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

Proceeding	92076810
Party	Defendant John Capovani
Correspondence Address	LEE PALMATEER LEE PALMATEER LAW OFFICE LLC 90 STATE STREET ALBANY, NY 12207 UNITED STATES Primary Email: lee@palmateerlaw.com 518-591-4636
Submission	Motion for Discovery Sanctions
Filer's Name	Lee Palmateer
Filer's email	lee@palmateerlaw.com
Signature	/Lee Palmateer/
Date	12/09/2021
Attachments	0370002-NOM01-Sanction.pdf(180065 bytes) 0370002-DECL03-Palmateer-with-Exh.pdf(1409358 bytes)

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

Y.Y.G.M. SA,

Petitioner,

Cancellation No. 92076810

Registration No. 6056987

vs.

JOHN CAPOVANI,

Respondent

**MOTION FOR SANCTIONS
WITH BRIEF INCORPORATED**

PLEASE TAKE NOTICE that Respondent John Capovani, by and through his attorneys, upon the Declaration of Lee Palmateer dated December 9, 2021 and the Brief embodied herein, hereby moves the Trademark Trial and Appeal Board (the “Board”) to impose sanctions on Petitioner pursuant to 37 C.F.R. § 2.120(h), Fed. R. Civ. P. 37(b)(2) and the Board’s inherent authority, including but not limited to dismissal of Petitioner’s Petition on the grounds that Petitioner refused to answer interrogatories and produce documents in categorical defiance of the Boards Order dated December 3, 2021 (Doc. CAN-10), and for such other and further relief that the Board deems just and proper. To the extent that the Board may consider leave necessary, Mr. Capovani further moves for leave to file and serve this motion.

**BRIEF IN SUPPORT
OF RESPONDENT’S MOTION FOR SANCTIONS**

I. Petitioner’s Overt Disregard of the Board’s Order Warrants Severe Sanctions

Petitioner previously moved (Doc. CAN-5) for suspension pending the outcome of a civil action. On December 3, 2021, the Board issued an Order suspending these proceedings pending disposition of the motion, with the express exception that:

This suspension order does not toll the time for either party to respond to any outstanding discovery or to serve expert disclosures.

(Palmateer Decl. dated December 9, 2021, ¶ 7 and Exh. “E”). This exception was informed by the timing of Petitioner’s motion. The motion was made just days before Petitioner’s discovery

demands were due even though the civil action had been extant for nearly two months prior. (Palmateer Decl. dated December 9, 2021, ¶¶ 2 and 3). Said motion would not be fully submitted until a few days before the December 7 discovery deadline.

The intent of the tolling exception is crystal-clear. Petitioner was to respond to Mr. Capovani's outstanding interrogatories and production requests. However, only three days later Petitioner made a wholesale denunciation of the Order. Petitioner refused to provide any discovery whatsoever and objected individually to each and every one of Mr. Capovani's interrogatories and production requests on the grounds that they were:

untimely insofar as ***this matter should be stayed in light of the federal civil action*** now proceeding between the parties.

(emphasis added) (Palmateer Decl. dated December 9, 2021, ¶ 8 and Exh. "F" and "G").

Petitioner thus thumbed its nose at the Board's authority and granted itself relief in direct contradiction to the Order.

Petitioner's conduct warrants sanction. If a party fails to comply with an order of the Board relating to discovery, the Board may impose any appropriate sanction, including those provided in Rule 37(b)(2) of the Federal Rules of Civil Procedure. 37 C.F.R. § 2.120(h); TBMP § 527.01(a). They may include:

- (i) directing that the matters embraced in the order or other designated facts be taken as established for purposes of the action, as the prevailing party claims;
- (ii) prohibiting the disobedient party from supporting or opposing designated claims or defenses, or from introducing designated matters in evidence;
- (iii) striking pleadings in whole or in part;
- (iv) staying further proceedings until the order is obeyed;
- (v) dismissing the action or proceeding in whole or in part;
- (vi) rendering a default judgment against the disobedient party; or
- (vii) treating as contempt of court the failure to obey any order except an order to submit to a physical or mental examination.

Fed. R. Civ. P. 37(b)(2)(A).

Instead of or in addition to the orders above, the court must order the disobedient party, the attorney advising that party, or both to pay the reasonable expenses, including attorney's fees, caused by the failure, unless the failure was substantially justified or other circumstances make an award of expenses unjust.

Fed. R. Civ. P. 37(b)(2)(B). Any intentional disobedience of an order is serious, but Petitioner's is particularly egregious because it displayed overt contempt. As a result, Mr. Capovani respectfully requests dismissal of the Petition with prejudice.

It seems clear that Petitioner is not conducting these proceedings in good faith. Petitioner has served no discovery demands of its own. (Palmateer Decl. dated December 9, 2021, ¶ 9). Petitioner did not serve its mandatory initial disclosures until after Mr. Capovani raised the issue on November 10 in opposition to Petitioner's suspension motion. (Palmateer Decl. dated December 9, 2021, ¶ 6). Petitioner then served its initial disclosures that day, four months after the July 10 deadline. (Palmateer Decl. dated December 9, 2021, ¶¶ 2 and 6). In its initial disclosures, Petitioner identified one witness other than Mr. Capovani and one category of documents, both of which relate to Petitioner's trademark use and registration efforts. Neither pertain to fraud, i.e., the only grounds in this Cancellation. (Palmateer Decl. dated December 9, 2021, ¶ 6 and Exh. "D"). Then presented with the opportunity and obligation to produce evidence in response to Mr. Capovani's discovery demands, Petitioner stonewalled and produced absolutely nothing. In addition, Petitioner's suspension motion was rife with deficiencies. (Palmateer Decl. dated December 9, 2021, ¶ 10). This conduct suggests Petitioner's outlook on the merits, which may explain a lack of incentive to conduct itself more properly.

Mr. Capovani respectfully submits that it would be a just and proper exercise of the Board's authority to dismiss Petitioner's Petition with prejudice.

II. Procedural Foundation of Mr. Capovani's Within Motion

This motion comports procedurally with the Board's Order, which provides that "[a]ny paper filed during the pendency of this motion which is not relevant thereto will be given no consideration." This motion is relevant because it relates directly to the Order, namely to Petitioner's direct violation of the Order.

This motion also comports procedurally with the Board's generally applicable practices and procedures.

[A] motion for sanctions for failure to comply with an order of the Board lies only when the Board has entered an order relating to discovery (i.e., an order compelling discovery or a protective order) and the order has been violated. Unlike a motion to compel discovery, there is no requirement to make a good faith effort to resolve the parties' dispute prior to filing a motion for discovery sanctions.

TBMP § 527.01(a). The Board's Order includes a very basic directive relating to discovery that seems difficult to violate. But here there is no mistaking Petitioner's noncompliance, as it was unapologetically complete and absolute.

III. Conclusion

For the foregoing reasons, Mr. Capovani respectfully requests dismissal of Petitioner's Petition with prejudice.

Dated: December 9, 2021

/s/Lee Palmateer _____
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Attorneys for Applicant

Certificate of Service

The undersigned hereby certifies that, on this date, a copy of this paper has been served upon Opposer by email at the email address of record of their counsel of record, including:

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Browne George Ross
O'Brien Annaguey & Ellis, LLP
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kwesley@bgrfirm.com
Attorneys for Petitioner

Respectfully submitted,

Dated: December 9, 2021

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Attorneys for Respondent

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

Y.Y.G.M. SA,

Petitioner,

Cancellation No. 92076810

Registration No. 6056987

vs.

JOHN CAPOVANI,

Respondent

**DECLARATION OF
LEE PALMATEER**

I, Lee Palmateer, depose and say under penalty of perjury as follows:

1. I am an attorney duly admitted to practice law in the courts of the Stat of New York.

I represent Respondent John Capovani in these cancellation proceedings (the “Cancellation”) and submit this Declaration in support of Mr. Capovani’s motion for sanctions.

2. According to the discovery and trial schedule in this case (Doc. CAN-2), the parties’ initial disclosures were due on July 10, 2021 and discovery closed on December 7, 2021. Said schedule and the appropriate rules of practice required service of discovery demands on or before November 7, 2021 so that the 30-day time to respond expires on or before the close of discovery.

3. On August 31, 2021, Petitioner commenced Civil Action No. 1:21-cv-04902-ENV-SJB in the Federal District Court for the Eastern District of New York seeking, among other things, a declaratory judgment that Petitioner’s and Mr. Capovani’s use of their respective trademarks cause no likelihood of confusion.

4. On November 1, 2021, Petitioner served its motion (Doc. CAN-5) to suspend these proceedings during the pendency of the Civil Action.

5. On November 6, 2021, Mr. Capovani served his initial disclosures, interrogatories and document production requests in this Cancellation on Petitioner, true and correct copies of which are annexed hereto and made part hereof as Exhibits “A” – “C”.

6. On November 10, 2021, Mr. Capovani filed and served his opposition to Petitioner's suspension motion in which he, among other things, indicated that Petitioner had not yet served its initial disclosures. (Doc. CAN-6, Palmateer Decl. dated November 10, 2021, ¶ 8). Later that day, Petitioner served its initial disclosures, a true and correct copy of which is annexed hereto and made part here of as Exhibit "D".

7. On December 3, 2021, the Board issued an Order suspending this Cancellation pending its final determination of Petitioner's suspension motion, a true and correct copy of which is annexed hereto and made part hereof as Exhibit "E".

8. On December 6, 2021, Petitioner served its interrogatory answers and discovery responses, true and correct copies of which are annexed hereto and made part hereof as Exhibits "F" and "G".

9. Petitioner has not served any discovery demands in this Cancellation.

10. As Mr. Capovani pointed out in his opposition (Docs. CAN-6 and CAN-9) to Petitioner's suspension motion, Petitioner failed to serve said motion until after Mr. Capovani served his Response, failed to include a brief with the motion, and filed two Replies.

