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

Proceeding no.	92079495
Party	Defendant Go Technologies
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Date	01/24/2023
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re Matter of U.S. Trademark Registration No.: 5,561,588

For the Mark: BRAIN CANDY

Registration Date: September 11, 2018

ADAM BUTLER,

Petitioner,

v.

GO TECHNOLOGIES,

Registrant.

Cancellation No. 92079495

**REGISTRANT’S MOTION TO COMPEL AND MOTION TO EXTEND TRIAL ORDER  
DEADLINES**

Registrant Go Technologies (“Registrant”) respectfully submits this motion requesting an order compelling Petitioner to respond to Registrant’s pending discovery requests and requesting the remaining trial order deadlines be extended by 60 days from the date of the entry of the Board’s order on this motion. As of the filing of this motion, Petitioner has wholly failed to respond to Registrant’s initial discovery, and Petitioner’s responses to Registrant’s discovery requests are over two weeks past due, and the parties are already operating on an abbreviated schedule.

**I. Background**

On December 7, 2022, Registrant served Registrant’s First Set of Interrogatories to Petitioner (**Exhibit A**) and Registrant’s First Request for Production of Documents and Things to Petitioner (**Exhibit B**). On December 9, 2022, Registrant served Registrant’s Second Set of

Interrogatories to Petitioner (**Exhibit C**). To date, Petitioner has not responded to any of Registrant's requests for production or interrogatories, thus causing Registrant to cancel its previously noticed depositions of Petitioner and individuals Petitioner may use to support his claims in the current proceeding.

At the same time, Petitioner has previously rebuked the undersigned's requests to extend trial deadlines in this proceeding. For example, Petitioner previously refused to stipulate to the extension of the trial order deadlines when the undersigned became Registrant's new attorney of record in this proceeding, thus causing Registrant to file a Contested Motion for Extension of Time (TTABVUE 8). Petitioner never responded to that prior motion and the Board granted it as being conceded (TTABVUE 10).

The undersigned has tried to work with opposing counsel to resolve Petitioner's complete failure to answer Registrant's discovery but has been unable to do so. Given Petitioner's previous hardline stance against extending trial order deadlines, Registrant must efficiently conduct discovery and cannot be lackadaisical in its approach. Stated differently, Petitioner has unfortunately given Registrant no choice but to involve the Board with the present Motion.

## **II. Arguments and Authorities**

The following arguments and authorities pertain to Registrant's Motion to Compel and associated Motion to Extend Trial Order Deadlines.

### **a. Motion to Compel**

Registrant's Motion to Compel seeks an order (1) directing Petitioner to respond Registrant's interrogatories and requests for production and (2) finding that Petitioner has waived its right to object to the merits of Registrant's discovery requests.

i. Order Directing Petitioner to Respond

Federal Rule of Civil Procedure 33(b)(2), 37 C.F.R. § 2.120(a)(3), and TBMP § 405.04(a) provide that responses to interrogatories must be served within 30 days after the date of service of the interrogatories. Registrant's first and second sets of interrogatories were served on December 7, 2022, and December 9, 2022, respectively. Petitioner's responses to Registrant's interrogatories were due January 6, 2023, and January 9, 2023, respectively. As of the filing of this Motion on January 24, 2023, Petitioner has not responded to either set of Registrant's interrogatories. Petitioner's responses to Registrant's interrogatories are over two weeks past due.

Federal Rule of Civil Procedure 34(b)(2)(A), 37 C.F.R. § 2.120(a)(3), and TBMP § 406.04(a) require that responses to requests for production be served within 30 days after the date of service of the requests. Registrant served its requests for production on Petitioner on December 7, 2022. Petitioner's responses were due January 6, 2023. As of the filing of this Motion on January 24, 2023, Petitioner has not responded to Registrant's requests for production. Petitioner's responses to Registrant's requests for production are over two weeks past due.

