sales Tax RATE	Sales Tax (\$)	DUTIES	PRICE
1	Sulka Silk-Jacquard Tie	1	200.00	0.00%	17.50	0.00	217.50
2	[REDACTED]	1	[REDACTED]	0.00%	[REDACTED]	0.00	[REDACTED]

TOTAL PRICE \$ [REDACTED]
SHIPPING \$ 0.00
GRAND TOTAL \$ [REDACTED]

Thank you for shopping at MRPORTER.COM

[REDACTED]
[REDACTED]

[REDACTED] & TAXES INFORMATION:

This shipment includes prepaid Customs duties and Sales taxes (when applicable) for the merchandise to be delivered to the address in the country specified by the customer.

MRPORTER.COM pays these charges on behalf of the customer.

Should you ever receive a demand for payment of such taxes or duties from either our shipper or from any customs authorities, please contact us immediately on shipping.usa@mrporter.com, as you are not required to pay this.

Mr Porter, 725 Darlington Avenue, Mahwah, NJ 07430

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing is being served by electronic mail, upon the attorney for the Registrant, Fross Zelnick Lehrman & Zissu, 151 West 42nd Street, 17th Floor, New York, NY 10036, at *jmargiotta@fzlz.com* and *dnuccaci@fzlz.com* this 13th day of May, 2021.

/s/ Milton Springut
Milton Springut