11. I declare under penalty of perjury that the foregoing is true and correct, except as to matters alleged on information and belief, and that as to those matters I believe them to be true, and I make this Declaration pursuant to the Federal Rules of Civil Procedure and with the knowledge that any knowingly false statement made herein by me is punishable under the penalty of perjury, fine and/or imprisonment.

Dated: December 9, 2021

/s/Lee Palmateer
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Attorneys for Respondent John Capovani

Certificate of Service

The undersigned hereby certifies that, on this date, a copy of this paper has been served upon Opposer by email at the email address of record of their counsel of record, including:

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Respectfully submitted,

Dated: December 9, 2021

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Exhibit A to Palmateer Decl. 12/9/2021

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

Y.Y.G.M. SA,

Petitioner,

Cancellation No. **92076810**

vs.

JOHN CAPOVANI,

Respondent.

RESPONDENT JOHN CAPOVANI'S RULE 26(a)(1) DISCLOSURES

Respondent, by his counsel Lee Palmeteer of Palmeteer Law Office LLC hereby provides the following disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure:

- 1. Persons likely to have discoverable information, along with the subjects of that information, that Respondent might use to support its claims or defenses, unless solely for impeachment.**

John Capovani (Respondent) is likely to have discoverable information pertaining to preparation of relevant trademark applications, business operations, and first use of trademarks. Cameron Monks is likely to have discoverable information pertaining to website development. Casey Martin is likely to have discoverable information pertaining to graphic design and tee-shirt printing. William Randal is likely to have discoverable information pertaining to coordination of the 518 Sneaker Fest -- Northeast U.S. region clothing & sneaker festival.

Respondent further reserve the right to add to this list and to call and/or rely on any other individuals identified as having relevant information in the course of discovery, and any individuals identified by Petitioner.

- 2. Category and location of documents, electronically stored information, and tangible things in Respondent's possession that he may use to support this claims or defenses, unless solely for impeachment.**

Exhibit A to Palmateer Decl. 12/9/2021

Documents, electronically stored information, and tangible things concerning dates of first use of trademarks.

Respondent reserves the right to add to this list and to use any documents produced in discovery, by any party including Third Parties. At this time it is premature for Respondent to provide information beyond that which is provided herein that Respondent may rely upon.

Dated: November 6, 2021

/s/Lee Palmateer
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Attorneys for Respondent

Exhibit A to Palmateer Decl. 12/9/2021

Certificate of Service

The undersigned hereby certifies that, on this date, a copy of this paper has been served upon Opposer by email at the email address of record of their counsel of record, including:

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Attorneys for Petitioner

Respectfully submitted,

Dated: November 6, 2021

/s/Lee Palmateer

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Exhibit B to Palmateer Decl. 12/9/2021

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

Y.Y.G.M. SA,

Petitioner,

Cancellation No. **92076810**

vs.

JOHN CAPOVANI,

Respondent.

RESPONDENT'S FIRST SET OF FIRST SET OF SET OF INTERROGATORIES

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, Respondent hereby requests that Petitioner, within thirty (30) days after service hereof, answer separately, fully, in writing and under oath, the following Interrogatories to the offices of Lee Palmateer Law Office LLC, 90 State Street, Suite 700, Albany, New York 12207. Pursuant to Fed. R. Civ. P. 26(e), these Interrogatories are continuous in nature and therefore require Plaintiff to furnish supplemental answers whenever Plaintiff obtains different or additional knowledge, information or belief relative to these Interrogatories.

I. DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

1. The term "Petitioner" "you," or "your" shall mean and include Petitioner and all principals, officers, directors, employees, former employees, servants, agents, attorneys, and other representatives acting on its behalf, and shall include any predecessor in interest, successor, subsidiary, affiliate, and/or division.
2. The terminology "documents and things" is defined to be synonymous in meaning and equal in scope to the items identified in in Fed. R. Civ. P. 34(a), including, without limitation, written, printed, typed, and visually or aurally reproduced material of any kind,

Exhibit B to Palmateer Decl. 12/9/2021

whether or not privileged, including, but not limited to, letters, notes, memoranda, e-mail, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts, drawings or sketches, photographs, tapes or disks capable of being mechanically read, advertising or promotional literature, operating manuals or instructions, bulletins, cables or telegrams, tapes or other recordings, test data, electronically stored media, and all other media. Drafts and non-identical copies are separate and distinct documents within the meaning of this term.

3. The term “person” shall mean any natural person or any corporate, business, legal or governmental entity or association.

4. When referring to a person, “identify” means to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment and present or last known job title. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

5. When referring to documents, “identify” means to give, to the extent known, the: (i) type of document; (ii) general subject matter; (iii) date of the document; (iv) author(s), addressee(s), and recipient(s); and (v) the Bates numbers(s) of the document.

6. The term “concern” or “concerning” shall mean relating or referring to, commenting upon, discussing, describing, embodying, evidencing or constituting.

7. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request or Interrogatory all responses that might otherwise be construed to be outside of its scope.

Exhibit B to Palmateer Decl. 12/9/2021

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

9. The term “YELLOW RAT BASTARD Mark” means the mark “YELLOW RAT BASTARD” subject of U.S. Trademark Application Serial No. 88,540,339.

10. The term “NYC YELLOW RAT BASTARD Mark” means the mark “NYC YELLOW RAT BASTARD” and associated design subject of U.S. Trademark Application Serial No. 88,768,401.

11. The term “Petitioner’s Marks” is synonymous with the term “Petitioner’s Marks” as defined in ¶ 1 of Petitioner’s Petition to include Petitioner’s YELLOW RAT BASTARD Mark and Petitioners NYC YELLOW RAT BASTARD Mark.

12. The term “bastard” is inclusive of the stylized or misspelled form “bartzard.”

13. The term “License” refers to any authorization, whether in the form of a license, distribution agreement, service agreement, reseller agreement, agent agreement, settlement agreement or otherwise, that authorizes any person to use the YELLOW RAT BASTARD Mark or to make, use, sell, or otherwise commercialize any Product in connection with which the YELLOW RAT BASTARD Mark is used. For the purposes of this definition, a covenant not to sue shall be deemed an authorization. The party granting such a License shall be deemed a licensor, and a party receiving such a license shall be deemed a licensee.

14. The term “Trademarked Product” refers to any product in connection with which the YELLOW RAT BASTARD Mark is or has been used by Petitioner or by others with petitioner’s authorization, including but not limited to use on the product, and product packaging, or in product advertising and marketing.

Exhibit B to Palmateer Decl. 12/9/2021

15. The terms “sale,” “sell,” “sold,” or “purchase,” refer to the sale or any other transaction or arrangement relating to Trademarked Products in connection with which Petitioner or its licensee receives any payment or other form of consideration.

16. The term “Petitioner Expert” refers to any person Petitioner anticipates that it may call to testify as an expert at trial or at a hearing in this case, or any person whose expert testimony or opinion may be submitted by Petitioner in this case.

II. INSTRUCTIONS

1. If you claim that any information, document or thing or part thereof requested herein is privileged or immune from discovery, produce that part falling within the scope of the Request or Interrogatory which is not privileged or immune from discovery, and set forth with sufficient particularity (for purposes of a motion to compel) with respect to anything withheld from production:

- a. the nature and subject matter of the document and thing;
- b. the basis for which the privilege or immunity thereto is claimed;
- c. the name and title of the author of the document or thing;
- d. the name and title of each individual or person to whom the document or thing or copy thereof was transmitted or otherwise disclosed;
- e. the date, place, and manner of recording or other preparation of the document or thing; and
- f. if the privilege being asserted is in connection with a claim or defense governed by state law, the state’s privilege rule being invoked.

2. If any information, document or thing requested herein was, but no longer is, in your possession, custody, or control, state whether it has been lost, destroyed, or transferred, is

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missing, or has otherwise been disposed of, and in each instance, explain the circumstances surrounding the disposition of the information, document or thing and the date that such disposal occurred.

3. Responses to the following Requests and Interrogatories are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

4. In accordance with Fed. R. Civ. P. 34(b), documents and things shall be produced by Petitioner as they are kept in the usual course of business, or they shall be organized and labeled to correspond to each of the Requests set forth below.

5. Unless a time limitation is expressly stated in a request, the request relates to all times.

6. UPPER CASE LETTERING used herein to identify a mark is not a limitation to upper case letters and shall be inclusive of lower-case letters.

REQUESTS

INTERROGATORY 1. Identify each person who participated in the preparation and filing of Petitioner's U.S. Trademark Application Serial No. 88,540,339 and what inquiries they performed in connection therewith, and for each representation or assertion made in said application identify each person who had personal knowledge thereof and identify all documents and things concerning, substantiating or corroborating the representation or assertion, including: that applicant is the owner of the trademark/service mark sought to be registered; the mark is in use in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; the mark was first used by the applicant or the applicant's related company or licensee or predecessor in

Exhibit B to Palmateer Decl. 12/9/2021

interest at least as early as 06/15/2019, and first used in commerce at least as early as 06/15/2019, and is now in use in such commerce; no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or mistake, or to deceive; after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

INTERROGATORY 2. As asked of Petitioner in U.S. Trademark Application Serial No. 88,540,339, set forth the date the YELLOW RAT BASTARD Mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest in the United States on or in connection with clothing, namely, t-shirts, tank tops, and sweatshirts, and describe in detail the circumstances of said use, including but not limited to the manner of use, the person or entity who first used the mark, involved third parties, channels of trade, and the locations of use, and identify each person who participated in or has knowledge of such use and all documents and things concerning, substantiating or corroborating such use.

INTERROGATORY 3. As asked of Petitioner in U.S. Trademark Application Serial No. 88,540,339, set forth the date the YELLOW RAT BASTARD Mark was first used in commerce by the applicant or the applicant's related company or licensee or predecessor in interest in the United States on or in connection with clothing, namely, t-shirts, tank tops, and describe in detail the circumstances of said use, including but not limited to the manner of use, the person or entity who first used the mark, involved third parties, channels of trade, and the locations of use, and identify each person who participated in or has knowledge of such use and all documents and things concerning, substantiating or corroborating such use.