"[A] motion to compel is available in the event of a failure to provide required disclosures or discovery requested by means of discovery depositions, interrogatories, and requests for production of documents and things." TBMP § 523.01. Petitioner has failed to respond to Registrant's interrogatories and requests for production. An order compelling Petitioner to respond is, therefore, warranted and necessary. *See Jain v. Ramparts, Inc.*, 1998 TTAB LEXIS 433, \*7-8 (TTAB November 30, 1998) ("[O]pposer served applicant with its discovery requests on May 31, 1996. On October 28, 1996, when applicant still had not

responded to the discovery requests, opposer moved to compel applicant's responses . . . [and] the Board granted opposer's motion to compel.").

ii. Finding Petitioner has Waived its Right to Object

TBMP § 403.03 provides "A party which fails to respond to interrogatories or document requests during the time allowed therefor, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery request on its merits."

Here, Petitioner's failure to respond is not due to excusable neglect. When the undersigned informed opposing counsel that Registrant intended to file the present Motion, opposing counsel responded: "My client has been indisposed in the last week, and thus I inadvertently did not respond to your requests." (**Exhibit D**) at 3 (highlighted for Board's convenience). Merely forgetting discovery responses are due does not constitute excusable neglect. Moreover, Petitioner still has not responded to discovery despite being notified its responses are past due and Registrant planned to file a motion to compel.

Given that Petitioner's failure to respond was not due to excusable neglect, Registrant respectfully requests the Board enter an order finding Petitioner has forfeited its right to object to Registrant's discovery requests on their merits.

**b. Motion to Extend Trial Order Deadlines**

Registrant respectfully requests the Board extend the trial order deadlines by 60 days from the date of the entry of its order on this Motion. Petitioner's responses to Registrant's discovery requests will contain information and documents over which Registrant would like to depose Petitioner and/or persons Petitioner's Initial Disclosures disclosed as likely to have discoverable information. Additionally, Petitioner's responses most likely will contain

information needed for an expert to consider should Registrant elect to designate an expert in the present proceeding.

Accordingly, Registrant respectfully requests the Board extend the trial order deadlines by 60 days from the date of the entry of its order on this Motion, so that Registrant has time to review Petitioner's responses, and engage in further discovery and/or expert matters based upon Petitioner's responses.

### **CERTIFICATE OF CONFERENCE**

The undersigned hereby certifies that Registrant has made a good faith effort to resolve with Petitioner's counsel the issues presented in the motion via email and telephone correspondence. To date, Petitioner has not provided any discovery responses.

The undersigned emailed counsel for Petitioner on January 12, 2023, advising Petitioner that Registrant would file a motion to compel if Petitioner did not provide discovery responses. (**Exhibit D**) at 4. Counsel for Petitioner responded via email on January 12, 2023, indicating Petitioner's failure to timely respond to discovery was inadvertent and requesting Registrant "please hold off with filing the Motion Compel unless I have not responded to your satisfaction by the of the day." *Id.* at 3. Counsel for Petitioner emailed the undersigned again on January 12, 2023, indicating "I should have Petitioner's responses to Registrant's written discovery requests completed by early next week." *Id.* at 2 (highlighted for Board's convenience; settlement discussions redacted). The undersigned called counsel for Petitioner the following week on Wednesday, January 18, 2023, to ask about the status of Petitioner's overdue discovery responses. Counsel for Petitioner did not answer, so the undersigned left a voicemail and sent a follow-up email. *Id.* at 1. As of the filing of this Motion, counsel for Petitioner has not responded to the undersigned's efforts to determine the status of Petitioner's responses and Petitioner has

not provided any discovery responses.

Petitioner's discovery responses are over two weeks past due. Despite good faith efforts by Registrant to remind Petitioner its discovery responses are past due, Petitioner has completely failed to respond to discovery.

/s/Edward B. Marvin  
Edward B. Marvin

### **PRAYER**

WHEREFORE, Registrant respectfully prays for an Order (1) compelling Petitioner to respond to Registrant's First Set of Interrogatories to Petitioner; (2) compelling Petitioner to respond to Registrant's Second Set of Interrogatories to Petitioner; (3) compelling Petitioner to respond to Registrant's First Request for Production of Documents and Things to Petitioner; (4) compelling Petitioner to produce all responsive documents; (5) finding that any objection Petitioner may have raised to Registrant's discovery requests is waived; (6) extending the trial order deadlines by 60 days from the date of the entry of the order on this Motion, and (7) providing any further relief the Board deems appropriate or necessary.

Dated: January 24, 2023

Respectfully submitted:

/Edward B. Marvin/  
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**ATTORNEYS FOR REGISTRANT**

## CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Registrant's Motion to Compel and Motion to Extend Trial Order Deadlines was served via email on January 24, 2023, to following counsel of record for Petitioner:

Gwen R. Acker Wood  
ACKER WOOD INTELLECTUAL PROPERTY LAW LLC  
4981 MCKNIGHT ROAD, PO BOX 11096  
PITTSBURGH, PA 15237  
UNITED STATES  
grwood@ackerwoodiplaw.com  
Phone: 412-486-1038

Executed on January 24, 2023

/ Edward B. Marvin/

Edward B. Marvin



# **Exhibit A**

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

In re Matter of U.S. Trademark Registration No.: 5,561,588

For the Mark: BRAIN CANDY

Registration Date: September 11, 2018

ADAM BUTLER,

Petitioner,

v.

GO TECHNOLOGIES,

Registrant.

Cancellation No. 92079495

**REGISTRANT'S FIRST SET OF INTERROGATORIES  
TO PETITIONER**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice of the U.S. Patent and Trademark Office, Registrant Go Technologies serves its First Set of Interrogatories to Petitioner Adam Butler. These interrogatories are to be answered separately and fully in writing and under oath not later than thirty (30) days after service hereof. These interrogatories are continuing in character so as to require Petitioner to seasonably amend and supplement its answers if Petitioner learns that in some material respects its answers are incomplete or inaccurate as required by Rule 26(e) of the Federal Rules of Civil Procedure.

## **GENERAL INSTRUCTIONS**

1. The answers to these interrogatories should be made within thirty (30) days from the date of service stated in the Certificate of Service above and the answers should be served on the undersigned attorney in accordance with the rules governing Trademark Trial and Appeal Board proceedings.

2. Answer each interrogatory separately and fully in writing, under oath, unless it is objected to, in which event answer the interrogatory to the extent it is not objected to and identify all information or materials for which privilege is claimed and state the reasons for the objection.

3. To the extent You object to any interrogatory, You must state the ground(s) of any such objection(s) with specificity. As part of this specificity, You must identify what part or parts of the interrogatory You object to.

4. To the extent You object to any interrogatory on the basis of privilege, You must state the particular rule or privilege upon which the claim is based and supply enough information about the basis for the privilege necessary to establish the factual elements required by the privilege rule invoked. You must also indicate whether any responsive information is being withheld on the basis of privilege and, if so, generally describe the responsive information without conveying the substance of it. The information concerning the basis for the privilege must be sufficiently detailed to permit decision on the claim and must be verified by affidavit by a person or persons having knowledge of the facts asserted.

5. If You claim any information requested by any interrogatory is confidential, then you should produce a redacted response that redacts such confidential information and produce a non-redacted response under the appropriate designation and in accordance with the Standard Protective Order imposed on this Cancellation Proceeding.

6. If there are any terms in these interrogatories that have not been specifically defined, You should look to the following sources in the following order of precedence: (a) The Lanham Act, (b) the Rules governing Trademark Trial and Appeal Board Proceedings set forth in Title 37 of the Code of Federal Regulations, (c) the Federal Rules of Civil Procedure, and (d) the Trademark Trial and Appeal Board Manual of Procedure.

7. If there are any terms in these interrogatories that have not been specifically defined and that You contend are either vague or ambiguous, give such terms their ordinary meaning as understood by You and state such ordinary meaning you applied in the response to such interrogatory.

8. Unless otherwise specifically stated in an interrogatory, Your response must pertain to the time period from the beginning of Petitioner's alleged date of first use anywhere of Petitioner's Mark to the present date.

9. In answering the following interrogatories, furnish all information known or reasonably available to You or subject to Your custody, possession, or control.

10. You are under a continuing duty to reasonably supplement Your response with respect to any interrogatory, particularly including, but not limited to, the identity and location of witnesses having knowledge of discoverable matters, the identity of each person expected to be called as an expert at trial, and the subject matter upon which the expert is expected to testify. Furthermore, you are under a similar duty to correct any incorrect response which you later learn is incorrect.

11. An evasive or incomplete answer is deemed to be a failure to answer under Federal Rules of Civil Procedure, Rule 37(a)(4).