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INTERROGATORY 4. Describe in detail the circumstances of Petitioner's first public use of the YELLOW RAT BASTARD Mark in the United States on or in connection with clothing, namely t-shirts, tank tops, and sweatshirts, including but not limited to the date and manner of use, the person or entity who first used the mark, involved third parties, channels of trade, and the locations of use, and identify each person who participated in or has knowledge of such use and all documents and things concerning, substantiating or corroborating such use.

INTERROGATORY 5. Describe in detail the circumstances of Petitioner's first public uses of the YELLOW RAT BASTARD Mark in the United States on or in connection with clothing, namely t-shirts, tank tops, and sweatshirts that were of such nature and extent as to create, in the mind of the relevant purchasing public in the United States, an association of the mark with Petitioner or its goods, including but not limited to the dates of use, manner of use, the person or entity who made such use, involved third parties, channels of trade, and the locations of use, and identify each person who participated in or has knowledge of such use and all documents and things concerning, substantiating or corroborating such use.

INTERROGATORY 6. Identify and describe all searches conducted for third-party uses of trademarks that are the same or similar to the YELLOW RAT BASTARD Mark, and any trademark applications, registrations and other records found in any such search, the identity of all persons who received or were made aware of the results of any such search, and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating or otherwise concerning the foregoing.

INTERROGATORY 7. Identify and describe in detail any investigations and studies performed relating to the registrability, validity, enforceability, scope and/or infringement of Respondent's RATBASTARD SUPPLY CO. mark, U.S. Trademark Application No. 88/488,647

Exhibit B to Palmateer Decl. 12/9/2021

or U.S. Trademark Registration No. 6,056,987, including, without limitation, the date and circumstances for requesting each investigation or study, the identity of all persons who authorized each investigation or study, the identity of all persons who received or were made aware of the results of each investigation or study, the identity of all documents and things referring or relating to same, third-party trademarks mentioned or uncovered in each investigation or study, and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating or otherwise concerning the foregoing.

INTERROGATORY 8. Identify and describe in detail any investigations and studies performed relating to the registrability, validity, enforceability, scope and/or infringement of Petitioners' Marks, including, without limitation, the date and circumstances for requesting each investigation or study, the identity of all persons who authorized each investigation or study, the identity of all persons who received or were made aware of the results of each investigation or study, the identity of all documents and things referring or relating to same, third-party trademarks mentioned or uncovered in each investigation or study, and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating or otherwise concerning the foregoing.

INTERROGATORY 9. Identify all communications or correspondence, including but not limited to in person conversations, phone calls, texts, e-mails and the like, at any time to or from Petitioner, or internal to Petitioner, regarding the subject matter of these Cancellation Proceedings, including the names and addresses of each person, the dates of each and every correspondence or communication with such person, a detailed description of the substance of any such communication or correspondence, and identify all documents and things comprising

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such communications or correspondences, and identify each person that participated in any such communication or correspondence, including their business title and business address.

INTERROGATORY 10. Identify all licensees or any other entity or person that has or ever had rights to use Petitioner's Marks, including the dates of any related license or agreement, the names and addresses of such licensees or other entity or person, the terms of any such license or agreement, and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating, or otherwise concerning the foregoing.

INTERROGATORY 11. In reference to ¶ 9 of your Petition in Cancellation No. 92,071,884 for cancellation of X-Treem Vibe, Inc.'s U.S. Trademark Registration No. 2,366,212, describe in detail the investigation performed and basis for your knowledge and belief regarding the allegation that "Respondent has ceased use of Respondent's Mark in connection with any goods or services in commerce whatsoever and intends not to resume such use," and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating, or otherwise concerning the foregoing.

INTERROGATORY 12. Describe in detail the investigation performed and basis for your knowledge and belief regarding the allegations in paragraph 10 of the Petition that "in reality, Respondent did not begin using Respondent's Mark in commerce until some time after June 15, 2019, when Petitioner began using Petitioner's Marks in commerce" and that "Respondent's representation to the contrary—i.e. that its use of Respondent's Mark began on October 5, 2018—constituted a fraud on the Office intended to subvert Petitioner's superior rights", and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating, or otherwise concerning the allegation.

Exhibit B to Palmateer Decl. 12/9/2021

INTERROGATORY 13. Describe in detail the investigation performed and basis for your knowledge and belief regarding the allegations in paragraph 11 of the Petition that “Petitioner will be damaged should the Registration remain active on the Principal Register since it will be unable to secure federal registration of Petitioner’s Marks as a result thereof, even though Petitioner is the true senior user”, and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating, or otherwise concerning the allegation.

INTERROGATORY 14. Describe in detail the investigation performed and basis for your knowledge and belief regarding the allegations in paragraph 9 of the Petition that “there was insufficient activity in connection with the Website to attract the Wayback Machine to index it until August 2020, as shown in Exhibit E appended hereto”, and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating, or otherwise concerning the allegation.

INTERROGATORY 15. Identify all persons, including their title and business address, that contributed to answering any interrogatories served on you in this action.

Dated: November 6, 2021

/s/Lee Palmateer
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Attorneys for Respondent

Exhibit B to Palmateer Decl. 12/9/2021

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this date, a copy of this paper has been served upon Opposer by email at the email address of record of their counsel of record, including:

Keith J. Wesley, Esq.
Browne George Ross
O'Brien Annaguey & Ellis, LLP
2121 Ave. of the Stars, Suite 2800
Los Angeles, CA 9006
(310) 274-7100
kwesley@bgrfirm.com
elauritsen@bgrfirm.com
Attorneys for Petitioner

Respectfully submitted,

Dated: November 6, 2021

/s/Lee Palmateer
Lee Palmateer
LEE PALMATEER LAW OFFICE LLC
90 State Street, Suite 700
Albany, NY 12207
Phone: 518-591-4636
Email: lee@palmateerlaw.com
Attorneys for Respondent

Exhibit C to Palmateer Decl. 12/9/2021

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

Y.Y.G.M. SA,

Petitioner,

Cancellation No. **92076810**

vs.

JOHN CAPOVANI,

Respondent.

**RESPONDENT'S FIRST SET OF REQUESTS FOR
PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, Respondent hereby requests that Petitioner, within thirty (30) days after service hereof, respond separately, fully and in writing to the following Requests, and produce the documents and things identified below for inspection and copying at the offices of Lee Palmateer Law Office LLC, 90 State Street, Suite 700, Albany, New York 12207.

I. DEFINITIONS

As used herein, the following terms shall have the meanings set forth below:

1. The term "Petitioner" "you," or "your" shall mean and include Petitioner and all principals, officers, directors, employees, former employees, servants, agents, attorneys, and other representatives acting on its behalf, and shall include any predecessor in interest, successor, subsidiary, affiliate, and/or division.

2. The terminology "documents and things" is defined to be synonymous in meaning and equal in scope to the items identified in in Fed. R. Civ. P. 34(a), including, without limitation, written, printed, typed, and visually or aurally reproduced material of any kind, whether or not privileged, including, but not limited to, letters, notes, memoranda, e-mail, invoices, purchase orders, records, minutes, bills, contracts, agreements, orders, receipts,

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drawings or sketches, photographs, tapes or disks capable of being mechanically read, advertising or promotional literature, operating manuals or instructions, bulletins, cables or telegrams, tapes or other recordings, test data, electronically stored media, and all other media. Drafts and non-identical copies are separate and distinct documents within the meaning of this term.

3. The term “person” shall mean any natural person or any corporate, business, legal or governmental entity or association.

4. When referring to a person, “identify” means to give, to the extent known, the person’s full name, present or last known address, and when referring to a natural person, additionally, the present or last known place of employment and present or last known job title. Once a person has been identified in accordance with this subparagraph, only the name of that person need be listed in response to subsequent discovery requesting the identification of that person.

5. When requested to identify documents, “identify” means to give, to the extent known, the: (i) type of document; (ii) general subject matter; (iii) date of the document; (iv) author(s), addressee(s), and recipient(s); and (v) the Bates numbers(s) of the document.

6. The term “concern” or “concerning” shall mean relating or referring to, commenting upon, discussing, describing, embodying, evidencing or constituting.

7. The connectives “and” and “or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the Request or Interrogatory all responses that might otherwise be construed to be outside of its scope.

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

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9. The term “YELLOW RAT BASTARD Mark” shall be synonymous with the term “Petitioner’s Marks” as defined in ¶ 1 of Petitioner’s Petition to include the word mark “YELLOW RAT BASTARD” subject of U.S. Trademark Application Serial No. 88,540,339 and the word mark “NYC YELLOW RAT BASTARD” and associated design subject of U.S. Trademark Application Serial No. 88,768,401, each for use on “clothing, namely t-shirts, tank tops, and sweatshirts” in Class 25 (“Petitioner’s Applications”).” The “bastard” element of the mark shall include the stylized or misspelled form “bartzard.” UPPER CASE LETTERING used herein to identify a mark is not a limitation to upper case letters and shall be inclusive of lower case letters.

10. The term “License” refers to any authorization, whether in the form of a license, distribution agreement, service agreement, reseller agreement, agent agreement, settlement agreement or otherwise, that authorizes any person to use the YELLOW RAT BASTARD Mark or to make, use, sell, or otherwise commercialize any Product in connection with which the YELLOW RAT BASTARD Mark is used. For the purposes of this definition, a covenant not to sue shall be deemed an authorization. The party granting such a License shall be deemed a licensor, and a party receiving such a license shall be deemed a licensee.

11. The term “Trademarked Product” refers to any product in connection with which the YELLOW RAT BASTARD Mark is or has been used by Petitioner or by others with petitioner’s authorization, including but not limited to use on the product, and product packaging, or in product advertising and marketing.

12. The term “Petitioner Expert” refers to any person Petitioner anticipates that it may call to testify as an expert at trial or at a hearing in this case, or any person whose expert testimony or opinion may be submitted by Petitioner in this case.