## **DEFINITIONS**

1. “Cancellation Proceeding” means the above captioned cancellation proceeding number 92079495 pending in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board.

2. The term “Petitioner,” “You,” and “Your” as used herein refers to the plaintiff in this Cancellation Proceeding, namely Adam Butler, and includes all business entities under his control, along with such business entity’s or entities’ present and former subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, officers, agents, assigns, and employees, as well as all attorneys, accountants, consultants, and/or all other persons acting or purporting to act on any of the foregoing’s behalf.

3. As used herein, “Petitioner’s Mark” shall refer to the trademark BRAIN CANDY purportedly owned by Petitioner which forms the basis for this Cancellation Proceeding.

4. “Petitioner’s Asserted Goods and Services” shall refer to the goods and services provided by Petitioner under Petitioner’s Mark which Petitioner contends are substantially similar to “the goods and services identified Registrant’s Mark registration,” as alleged in paragraph 10 of Petitioner’s Petition to Cancel in this Cancellation Proceeding.

5. The “ ‘436 Application” shall refer to U.S. Trademark Application Serial No. 97/489,436.

6. The “ ‘007 Application” shall refer to U.S. Trademark Application Serial No. 88/365,007.

7. As used herein, “Registrant’s Mark” shall refer to the mark BRAIN CANDY that is registered as U.S. Trademark Reg. No. 5,561,588 and is the subject of this Cancellation Proceeding.

8. The term “Registrant” as used herein refers to, Go Technologies, the defendant in this Cancellation Proceeding.

9. The term “Registrant’s Services” as used herein refer to the services recited in U.S. Trademark Reg. No. 5,561,588.

10. The terms “communication” or “correspondence” include, but are not limited to, each and every disclosure, transfer, or exchange of oral or written information which may be transmitted face-to-face, by telephone or facsimile, electronically (e.g., email and text messages, social media messages and posts), by mail, by personal delivery, or otherwise, including, but not limited to, any notes, recordings or records thereof, and any related documents as defined below.

11. The term “document” as used in its broadest sense includes, without limitation, all writings of every kind, including, without limitation, letters, telegrams, memoranda, reports, studies, calendar and daily entries, maps, pamphlets, notes, charts, tabulations, analyses, statistical or information accumulations, audits, and associated work papers, any kind of records, meetings or conversations, film impressions, magnetic tape, sound or mechanical recordings, all stored compilations of information of any kind which may be retrievable (such as, without limitation, the contents of computer memory or information storage facilities, e-mail messages, text messages, social media messages and posts, and computer programs, and any instructions or interpretive materials associated with them), and copies of documents that are not identical to duplicates of the originals (e.g., because handwritten or “blind” notes appear thereon or are attached thereto), whether or not the originals are in Registrant’s possession, custody, or control. The term “document” specifically includes, without limitation, all drafts and preliminary versions of documents, and any non-identical copy is a separate document within the meaning of this term.

12. The term “person” shall mean and include any natural person, business, legal, or governmental entity, association, or organization, including but not limited to, a corporation, partnership, limited liability company, sole proprietorship, limited partnership or the like.

13. The terms “governmental entity” means any Federal, State, County, Parish, City, or Municipal government and any agency, department, or office thereof.

14. “Possession, custody, or control” means in Your physical possession, as “Your” is defined above, and/or if You have the right, power, or ability, whether in law or in fact, to secure the document or a copy thereof from another person having physical possession thereof.

15. The term “concerning” as used herein means in whole or in part, and directly or indirectly: referring to, relating to, connected with, commenting on, responding to, showing, describing, evidencing, analyzing, reflecting, regarding, concerning, constituting, received by, prepared by, or written by.

16. The term “between” is used herein in its broadest sense, and means among, between, involving, or to which one or more persons specified in the request is a party or recipient.

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

18. The words “and” and “or” shall be interpreted both conjunctively and disjunctively as necessary to bring within the scope of the request the broadest number of documents and greatest amount of information.

19. The masculine, feminine, or neuter form of any noun or verb includes its other forms, as necessary to bring within the scope of the request the broadest number of documents and greatest amount of information.

20. The term “any” should be understood in its most or its least inclusive sense as necessary to bring within the scope of the request the broadest number of documents and greatest

amount of information.

21. The term “each” means each and every.

22. The term “tangible thing” means a physical object that is not a document or electronically stored information.

23. “Identify” or any form of that word as used herein in connection with a document means to state: (a) the name, date and subject of the document; (b) the type of document (e.g., letter, memorandum, note, report); (c) the identity of the author and all recipients of the document; (d) the identity of the custodian or possessor of the document or a copy thereof; and (e) the location of the document or copy thereof.

24. “Identify” or any form of that word as used herein with respect to a person, if the person is an individual, means to state: (a) the full name; (b) the present employer, if known; and (c) the present address and telephone number or, if unknown, the last known address and telephone number and last known employer of such person. 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 identification of that person.

25. “Identify” or any form of that word as used herein with respect to a person, if the person is a business entity, means to state: (a) the legal name; (b) the state of legal formation and current existence; (c) the name of all officers, directors, partners and/or principals; and (d) the address of the entity’s principal place of business. 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 identification of that person.



## **INTERROGATORIES**

### **Interrogatory No. 1:**

Please provide the name and the last known address and telephone number of each individual likely to have discoverable information that Petitioner may use to support his claims or defenses, and identify the subjects of the discoverable information for each individual.

**Answer:**

### **Interrogatory No. 2:**

Identify by category and location, all documents, electronically stored information, and tangible things that are in possession, custody, or control of Petitioner that Petitioner may use to support its claims or defenses in this Cancellation Proceeding.

**Answer:**

### **Interrogatory No. 3:**

Identify all expert witnesses Petitioner intends to use in this Cancellation Proceeding, including, but not limited to, the following:

- (a) Name, address and telephone number of the expert;
- (b) Subject matter on which the expert is expected to testify;
- (c) Any communications to and from the expert witness;
- (d) Opinions to be expressed by the expert and the basis and reasons therefore, including any reports received from the expert and any drafts thereof;
- (e) Data or other information considered by the expert in forming such opinions;
- (f) Any exhibits to be used as a summary of or in support of such opinions;
- (g) Qualifications of the expert;
- (h) Listing of publications authored by the expert within the preceding ten years;
- (i) Compensation to be paid to the expert for the study and testimony; and
- (j) Listing of other cases in which such expert has testified as an expert at proceeding, trial, or by deposition within the preceding four years.

**Answer:**

### **Interrogatory No. 4:**

Identify and describe all goods and/or services comprising Petitioner's Asserted Goods and

Services. (Note: The phrase “Petitioner’s Asserted Goods and Services” is defined in the Definitions section above).

**Answer:**

**Interrogatory No. 5:**

State the date of first use of Petitioner’s Mark in connection with each good and service identified in response to Interrogatory Number 4.

**Answer:**

**Interrogatory No. 6:**

Identify all documents concerning each usage, including but not limited to, each first usage of Petitioner’s Asserted Goods and Services.

**Answer:**

**Interrogatory No. 7:**

Identify all goods and/or services not comprising Petitioner’s Asserted Goods and Services that Petitioner intends to promote, advertise, or render under the mark BRAIN CANDY.

**Answer:**

**Interrogatory No. 8:**

For each of Petitioner’s Asserted Goods and Services, identify and describe the channels of trade that Petitioner has used or intends to use Petitioner’s Mark.

**Answer:**

**Interrogatory No. 9:**

Identify the actual or intended classes of customers of each of Petitioner’s Asserted Goods and Services, including the demographics of such classes of customers.

**Answer:**

**Interrogatory No. 10:**

Identify the actual or intended classes of consumers for each of Petitioner's Asserted Goods and Services, including the demographics of such classes of consumers.

**Answer:**

**Interrogatory No. 11:**

Identify each present and former officer and director for the applicant of the '007 Application, giving each officer's and director's name, last known address and telephone number, title, and duties with respect to such applicant.

**Answer:**

**Interrogatory No. 12:**

Identify each present and former employee for the applicant of the '007 Application, giving each employee's name, last known address and telephone number, title, dates of employment, and employment duties for such applicant.

**Answer:**

**Interrogatory No. 13:**

Identify each present and former independent contractor performing services for the applicant of the '007 Application, giving each independent contractor's name, last known address and telephone number, title, dates of service for such applicant, and services performed for such applicant.