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II. INSTRUCTIONS

1. If you claim that any information, document or thing or part thereof requested herein is privileged or immune from discovery, produce that part falling within the scope of the Request or Interrogatory which is not privileged or immune from discovery, and set forth with sufficient particularity (for purposes of a motion to compel) with respect to anything withheld from production:

- a. the nature and subject matter of the document and thing;
- b. the basis for which the privilege or immunity thereto is claimed;
- c. the name and title of the author of the document or thing;
- d. the name and title of each individual or person to whom the document or thing or copy thereof was transmitted or otherwise disclosed;
- e. the date, place, and manner of recording or other preparation of the document or thing; and
- f. if the privilege being asserted is in connection with a claim or defense governed by state law, the state's privilege rule being invoked.

2. If any information, document or thing requested herein was, but no longer is, in your possession, custody, or control, state whether it has been lost, destroyed, or transferred, is missing, or has otherwise been disposed of, and in each instance, explain the circumstances surrounding the disposition of the information, document or thing and the date that such disposal occurred.

3. Responses to the following Requests and Interrogatories are to be promptly supplemented to include subsequently acquired information in accordance with the requirements of Rule 26(e) of the Federal Rules of Civil Procedure.

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4. In accordance with Fed. R. Civ. P. 34(b), documents and things shall be produced by Petitioner as they are kept in the usual course of business, or they shall be organized and labeled to correspond to each of the Requests set forth below.

5. Unless a time limitation is expressly stated in a request, the request relates to all times.

REQUESTS

REQUEST NO. 1.

All documents and things filed with government agencies for the purpose of Petitioner's formation as a business entity and to identify its current business entity identity.

REQUEST NO. 2.

All documents and things concerning Petitioner's U.S. Trademark Application Serial No. 88,540,339 and U.S. Trademark Application Serial No. 88,768,401.

REQUEST NO. 3.

All documents and things sufficient to identify all personnel who have had any responsibility for or duties relating to Petitioner's adoption and use of the YELLOW RAT BASTARD Mark.

REQUEST NO. 4.

All documents and things sufficient to identify all personnel who have had any responsibility for or duties relating to Petitioner's manufacture, procurement, sales and marketing of goods bearing YELLOW RAT BASTARD Mark.

REQUEST NO. 5.

All documents and things concerning Petitioner's first advertisement, sale or offer for sale of product bearing YELLOW RAT BASTARD Mark in the United States.

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REQUEST NO. 6.

All documents and things concerning Petitioner's first public uses of the YELLOW RAT BASTARD Mark in the United States that were of such nature and extent as to create, in the mind of the relevant purchasing public in the United States, an association of the mark with Petitioner or its goods.

REQUEST NO. 7.

All documents and things sufficient to identify the channels of trade through which Petitioner's Trademarked Goods are traded.

REQUEST NO. 8.

All documents and things concerning use by third parties of the YELLOW RAT BASTARD Mark or any mark or name comprising YELLOW along with RAT, BASTARD, or BAZTARD, whether alone or in combination with other words or features.

REQUEST NO. 9.

All documents and things concerning use of any mark or name comprising the term YELLOW RAT BASTARD, YELLOW RAT BAZTARD, YELLOW, BASTARD or BAZTARD by Henry Ishay, X-Treem Vibe, Inc. or X-Treme Vibe, Inc.

REQUEST NO. 10.

All documents and things concerning the preparation, filing, and prosecution of Petitioner's U.S. Trademark Application Serial No. 88,540,339 and U.S. Trademark Application Serial No. 88,768,401.

REQUEST NO. 11.

All documents and things concerning any search conducted for third-party uses of trademarks that are the same or similar to the YELLOW RAT BASTARD Mark, including but

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not limited to prior trademark applications or registrations, and any records identified in any such search.

REQUEST NO. 12.

All documents and things concerning any trademark applications or registrations cited, mentioned or otherwise identified in the prosecution of Petitioner's U.S. Trademark Application Serial No. 88,540,339 and U.S. Trademark Application Serial No. 88,768,401.

REQUEST NO. 13.

All documents and things concerning U.S. Trademark Registration No. 2,366,212 owned by X-Treem Vibe, Inc. for the mark YELLOW RAT BASTARD (hereinafter the "X-Treem YRB Mark") and Cancellation Proceeding No. 92071884, including but not limited to the Prosecution History of the Cancellation Proceeding, evidence supporting Petitioner's contentions in the Cancellation Proceedings, and correspondences and exchanges between the parties to the Cancellation Proceedings.

REQUEST NO. 14.

All documents and things concerning correspondences and interactions between Petitioner on the one hand and Henry Ishay, X-Treem Vibe, Inc. or X-Treme Vibe, Inc. on the other hand relating to trademark use, trademark applications or trademark registrations.

REQUEST NO. 15.

All documents and things concerning any prior use by third parties of registered or unregistered trademarks containing the term "ratbastard", "rat bastard", "yellow rat bastard" or "yellow ratbastard", alone or in combination with other words or design features.

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REQUEST NO. 16.

All documents and things concerning, requesting or providing analysis, comments, thoughts, discussion, or opinions regarding the infringement, validity or enforceability of Petitioner's YELLOW RAT BASTARD Mark, the X-Treem YRB Mark, Respondent's RATBASTARD SUPPLY CO. mark, and any trademark application or registration related to any of the foregoing marks.

REQUEST NO. 17.

All documents and things, including communications between Petitioner and third parties, concerning the filing of these cancellation proceedings.

REQUEST NO. 18.

All documents and things concerning the sale, marketing, distribution, or manufacture of Trademarked Product made, used, offered for sale, or sold by Petitioner, or any licensee, distributor, re-seller or agent of Petitioner.

REQUEST NO. 19.

All documents and things concerning Petitioner's product marketing and/or sales literature including brochures, flyers, bulletins, advertisements, pamphlets, catalog entries, product announcements, product descriptions, and other documents for Trademarked Product.

REQUEST NO. 20.

All documents and things concerning Petitioner's marketing and advertising for Trademarked Product in television, radio, social media, Internet, website or other digital media.

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REQUEST NO. 21.

All documents and things concerning any License or an offer to grant a License, including but not limited to any executed Licenses and communications with parties or potential parties to such Licenses.

REQUEST NO. 22.

All documents and things concerning any agreements between Petitioner and any Licensee pertaining to use of the YELLOW RAT BASTARD Mark and the quality of Licensee's products, services, and business operations.

REQUEST NO. 23.

All documents and things concerning any royalty payments or other fees, payments or charges made to Petitioner pursuant to a License.

REQUEST NO. 24.

All documents and things concerning any communications between any licensee or third party regarding enforcement of the YELLOW RAT BASTARD Mark.

REQUEST NO. 25.

All documents and things concerning the sales or profits of Petitioner or any licensee resulting from the sale of any Trademarked Product.

REQUEST NO. 26.

All documents and things concerning the number of Trademarked Products sold by Petitioner or its licensees, the price at which they were sold, and the date of the sale.

REQUEST NO. 27.

All documents and things that establish Petitioner's continuity of use of the YELLOW RAT BASTARD Mark from the time of its first use to the current time.

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REQUEST NO. 28.

All documents and things concerning and supporting Petitioner's allegations in paragraph 7 of the Petition that Respondent's goods are available for purchase exclusively via its website.

REQUEST NO. 29.

All documents and things concerning and supporting Petitioner's allegations in paragraph 7 of the Petition that Respondent's goods are not available for purchase other than via its website.

REQUEST NO. 30.

All documents and things concerning and supporting Petitioner's allegations in paragraph 8 of the Petition that "the Website did not exist prior to April 9, 2019."

REQUEST NO. 31.

All documents and things concerning and supporting Petitioner's allegations in paragraph 9 of the Petition that "the Website was under construction for the first several months after it was registered."

REQUEST NO. 32.

All documents and things concerning and supporting Petitioner's allegations in paragraph 9 of the Petition that "there was insufficient activity in connection with the Website to attract the Wayback Machine to index it until August 2020."

REQUEST NO. 33.

All documents and things concerning and supporting Petitioner's knowledge and understanding regarding the nature and extent of "activity in connection with the Website" that would have been required prior to August 2020 "to attract the Wayback Machine" upon which Petitioner based its allegations of paragraph 9 of the Petition.

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REQUEST NO. 34.

All documents and things concerning and supporting Petitioner's allegations in paragraph 10 of the Petition that "Respondent did not begin using Respondent's Mark in commerce until some time after June 15, 2019".

REQUEST NO. 35.

All documents and things concerning and supporting Petitioner's allegations in paragraph 10 of the Petition that "Petitioner began using Petitioner's Marks in commerce" on June 15, 2019.

REQUEST NO. 36.

All documents and things concerning and supporting Petitioner's allegations in paragraph 10 of the Petition that Respondent's representation that its use of Respondent's Mark began on October 5, 2018 "constituted a fraud on the Office intended to subvert Petitioner's superior rights."

REQUEST NO. 37.

All documents and things concerning Respondent's use of any mark or name comprising the term RAT or BASTARD, whether alone or in combination with other words or features.

REQUEST NO. 38.

All documents and things concerning or evidencing a likelihood of confusion or actual confusion caused by Petitioner's and Respondent's trademark use.

REQUEST NO. 39.

All documents and things concerning and supporting Petitioner's allegations in paragraph 11 of the Petition that "Petitioner will be damaged should the Registration remain active on the Principal Register."

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REQUEST NO. 40.

All documents and things concerning and supporting Petitioner's allegations in paragraph 11 of the Petition that "Petitioner is the true senior user."

REQUEST NO. 41.

Samples and specimens of each Trademarked Product and associated tag, label or package marked with the YELLOW RAT BASTARD Mark and transported or sold in interstate commerce in connection.

REQUEST NO. 42.

All documents and things Petitioner intends to use at trial in this case.

REQUEST NO. 43.

All documents and things concerning marking of Trademarked Product including, without limitation, when Petitioner and its licensees, if any, began marking products or product packaging with the YELLOW RAT BASTARD Mark, the date that each product or package was so marked and the manner in which the product or package was marked.