**Answer:**

**Interrogatory No. 14:**

Identify each present and former shareholder for the applicant of the '007 Application, giving each shareholder's name, last known address and telephone number, number of shares

owned, and dates during which such shareholder owned shares of stock in such applicant.

**Answer:**

**Interrogatory No. 15:**

Identify each present and former officer and director for the corporation The Butler Did It Productions, Inc. referenced in Paragraph 1 of Petitioner's Petition to Cancel in this Cancellation Proceeding, giving each officer's and director's name, last known address and telephone number, title, and duties with respect to such corporation.

**Answer:**

**Interrogatory No. 16:**

Identify each present and former employee for the corporation The Butler Did It Productions, Inc. referenced in Paragraph 1 of Petitioner's Petition to Cancel in this Cancellation Proceeding, giving each employee's name, last known address and telephone number, title, dates of employment, and employment duties for such corporation.

**Answer:**

**Interrogatory No. 17:**

Identify each present and former independent contractor performing services for the corporation The Butler Did It Productions, Inc. referenced in Paragraph 1 of Petitioner's Petition to Cancel in this Cancellation Proceeding, giving each independent contractor's name, last known address and telephone number, title, dates of service for such corporation, and services performed for such corporation.

**Answer:**

**Interrogatory No. 18:**

Identify each present and former shareholder for the corporation The Butler Did It

Productions, Inc. referenced in Paragraph 1 of Petitioner's Petition to Cancel in this Cancellation Proceeding, giving each shareholder's name, last known address and telephone number, number of shares owned, and dates during which such shareholder owned shares of stock in such corporation.

**Answer:**

**Interrogatory No. 19:**

Identify each present and former employee of Petitioner, giving each employee's name, last known address and telephone number, title, dates of employment, and employment duties for Petitioner.

**Answer:**

**Interrogatory No. 20:**

Identify each present and former independent contractor performing services for Petitioner, giving each independent contractor's name, last known address and telephone number, title, dates of service for Petitioner, and services performed for Petitioner.

**Answer:**

**Interrogatory No. 21:**

Identify all documents in the possession, custody, or control of Petitioner, including, but not limited to, market surveys, interoffice memoranda, or communications concerning the value of Petitioner's Mark or any goodwill thereunder.

**Answer:**

**Interrogatory No. 22:**

List all advertisements in the United States by Petitioner for Petitioner's Asserted Goods and Services , including the following:

- a. All newspapers containing advertisements;
- b. All trade journals containing advertisements;
- c. All radio and/or television stations containing advertisements;
- d. All pamphlets or brochures;
- e. All other media in which Petitioner has advertised for Petitioner's Asserted Goods and Services;
- f. The date(s) during which such advertisements were placed in each such media.

**Answer:**

**Interrogatory No. 23:**

Please describe Petitioner's policy with regards to the presentation of Petitioner's Mark, including but not limited to its style and color.

**Answer:**

**Interrogatory No. 24:**

Please identify any and all actual or proposed licensees or users of Petitioner's Mark in connection with any service or product, including the name, address, date of any agreement concerning such licensee or user, and the goods or services on which Petitioner's Mark is used by such licensee or user.

**Answer:**

**Interrogatory No. 25:**

Identify the geographical location where Petitioner has provided or rendered each of Petitioner's Asserted Goods and Services, identifying the type of good or service and the city and state for each type.

**Answer:**

**Interrogatory No. 26:**

Identify by name and address all persons and organizations responsible for advertising and marketing each of Petitioner's Asserted Goods and Services sold and/or distributed and the date(s)

during which each of such persons and organizations were responsible.

**Answer:**

**Interrogatory No. 27:**

Identify the approximate price at which each of Petitioner's Asserted Goods and Services is sold or intended to be sold to customers.

**Answer:**

**Interrogatory No. 28:**

Identify the number of subscribers to the podcast Petitioner provides under Petitioner's Mark on an annual basis since inception.

**Answer:**

**Interrogatory No. 29:**

Identify the number of listeners to the podcast Petitioner provides under Petitioner's Mark on an annual basis since its inception.