REQUEST NO. 44.

All documents and things identified or referenced in Petitioner' responses to Respondent's Interrogatories to Petitioner.

REQUEST NO. 45.

All documents and things reviewed or considered in preparing Petitioner' responses to Respondent's Interrogatories to Petitioner.

REQUEST NO. 46.

All witness statements obtained by Petitioner concerning these proceedings.

Exhibit C to Palmateer Decl. 12/9/2021

REQUEST NO. 47.

All documents and things that, in relation to these proceedings, were furnished or made available to, reviewed by, or prepared by or for any Petitioner Expert including, but not limited to, reports, correspondence, memoranda, charts, photographs, diagrams, drawings, tables, notes or similar things, as well as all documents and things not written by experts, but which Petitioner intends to offer into evidence through an expert.

REQUEST NO. 48.

All papers published by any Petitioner Expert.

REQUEST NO. 49.

All transcripts of any previous trial or deposition testimony of any Petitioner Expert.

Dated: November 6, 2021

/s/Lee Palmateer
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Attorneys for Respondent

Exhibit C to Palmateer Decl. 12/9/2021

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on this date, a copy of this paper has been served upon Opposer by email at the email address of record of their counsel of record, including:

Keith J. Wesley, Esq.
Browne George Ross
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Los Angeles, CA 9006
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kwesley@bgrfirm.com
elauritsen@bgrfirm.com
Attorneys for Petitioner

Respectfully submitted,

Dated: November 6, 2021

/s/Lee Palmateer
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Email: lee@palmateerlaw.com
Attorneys for Respondent

Exhibit D to Palmateer Decl. 12/9/2021

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

In the Matter of Trademark Registration No. 6,056,987
For the Mark **RATBASTARD SUPPLY CO.**

Y.Y.G.M. SA,

Petitioner,

Cancellation No. 92076810

vs.

JOHN CAPOVANI,

Respondent

Y.Y.G.M. SA'S INITIAL DISCLOSURES

Y.Y.G.M. SA ("Petitioner"), by and through its undersigned counsel, hereby makes the following disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure and 37 C.F.R. section 2.120(a).

1. PRELIMINARY STATEMENT

Petitioner's investigation into the facts and issues relating to this action is ongoing. All of the responses contained herein are based on information presently available and specifically known to Petitioner. It is anticipated that further discovery and investigation will reveal additional facts and evidence, which may lead to additions to, changes in, and variations from the disclosures set forth below. The following disclosures are given without prejudice to Petitioner's right to produce subsequently discovered evidence.

2. INDIVIDUALS LIKELY TO HAVE DISCOVERABLE INFORMATION THAT
PETITIONER MAY USE TO SUPPORT ITS CLAIMS

A. Salvatore Rianna – Contact only via counsel for Petitioner.

Exhibit D to Palmateer Decl. 12/9/2021

Subjects: The timing, extent, and nature of Petitioner’s use of its applicable trademarks; the circumstances surrounding the filing of Petitioner’s applications to register its trademarks with the USPTO.

B. John Capovani (“Respondent”) – Petitioner understands that Respondent should be contacted only via his counsel.

Subjects: The timing, extent, and nature of Respondent’s use of its applicable trademarks; the circumstances surrounding the filing of Respondent’s applications to register its trademarks with the USPTO.

3. DOCUMENTS, ELECTRONICALLY STORED INFORMATION, AND TANGIBLE THINGS THAT PETITIONER MAY USE TO SUPPORT ITS CLAIMS

Petitioner may use the following categories of documents, electronically stored information, and tangible things are in its possession, custody, or control of Petitioner to support its claims:

- Petitioner’s business records revealing its dates of first use of its applicable trademarks, including but not limited to pictures of Petitioner’s merchandise and advertising records.

Respectfully submitted,

Dated: November 10, 2021

/Keith J. Wesley/

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Attorneys for Petitioner Y.Y.G.M. SA

Exhibit D to Palmateer Decl. 12/9/2021

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, a copy of Petitioner Y.Y.G.M. SA's Initial Disclosures has been served upon Respondent John Capovani by email at the email address of his counsel of record, including:

Lee Palmateer
LEE PALMATEER LAW OFFICE LLC
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Albany, NY 12207
lee@palmateerlaw.com

Dated: November 10, 2021

Respectfully submitted,

/Andrea A. Augustine/
Andrea A. Augustine
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Exhibit E to Palmateer Decl. 12/9/2021

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500
General Email: TTABInfo@uspto.gov

Ca/wbc

December 3, 2021

Cancellation No. 92076810

YYGM, SA

v.

John Capovani

Wendy Boldt Cohen, Interlocutory Attorney:

Proceedings are suspended pending disposition of the motion to suspend pending the outcome of civil action (filed November 1, 2021). Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. *See* Trademark Rule 2.127(d).

This suspension order does not toll the time for either party to respond to any outstanding discovery or to serve expert disclosures.

The motion to suspend will be decided in due course.

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

Y.Y.G.M., SA,

Petitioner,

vs.

JOHN CAPOVANI,

Respondent.

Cancellation No. **92076810**

**PETITIONER Y.Y.G.M., SA'S OBJECTIONS AND RESPONSES TO RESPONDENT'S
FIRST SET OF INTERROGATORIES**

Petitioner Y.Y.G.M., SA ("Petitioner") hereby provides the following objections and responses to the First Set of Interrogatories propounded by Respondent John Capovani ("Respondent").

INTRODUCTORY RESPONSE

Petitioner's investigation of the facts relating to this case is still ongoing. As such, Petitioner has not completed its investigation, has not completed discovery, and has not completed preparation for trial. All of the answers contained herein are based upon the information presently available, and specifically known, to Petitioner. It is anticipated that further discovery and further independent investigation will supply additional facts which may clarify and add meaning to facts presently known, as well as establish new factual matters, all of which may lead to substantial addition to, changes in, and variations from the responses set forth herein. The following responses are given without prejudice to Petitioner's right to produce evidence of any subsequently discovered fact or facts that Petitioner may later recall.

The responses contained herein are made in a good faith effort to supply as much factual information as is presently known, but should in no way be to the prejudice of these parties in

Exhibit F to Palmateer Decl. 12/9/2021

relationship to further discovery, research, or analysis. Petitioner reserves the right to alter, supplement, amend, or otherwise modify these responses in any way and at any time, including at or during trial, in light of facts revealed to it through discovery, further investigation, or further legal analysis. Petitioner also reserves the right to amend or supplement these responses with any information that has been inadvertently or unintentionally omitted and/or to introduce such information into evidence at the time of hearing or trial.

Petitioner makes these responses to the Interrogatories subject to, and without waiving in any way, any objections as to competence, relevance, materiality, propriety, and admissibility, and any and all other objections and grounds which would require the exclusion of any statement herein if the Interrogatories were asked of, or any statements contained were made by, a witness present and testifying in court, all of which objections and grounds are reserved and may be interposed at time of trial.

GENERAL OBJECTIONS

1. To the extent the Interrogatories call for confidential communications between Petitioner and any of its attorneys, or information that is otherwise covered by the attorney-client privilege, the work-product doctrine, or any other right or privilege recognized by law, Petitioner generally objects to the Interrogatories, and each interrogatory contained therein.

2. Petitioner objects to the Interrogatories, and each interrogatory contained therein, to the extent that they seek information protected by applicable state or United States constitutions, applicable state or federal statutes or regulations or case law that establish a right of privacy and forbid the discovery and dissemination of confidential, sensitive and financial information. Petitioner will not reveal such information where doing so would violate the privacy rights of Petitioner or of third parties.

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3. Petitioner objects to the Interrogatories, and each interrogatory contained therein, to the extent that they seek information that is not relevant and/or material to the subject matter of this litigation or are not reasonably calculated to lead to the discovery of admissible evidence.

4. Petitioner objects to the Interrogatories, and each interrogatory contained therein, insofar as they are repetitive, redundant or overlapping.

5. Petitioner objects to the Interrogatories, and each interrogatory contained therein, to the extent that they are unduly burdensome, oppressive, annoying or harassing.

6. Petitioner objects to the Interrogatories, and each interrogatory contained therein, to the extent that they are vague and ambiguous, compound, confusing, unintelligible, unclear and amenable to different meanings, understandings or interpretations. Petitioner is responding to each Interrogatory as it interprets and understands that Interrogatory with respect to the issues framed in connection with this litigation. If Respondent asserts an interpretation of any part of a Interrogatory that differs from the understanding of Petitioner, Petitioner reserves the right to supplement, amend, or modify its/his/her responses or objections.

7. Petitioner objects to the Interrogatories, and to each interrogatory contained therein, to the extent they are unlimited in time or seek information beyond the time-frame relevant to this litigation on the grounds that they are overbroad and unduly burdensome, and seek information that is irrelevant to the subject matter of this litigation.

8. Petitioner objects to the Interrogatories, and each interrogatory contained therein, to the extent they seek to impose duties or obligations different from, additional to, or otherwise beyond those required by the *Federal Rules of Civil Procedure*.

9. Petitioner objects to the Interrogatories, and each interrogatory therein, to the extent they seek information that is equally available to or within Respondent's possession,

Exhibit F to Palmateer Decl. 12/9/2021

custody or control on the grounds that such Interrogatories are unduly burdensome and oppressive.

The foregoing objections are incorporated by reference into each of the specific responses made herein. Notwithstanding the specific responses to any of the Interrogatories, Petitioner does not waive any of the general or specific objections made herein. Subject to and without waiving the foregoing General Objections, Petitioner responds to the First Set of Interrogatories, as follows:

RESPONSES AND OBJECTIONS

INTERROGATORY NO. 1:

Identify each person who participated in the preparation and filing of Petitioner's U.S. Trademark Application Serial No. 88,540,339 and what inquiries they performed in connection therewith, and for each representation or assertion made in said application identify each person who had personal knowledge thereof and identify all documents and things concerning, substantiating or corroborating the representation or assertion, including: that applicant is the owner of the trademark/service mark sought to be registered; the mark is in use in commerce on or in connection with the goods/services in the application; the specimen(s) shows the mark as used on or in connection with the goods/services in the application; the mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest at least as early as 06/15/2019, and first used in commerce at least as early as 06/15/2019, and is now in use in such commerce; no other persons, except, if applicable, concurrent users, have the right to use the mark in commerce, either in the identical form or in such near resemblance as to be likely, when used on or in connection with the goods/services of such other persons, to cause confusion or

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mistake, or to deceive; after an inquiry reasonable under the circumstances, the allegations and other factual contentions made above have evidentiary support.

RESPONSE TO INTERROGATORY NO. 1:

Petitioner objects to this Interrogatory on the grounds that it is compound, is not reasonably calculated to lead to the discovery of admissible evidence, and calls for protected attorney work product. Petitioner further objects to this Interrogatory on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

INTERROGATORY NO. 2:

As asked of Petitioner in U.S. Trademark Application Serial No. 88,540,339, set forth the date the YELLOW RAT BASTARD Mark was first used by the applicant or the applicant's related company or licensee or predecessor in interest in the United States on or in connection with clothing, namely, t-shirts, tank tops, and sweatshirts, and describe in detail the circumstances of said use, including but not limited to the manner of use, the person or entity who first used the mark, involved third parties, channels of trade, and the locations of use, and identify each person who participated in or has knowledge of such use and all documents and things concerning, substantiating or corroborating such use.

RESPONSE TO INTERROGATORY NO. 2:

Petitioner objects to this Interrogatory on the grounds that it is compound and is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Interrogatory on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

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INTERROGATORY NO. 3:

As asked of Petitioner in U.S. Trademark Application Serial No. 88,540,339, set forth the date the YELLOW RAT BASTARD Mark was first used in commerce by the applicant or the applicant's related company or licensee or predecessor in interest in the United States on or in connection with clothing, namely, t-shirts, tank tops, and describe in detail the circumstances of said use, including but not limited to the manner of use, the person or entity who first used the mark, involved third parties, channels of trade, and the locations of use, and identify each person who participated in or has knowledge of such use and all documents and things concerning, substantiating or corroborating such use.

RESPONSE TO INTERROGATORY NO. 3:

Petitioner objects to this Interrogatory on the grounds that it is compound and is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Interrogatory on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

INTERROGATORY NO. 4:

Describe in detail the circumstances of Petitioner's first public use of the YELLOW RAT BASTARD Mark in the United States on or in connection with clothing, namely t-shirts, tank tops, and sweatshirts, including but not limited to the date and manner of use, the person or entity who first used the mark, involved third parties, channels of trade, and the locations of use, and identify each person who participated in or has knowledge of such use and all documents and things concerning, substantiating or corroborating such use.

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RESPONSE TO INTERROGATORY NO. 4:

Petitioner objects to this Interrogatory on the grounds that it is compound and is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Interrogatory on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

INTERROGATORY NO. 5:

Describe in detail the circumstances of Petitioner's first public uses of the YELLOW RAT BASTARD Mark in the United States on or in connection with clothing, namely t-shirts, tank tops, and sweatshirts that were of such nature and extent as to create, in the mind of the relevant purchasing public in the United States, an association of the mark with Petitioner or its goods, including but not limited to the dates of use, manner of use, the person or entity who made such use, involved third parties, channels of trade, and the locations of use, and identify each person who participated in or has knowledge of such use and all documents and things concerning, substantiating or corroborating such use.

RESPONSE TO INTERROGATORY NO. 5:

Petitioner objects to this Interrogatory on the grounds that it is compound and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Interrogatory on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

INTERROGATORY NO. 6:

Identify and describe all searches conducted for third-party uses of trademarks that are the same or similar to the YELLOW RAT BASTARD Mark, and any trademark applications, registrations and other records found in any such search, the identity of all persons who received

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or were made aware of the results of any such search, and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating or otherwise concerning the foregoing.

RESPONSE TO INTERROGATORY NO. 6:

Petitioner objects to this Interrogatory on the grounds that it is compound, is not reasonably calculated to lead to the discovery of admissible evidence, and calls for protected attorney work product. Petitioner further objects to this Interrogatory on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

INTERROGATORY NO. 7:

Identify and describe in detail any investigations and studies performed relating to the registrability, validity, enforceability, scope and/or infringement of Respondent's RATBASTARD SUPPLY CO. mark, U.S. Trademark Application No. 88/488,647 or U.S. Trademark Registration No. 6,056,987, including, without limitation, the date and circumstances for requesting each investigation or study, the identity of all persons who authorized each investigation or study, the identity of all persons who received or were made aware of the results of each investigation or study, the identity of all documents and things referring or relating to same, third-party trademarks mentioned or uncovered in each investigation or study, and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating or otherwise concerning the foregoing.

RESPONSE TO INTERROGATORY NO. 7:

Petitioner objects to this Interrogatory on the grounds that it is compound, is not reasonably calculated to lead to the discovery of admissible evidence, and calls for protected attorney work

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product. Petitioner further objects to this Interrogatory on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

INTERROGATORY NO. 8:

Identify and describe in detail any investigations and studies performed relating to the registrability, validity, enforceability, scope and/or infringement of Petitioners' Marks, including, without limitation, the date and circumstances for requesting each investigation or study, the identity of all persons who authorized each investigation or study, the identity of all persons who received or were made aware of the results of each investigation or study, the identity of all documents and things referring or relating to same, third-party trademarks mentioned or uncovered in each investigation or study, and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating or otherwise concerning the foregoing.

RESPONSE TO INTERROGATORY NO. 8:

Petitioner objects to this Interrogatory on the grounds that it is compound, is not reasonably calculated to lead to the discovery of admissible evidence, and calls for protected attorney work product. Petitioner further objects to this Interrogatory on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

INTERROGATORY NO. 9:

Identify all communications or correspondence, including but not limited to in person conversations, phone calls, texts, e-mails and the like, at any time to or from Petitioner, or internal to Petitioner, regarding the subject matter of these Cancellation Proceedings, including the names

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and addresses of each person, the dates of each and every correspondence or communication with such person, a detailed description of the substance of any such communication or correspondence, and identify all documents and things comprising such communications or correspondences, and identify each person that participated in any such communication or correspondence, including their business title and business address.

RESPONSE TO INTERROGATORY NO. 9:

Petitioner objects to this Interrogatory on the grounds that it is compound, is not reasonably calculated to lead to the discovery of admissible evidence, and calls for information and communications subject to the attorney-client privilege. Petitioner further objects to this Interrogatory on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

INTERROGATORY NO. 10:

Identify all licensees or any other entity or person that has or ever had rights to use Petitioner's Marks, including the dates of any related license or agreement, the names and addresses of such licensees or other entity or person, the terms of any such license or agreement, and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating, or otherwise concerning the foregoing.

RESPONSE TO INTERROGATORY NO. 10:

Petitioner objects to this Interrogatory on the grounds that it is compound and is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Interrogatory on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

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INTERROGATORY NO. 11:

In reference to ¶ 9 of your Petition in Cancellation No. 92,071,884 for cancellation of X-Treem Vibe, Inc.'s U.S. Trademark Registration No. 2,366,212, describe in detail the investigation performed and basis for your knowledge and belief regarding the allegation that "Respondent has ceased use of Respondent's Mark in connection with any goods or services in commerce whatsoever and intends not to resume such use," and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating, or otherwise concerning the foregoing.

RESPONSE TO INTERROGATORY NO. 11:

Petitioner objects to this Interrogatory on the grounds that it is compound and is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Interrogatory on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

INTERROGATORY NO. 12:

Describe in detail the investigation performed and basis for your knowledge and belief regarding the allegations in paragraph 10 of the Petition that "in reality, Respondent did not begin using Respondent's Mark in commerce until some time after June 15, 2019, when Petitioner began using Petitioner's Marks in commerce" and that "Respondent's representation to the contrary—i.e. that its use of Respondent's Mark began on October 5, 2018—constituted a fraud on the Office intended to subvert Petitioner's superior rights", and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating, or otherwise concerning the allegation.

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RESPONSE TO INTERROGATORY NO. 12:

Petitioner objects to this Interrogatory on the grounds that it is compound. Petitioner further objects to this Interrogatory on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

INTERROGATORY NO. 13:

Describe in detail the investigation performed and basis for your knowledge and belief regarding the allegations in paragraph 11 of the Petition that “Petitioner will be damaged should the Registration remain active on the Principal Register since it will be unable to secure federal registration of Petitioner’s Marks as a result thereof, even though Petitioner is the true senior user”, and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating, or otherwise concerning the allegation.

RESPONSE TO INTERROGATORY NO. 13:

Petitioner objects to this Interrogatory on the grounds that it is compound. Petitioner further objects to this Interrogatory on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

INTERROGATORY NO. 14:

Describe in detail the investigation performed and basis for your knowledge and belief regarding the allegations in paragraph 9 of the Petition that “there was insufficient activity in connection with the Website to attract the Wayback Machine to index it until August 2020, as shown in Exhibit E appended hereto”, and identify each person who has knowledge of the foregoing and identify all documents and things substantiating, corroborating, or otherwise concerning the allegation.

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RESPONSE TO INTERROGATORY NO. 14:

Petitioner objects to this Interrogatory on the grounds that it is compound and calls for protected attorney work product. Petitioner further objects to this Interrogatory on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

INTERROGATORY NO. 15:

Identify all persons, including their title and business address, that contributed to answering any interrogatories served on you in this action.

RESPONSE TO INTERROGATORY NO. 15:

Petitioner objects to this Interrogatory on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

Dated: December 6, 2021

BROWNE GEORGE ROSS
O'BRIEN ANNAGUEY & ELLIS LLP

By: /s/ Keith Wesley

Keith Wesley
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Attorneys for Petitioner Y.Y.G.M. SA

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, a copy of **PETITIONER Y.Y.G.M., SA'S OBJECTIONS AND RESPONSES TO RESPONDENT'S FIRST SET OF INTERROGATORIES** has been served upon Respondent John Capovani by email at the email address of his counsel of record, including:

Lee Palmateer
LEE PALMATEER LAW OFFICE LLC
90 State Street, Suite 700
Albany, NY 12207
Phone: 518-591-4636
Fax: 518-677-1886
Email: lee@palmateerlaw.com

Respectfully submitted,

Dated: December 6, 2021

/Robin Goodwin/
Robin Goodwin
Legal Assistant
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

Y.Y.G.M., SA,

Petitioner,

vs.