**Answer:**

**Interrogatory No. 30:**

State the annual revenue in dollars for each of Petitioner's Asserted Goods and Services for each year since the date of first use of Petitioner's Mark.

**Answer:**

**Interrogatory No. 31:**

Describe the origin, motive, and/or reasons for Petitioner's selection, adoption, and use of the term BRAIN CANDY as Petitioner's Mark, identifying all evidence in support thereof.

**Answer:**

**Interrogatory No. 32:**

Identify the person(s) with the most knowledge concerning the nature of Petitioner's Asserted Goods and Services, the intended consumers of such goods and services, and any revenue received for such goods and services.

**Answer:**

**Interrogatory No. 33:**

State the earliest date that Petitioner began offering, selling, marketing, or rendering each of Petitioner's Asserted Goods and Services (1) anywhere in the United States, and/or (2) in interstate commerce in the United States.

**Answer:**

**Interrogatory No. 34:**

If the use of Petitioner's Mark in conjunction with any of Petitioner's Asserted Goods and Services has not been continuous, please indicate in full the times, dates, and circumstances of each interruption.

**Answer:**

**Interrogatory No. 35:**

State the total dollar amount spent per year by Petitioner to advertise and market each of Petitioner's Asserted Goods and Services since the first use anywhere of Petitioner's Mark.

**Answer:**

**Interrogatory No. 36:**

State the total dollar amount spent per year by anyone other than Petitioner to advertise and market each of Petitioner's Asserted Goods and Services since the first use anywhere of Petitioner's Mark.



**Answer:**

**Interrogatory No. 37:**

Identify by name, address, and telephone number, all owners or investors in Petitioner's business through which Petitioner offers or renders Petitioner's Asserted Goods and Services including:

- (a) percentage of ownership;
- (b) dollar amount of investment.

**Answer:**

**Interrogatory No. 38:**

Identify all third party marks for use on or in connection with any podcasts or quizzes and that include the word "Brain", "Candy", or both words, of which Petitioner has knowledge.

**Answer:**

**Interrogatory No. 39:**

Identify all trademarks or service marks owned by third parties upon which Petitioner intends to rely on in connection with this Cancellation Proceeding.

**Answer:**

**Interrogatory No. 40:**

Identify all persons who have attended any trade shows, conventions, or similar meetings to discuss, advertise, promote, or otherwise attempt to sell, or publicize Petitioner's Asserted Goods and Services and identify the shows, conventions, or meetings at which they have appeared by date and location.

**Answer:**

**Interrogatory No. 41:**

Identify each natural person or entity against which Petitioner has taken action to protect, enforce, or defend its rights in Petitioner's Mark, including, but not limited to protest letters and responses thereto. For each person or entity identified, describe:

- (a) the trademark such person or entity was using;
- (b) how and when action was taken by Petitioner against the entity or person in question; and
- (c) the outcome and/or current status of the action taken.

**Answer:**

**Interrogatory No. 42:**

Identify all oral settlement agreements, coexistence agreements, assignments, licenses, authorizations, consents, or permissions entered into by or on behalf of Petitioner concerning Petitioner's Mark.

**Answer:**

**Interrogatory No. 43:**

Identify the date when Petitioner first became aware of Registrant's use and/or application for registration of Registrant's Mark, and describe in detail the basis for such awareness.

**Answer:**

**Interrogatory No. 44:**

Identify all persons employed, consulted, or affiliated with Petitioner with knowledge concerning Registrant's use and/or application for registration of Registrant's Mark and the basis or reason for such knowledge.

**Answer:**

**Interrogatory No. 45:**

Identify all person's employed, consulted, or affiliated with Petitioner with knowledge concerning any communications, either in writing, in person, or by telephone, electronic mail, or

fax, by and between Petitioner and any third party on any matter concerning Registrant's Mark.

**Answer:**

**Interrogatory No. 46:**

Identify by name of author and date of completion all trademark searches, surveys, or market research tests obtained by Petitioner concerning:

- (a) Products or services that are offered or intended to be offered in connection with Petitioner's Mark;
- (b) Petitioner's Mark; or
- (c) Registrant or Registrant's Mark.

**Answer:**

**Interrogatory No. 47:**

Identify all advertising agencies, marketing consultants, or other persons retained or consulted by Petitioner in connection with promoting or advertising any of Petitioner's Asserted Goods and Services.