JOHN CAPOVANI,

Respondent.

Cancellation No. **92076810**

**PETITIONER Y.Y.G.M., SA'S OBJECTIONS AND RESPONSES TO RESPONDENT'S
FIRST SET OF REQUESTS FOR PRODUCTION AND THINGS**

Petitioner Y.Y.G.M., SA ("Petitioner") hereby provides the following objections and responses to the First Set of Requests for Production of Documents and Things propounded by Respondent John Capovani ("Respondent").

INTRODUCTORY RESPONSE

Petitioner's investigation of the facts relating to this case is still ongoing. As such, Petitioner has not completed its investigation, has not completed discovery, and has not completed preparation for trial. All of the answers contained herein are based upon the information presently available, and specifically known, to Petitioner. It is anticipated that further discovery and further independent investigation will supply additional facts which may clarify and add meaning to facts presently known, as well as establish new factual matters, all of which may lead to substantial addition to, changes in, and variations from the responses set forth herein. The following responses are given without prejudice to Petitioner's right to produce evidence of any subsequently discovered fact or facts that Petitioner may later recall.

The responses contained herein are made in a good faith effort to supply as much factual information as is presently known, but should in no way be to the prejudice of these parties in

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relationship to further discovery, research, or analysis. Petitioner reserves the right to alter, supplement, amend, or otherwise modify these responses in any way and at any time, including at or during trial, in light of facts revealed to it through discovery, further investigation, or further legal analysis. Petitioner also reserves the right to amend or supplement these responses with any information that has been inadvertently or unintentionally omitted and/or to introduce such information into evidence at the time of hearing or trial.

Petitioner makes these responses to the Requests subject to, and without waiving in any way, any objections as to competence, relevance, materiality, propriety, and admissibility, and any and all other objections and grounds which would require the exclusion of any statement herein if the Requests were asked of, or any statements contained were made by, a witness present and testifying in court, all of which objections and grounds are reserved and may be interposed at time of trial.

GENERAL OBJECTIONS

1. To the extent the Requests call for confidential communications between Petitioner and any of its attorneys, or information that is otherwise covered by the attorney-client privilege, the work-product doctrine, or any other right or privilege recognized by California or federal law, Petitioner generally objects to the Requests, and each request contained therein.

2. Petitioner objects to the Requests, and each request contained therein, to the extent that they seek information protected by applicable state or United States constitutions, applicable state or federal statutes or regulations or case law that establish a right of privacy and forbid the discovery and dissemination of confidential, sensitive and financial information. Petitioner will not reveal such information where doing so would violate the privacy rights of Petitioner or of third parties.

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3. Petitioner objects to the Requests, and each request contained therein, to the extent that they seek information that is not relevant and/or material to the subject matter of this litigation or are not reasonably calculated to lead to the discovery of admissible evidence.

4. Petitioner objects to the Requests, and each request contained therein, insofar as they are repetitive, redundant or overlapping.

5. Petitioner objects to the Requests, and each request contained therein, to the extent that they are unduly burdensome, oppressive, annoying or harassing.

6. Petitioner objects to the Requests, and each request contained therein, to the extent that they are vague and ambiguous, compound, confusing, unintelligible, unclear and amenable to different meanings, understandings or interpretations. Petitioner is responding to each Request as it interprets and understands that Request with respect to the issues framed in connection with this litigation. If Respondent asserts an interpretation of any part of a Request that differs from the understanding of Petitioner, Petitioner reserves the right to supplement, amend, or modify its/his/her responses or objections.

7. Petitioner objects to the Requests, and to each request contained therein, to the extent they are unlimited in time or seek information beyond the time-frame relevant to this litigation on the grounds that they are overbroad and unduly burdensome, and seek information that is irrelevant to the subject matter of this litigation.

8. Petitioner objects to the Requests, and each request contained therein, to the extent they seek to impose duties or obligations different from, additional to, or otherwise beyond those required by the *Federal Rules of Civil Procedure*.

9. Petitioner objects to the Requests, and each request therein, to the extent they seek information that is equally available to or within Respondent's possession, custody or control on

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the grounds that such Requests are unduly burdensome and oppressive.

The foregoing objections are incorporated by reference into each of the specific responses made herein. Notwithstanding the specific responses to any of the Requests, Petitioner does not waive any of the general or specific objections made herein. Subject to and without waiving the foregoing General Objections, Petitioner responds to the First Set of Requests for Production of Documents and Things, as follows:

RESPONSES AND OBJECTIONS

REQUEST NO. 1:

All documents and things filed with government agencies for the purpose of Petitioner's formation as a business entity and to identify its current business entity identity.

RESPONSE TO REQUEST NO. 1:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 2:

All documents and things concerning Petitioner's U.S. Trademark Application Serial No. 88,540,339 and U.S. Trademark Application Serial No. 88,768,401.

RESPONSE TO REQUEST NO. 2:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, vague and ambiguous as to the meaning of "concerning," not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it

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calls for documents protected by the attorney-client privilege and work product doctrines. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 3:

All documents and things sufficient to identify all personnel who have had any responsibility for or duties relating to Petitioner's adoption and use of the YELLOW RAT BASTARD Mark.

RESPONSE TO REQUEST NO. 3:

Petitioner objects to this Request on the grounds that it is overly broad and unduly burdensome and vague and ambiguous in its call for information regarding individuals with duties "relating to" the use and adoption of Petitioner's mark. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 4:

All documents and things sufficient to identify all personnel who have had any responsibility for or duties relating to Petitioner's manufacture, procurement, sales and marketing of goods bearing YELLOW RAT BASTARD Mark.

RESPONSE TO REQUEST NO. 4:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, vague and ambiguous as to individuals with "duties relating to" Petitioner's activities, and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

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REQUEST NO. 5:

All documents and things concerning Petitioner's first advertisement, sale or offer for sale of product bearing YELLOW RAT BASTARD Mark in the United States.

RESPONSE TO REQUEST NO. 5:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it calls for documents protected by the attorney-client privilege and work product doctrines. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 6:

All documents and things concerning Petitioner's first public uses of the YELLOW RAT BASTARD Mark in the United States that were of such nature and extent as to create, in the mind of the relevant purchasing public in the United States, an association of the mark with Petitioner or its goods.

RESPONSE TO REQUEST NO. 6:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it calls for legal conclusions. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

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REQUEST NO. 7:

All documents and things sufficient to identify the channels of trade through which Petitioner's Trademarked Goods are traded.

RESPONSE TO REQUEST NO. 7:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 8:

All documents and things concerning use by third parties of the YELLOW RAT BASTARD Mark or any mark or name comprising YELLOW along with RAT, BASTARD, or BAZTARD, whether alone or in combination with other words or features.

RESPONSE TO REQUEST NO. 8:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. . Petitioner further objects to this Request on the grounds that it calls for documents protected by the attorney-client privilege and work product doctrines. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 9:

All documents and things concerning use of any mark or name comprising the term YELLOW RAT BASTARD, YELLOW RAT BAZTARD, YELLOW, BASTARD or BAZTARD by Henry Ishay, X-Treem Vibe, Inc. or X-Treme Vibe, Inc.

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RESPONSE TO REQUEST NO. 9:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. . Petitioner further objects to this Request on the grounds that it calls for documents protected by the attorney-client privilege and work product doctrines. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 10:

All documents and things concerning the preparation, filing, and prosecution of Petitioner's U.S. Trademark Application Serial No. 88,540,339 and U.S. Trademark Application Serial No. 88,768,401.

RESPONSE TO REQUEST NO. 10:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. . Petitioner further objects to this Request on the grounds that it calls for documents protected by the attorney-client privilege and work product doctrines. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 11:

All documents and things concerning any search conducted for third-party uses of trademarks that are the same or similar to the YELLOW RAT BASTARD Mark, including but not limited to prior trademark applications or registrations, and any records identified in any such search.

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RESPONSE TO REQUEST NO. 11:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents protected by the attorney-client privilege and attorney work product doctrine. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 12:

All documents and things concerning any trademark applications or registrations cited, mentioned or otherwise identified in the prosecution of Petitioner's U.S. Trademark Application Serial No. 88,540,339 and U.S. Trademark Application Serial No. 88,768,401.

RESPONSE TO REQUEST NO. 12:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents protected by the attorney-client privilege and attorney work product doctrine. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 13:

All documents and things concerning U.S. Trademark Registration No. 2,366,212 owned by X-Treem Vibe, Inc. for the mark YELLOW RAT BASTARD (hereinafter the "X-Treem YRB Mark") and Cancellation Proceeding No. 92071884, including but not limited to the Prosecution History of the Cancellation Proceeding, evidence supporting Petitioner's contentions in the Cancellation Proceedings, and correspondences and exchanges between the parties to the Cancellation Proceedings.

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RESPONSE TO REQUEST NO. 13:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents protected by the attorney-client privilege and attorney work product doctrine. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 14:

All documents and things concerning correspondences and interactions between Petitioner on the one hand and Henry Ishay, X-Treem Vibe, Inc. or X-Treme Vibe, Inc. on the other hand relating to trademark use, trademark applications or trademark registrations.

RESPONSE TO REQUEST NO. 14:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents protected by the attorney-client privilege and attorney work product doctrine. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 15:

All documents and things concerning any prior use by third parties of registered or unregistered trademarks containing the term “ratbastard”, “rat bastard”, “yellow rat bastard” or “yellow ratbastard”, alone or in combination with other words or design features.

RESPONSE TO REQUEST NO. 15:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents

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protected by the attorney-client privilege and attorney work product doctrine. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 16:

All documents and things concerning, requesting or providing analysis, comments, thoughts, discussion, or opinions regarding the infringement, validity or enforceability of Petitioner's YELLOW RAT BASTARD Mark, the X-Treem YRB Mark, Respondent's RATBASTARD SUPPLY CO. mark, and any trademark application or registration related to any of the foregoing marks.

RESPONSE TO REQUEST NO. 16:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents protected by the attorney-client privilege and attorney work product doctrine. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 17:

All documents and things, including communications between Petitioner and third parties, concerning the filing of these cancellation proceedings.

RESPONSE TO REQUEST NO. 17:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, not reasonably calculated to lead to the discovery of admissible evidence, and calls for documents protected by the attorney-client privilege and attorney work product doctrine. Petitioner further

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objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 18:

All documents and things concerning the sale, marketing, distribution, or manufacture of Trademarked Product made, used, offered for sale, or sold by Petitioner, or any licensee, distributor, re-seller or agent of Petitioner.

RESPONSE TO REQUEST NO. 18:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 19:

All documents and things concerning Petitioner's product marketing and/or sales literature including brochures, flyers, bulletins, advertisements, pamphlets, catalog entries, product announcements, product descriptions, and other documents for Trademarked Product.

RESPONSE TO REQUEST NO. 19:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 20:

All documents and things concerning Petitioner's marketing and advertising for Trademarked Product in television, radio, social media, Internet, website or other digital media.

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RESPONSE TO REQUEST NO. 20:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 21:

All documents and things concerning any License or an offer to grant a License, including but not limited to any executed Licenses and communications with parties or potential parties to such Licenses.

RESPONSE TO REQUEST NO. 21:

Petitioner objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 22:

All documents and things concerning any agreements between Petitioner and any Licensee pertaining to use of the YELLOW RAT BASTARD Mark and the quality of Licensee's products, services, and business operations.

RESPONSE TO REQUEST NO. 22:

Petitioner objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

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REQUEST NO. 23:

All documents and things concerning any royalty payments or other fees, payments or charges made to Petitioner pursuant to a License.

RESPONSE TO REQUEST NO. 23:

Petitioner objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 24:

All documents and things concerning any communications between any licensee or third party regarding enforcement of the YELLOW RAT BASTARD Mark.

RESPONSE TO REQUEST NO. 24:

Petitioner objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 25:

All documents and things concerning the sales or profits of Petitioner or any licensee resulting from the sale of any Trademarked Product.

RESPONSE TO REQUEST NO. 25:

Petitioner objects to this Request on the grounds that it is calls for information protected by Petitioner's right to financial privacy and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it is untimely

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insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 26:

All documents and things concerning the number of Trademarked Products sold by Petitioner or its licensees, the price at which they were sold, and the date of the sale.

RESPONSE TO REQUEST NO. 26:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 27:

All documents and things that establish Petitioner's continuity of use of the YELLOW RAT BASTARD Mark from the time of its first use to the current time

RESPONSE TO REQUEST NO. 27:

Petitioner objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

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REQUEST NO. 28:

All documents and things concerning and supporting Petitioner's allegations in paragraph 7 of the Petition that Respondent's goods are available for purchase exclusively via its website.

RESPONSE TO REQUEST NO. 28:

Petitioner objects to this Request on the grounds that it calls for documents protected by the attorney-client privilege and work product doctrine. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 29:

All documents and things concerning and supporting Petitioner's allegations in paragraph 7 of the Petition that Respondent's goods are not available for purchase other than via its website.

RESPONSE TO REQUEST NO. 29:

Petitioner objects to this Request on the grounds that it is repetitive. Petitioner further objects to this Request on the grounds that it calls for documents protected by the attorney-client privilege and work product doctrine. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 30:

All documents and things concerning and supporting Petitioner's allegations in paragraph 8 of the Petition that "the Website did not exist prior to April 9, 2019."

RESPONSE TO REQUEST NO. 30:

Petitioner objects to this Request on the grounds that it calls for documents protected by the attorney-client privilege and work product doctrine. Petitioner further objects to this Request

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on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 31:

All documents and things concerning and supporting Petitioner's allegations in paragraph 9 of the Petition that "the Website was under construction for the first several months after it was registered."

RESPONSE TO REQUEST NO. 31:

Petitioner objects to this Request on the grounds that it calls for documents protected by the attorney-client privilege and work product doctrine. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 32:

All documents and things concerning and supporting Petitioner's allegations in paragraph 9 of the Petition that "there was insufficient activity in connection with the Website to attract the Wayback Machine to index it until August 2020."

RESPONSE TO REQUEST NO. 32:

Petitioner objects to this Request on the grounds that it calls for documents protected by the attorney-client privilege and work product doctrine. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 33:

All documents and things concerning and supporting Petitioner's knowledge and understanding regarding the nature and extent of "activity in connection with the Website" that

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would have been required prior to August 2020 “to attract the Wayback Machine” upon which Petitioner based its allegations of paragraph 9 of the Petition.

RESPONSE TO REQUEST NO. 33:

Petitioner objects to this Request on the grounds that it calls for documents protected by the attorney-client privilege and work product doctrine. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 34:

All documents and things concerning and supporting Petitioner’s allegations in paragraph 10 of the Petition that “Respondent did not begin using Respondent’s Mark in commerce until some time after June 15, 2019”.

RESPONSE TO REQUEST NO. 34:

Petitioner objects to this Request on the grounds that it calls for documents protected by the attorney-client privilege and work product doctrine. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 35:

All documents and things concerning and supporting Petitioner’s allegations in paragraph 10 of the Petition that “Petitioner began using Petitioner’s Marks in commerce” on June 15, 2019.

RESPONSE TO REQUEST NO. 35:

Petitioner objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds

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that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 36:

All documents and things concerning and supporting Petitioner's allegations in paragraph 10 of the Petition that Respondent's representation that its use of Respondent's Mark began on October 5, 2018 "constituted a fraud on the Office intended to subvert Petitioner's superior rights."

RESPONSE TO REQUEST NO. 36:

Petitioner objects to this Request on the grounds that it calls for documents protected by the attorney-client privilege and work product doctrine. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 37:

All documents and things concerning Respondent's use of any mark or name comprising the term RAT or BASTARD, whether alone or in combination with other words or features.

RESPONSE TO REQUEST NO. 37:

Petitioner objects to this Request on the grounds that it is not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 38:

All documents and things concerning or evidencing a likelihood of confusion or actual confusion caused by Petitioner's and Respondent's trademark use.

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RESPONSE TO REQUEST NO. 38:

Petitioner objects to this Request on the grounds that it calls for documents protected by the attorney-client privilege and work product doctrines. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 39:

All documents and things concerning and supporting Petitioner's allegations in paragraph 11 of the Petition that "Petitioner will be damaged should the Registration remain active on the Principal Register."

RESPONSE TO REQUEST NO. 39:

Petitioner objects to this Request on the grounds that it calls for documents protected by the attorney-client privilege and work product doctrines. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 40:

All documents and things concerning and supporting Petitioner's allegations in paragraph 11 of the Petition that "Petitioner is the true senior user."

RESPONSE TO REQUEST NO. 40:

Petitioner objects to this Request on the grounds that it calls for documents protected by the attorney-client privilege and work product doctrines. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

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REQUEST NO. 41:

Samples and specimens of each Trademarked Product and associated tag, label or package marked with the YELLOW RAT BASTARD Mark and transported or sold in interstate commerce in connection.

RESPONSE TO REQUEST NO. 41:

Petitioner objects to this Request on the grounds that it is vague and ambiguous in its use of the term “in connection.” Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 42:

All documents and things Petitioner intends to use at trial in this case.

RESPONSE TO REQUEST NO. 42:

Petitioner objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 43:

All documents and things concerning marking of Trademarked Product including, without limitation, when Petitioner and its licensees, if any, began marking products or product packaging with the YELLOW RAT BASTARD Mark, the date that each product or package was so marked and the manner in which the product or package was marked.

RESPONSE TO REQUEST NO. 43:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further

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objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 44:

All documents and things identified or referenced in Petitioner's responses to Respondent's Interrogatories to Petitioner.

RESPONSE TO REQUEST NO. 44:

Petitioner objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 45:

All documents and things reviewed or considered in preparing Petitioner's responses to Respondent's Interrogatories to Petitioner.

RESPONSE TO REQUEST NO. 45:

Petitioner objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 46:

All witness statements obtained by Petitioner concerning these proceedings.

RESPONSE TO REQUEST NO. 46:

Petitioner objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 47:

All documents and things that, in relation to these proceedings, were furnished or made available to, reviewed by, or prepared by or for any Petitioner Expert including, but not limited to, reports, correspondence, memoranda, charts, photographs, diagrams, drawings, tables, notes or

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similar things, as well as all documents and things not written by experts, but which Petitioner intends to offer into evidence through an expert.

RESPONSE TO REQUEST NO. 47:

Petitioner objects to this Request on the grounds that it calls for documents protected by the attorney work product doctrine. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 48:

All papers published by any Petitioner Expert.

RESPONSE TO REQUEST NO. 48:

Petitioner objects to this Request on the grounds that it is overly broad, unduly burdensome, and not reasonably calculated to lead to the discovery of admissible evidence. Petitioner further objects to this Request on the grounds that it is untimely insofar as this matter should be stayed in light of the federal civil action now proceeding between the parties.

REQUEST NO. 49:

All transcripts of any previous trial or deposition testimony of any Petitioner Expert.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this date, a copy of **PETITIONER Y.Y.G.M., SA'S OBJECTIONS AND RESPONSES TO RESPONDENT'S FIRST SET OF REQUESTS FOR PRODUCTION AND THINGS** has been served upon Respondent John Capovani by email at the email address of his counsel of record, including:

Lee Palmateer
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Albany, NY 12207
lee@palmateerlaw.com

Respectfully submitted,

Dated: December 6, 2021

/Robin Goodwin/
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