**Answer:**

**Interrogatory No. 48:**

Identify all persons with knowledge concerning the decision by Petitioner to select and adopt Petitioner's Mark for use in connection with Petitioner's Asserted Goods and Services, including, but not limited to employees, consultants, or other individuals consulted by Petitioner or attorney's retained by Petitioner to opine on the availability of Petitioner's Mark, and describe the role of each person in the decision.

**Answer:**

**Interrogatory No. 49:**

State whether Petitioner is aware of any third parties using or having used names, trade names, trademarks, or service marks with the word "Brain", "Candy", or both words, whether

alone or in combination with other words or symbols. If so, for each usage:

- (a) Identify the name, trade name, trademark, or service mark;
- (b) Identify the third party;
- (c) Identify the date of first use by the third party;
- (d) Identify the date Petitioner first became aware of such usage;
- (e) State whether Petitioner contends that such usage causes a likelihood of confusion with Petitioner's Mark;
- (f) Identify any action taken against the third party; and
- (g) Identify all documents relating or referring to such usage, including but not limited to letters sent to/from the third party.

**Answer:**

**Interrogatory No. 50:**

Describe all instances of actual confusion Petitioner intends to use to support its claims or defenses in this Cancellation Proceeding including the date of the instance, the identity of the person confused, and how Petitioner addressed, clarified, or dispelled the confusion.

**Answer:**

**Interrogatory No. 51:**

Identify all natural persons and entities who created any content appearing on any website page of the website having a home page located at the domain [www.thebraincandypodcast.com](http://www.thebraincandypodcast.com) and the date(s) during which such natural persons and entities created such content.

**Answer:**

**Interrogatory No. 52:**

Identify each instance prior to June 23, 2016 when Petitioner broadcast or distributed a quiz under Petitioner's Mark.

**Answer:**

**Interrogatory No. 53:**

Identify each instance prior to June 23, 2016 when any podcast provided under Petitioner's Mark included a quiz as part of the podcast.

**Answer:**

**Interrogatory No. 54:**

Identify each instance on or after June 23, 2016 when Petitioner broadcast or distributed a quiz under Petitioner's Mark.

**Answer:**

**Interrogatory No. 55:**

Identify each instance prior to June 23, 2016 when any podcast provided under Petitioner's Mark included a quiz as part of the podcast.

**Answer:**

**Interrogatory No. 56:**

Identify each instance prior to June 23, 2016 when any consumer of any podcast provided under Petitioner's Mark communicated, during such podcast, with the podcast or any host of the podcast in response to any question any podcast host asked during the podcast.

**Answer:**

**Interrogatory No. 57:**

Identify each instance prior to June 23, 2016 when any consumer of any podcast provided under Petitioner's Mark communicated with the podcast or any host of the podcast in response to any question any podcast host asked during the podcast and such consumer communication was discussed during the podcast.

**Answer:**

**Interrogatory No. 58:**

Identify each instance on or after June 23, 2016 when any consumer of any podcast provided under Petitioner's Mark communicated, during such podcast, with the podcast or any host of the podcast in response to any question any podcast host asked during the podcast.

**Answer:**

**Interrogatory No. 59:**

Identify each instance on or after June 23, 2016 when any consumer of any podcast provided under Petitioner's Mark communicated with the podcast or any host of the podcast in response to any question any podcast host asked during the podcast and such consumer communication was discussed during the podcast.

**Answer:**

**Interrogatory No. 60:**

Describe all awards any podcast provided under Petitioner's Mark has won by including the name of the award, the name and contact information of the entity that awarded the award, the date of the award, and what characteristics or quality about the podcast the award recognizes.

**Answer:**

**Interrogatory No. 61:**

Identify all websites where Petitioner advertises or promotes Petitioner's Asserted Goods and Services and the date(s) during which advertisements or promotions of Petitioner's Asserted Goods and Services were displayed on each identified website.

**Answer:**

**Interrogatory No. 62:**

Identify, to the extent possible, any and all documents responsive to the forgoing

interrogatories which are lost and identify the date(s) the loss was first discovered, the person(s) who discovered the loss, and the person(s) most knowledgeable about the contents of such lost documents.

**Answer:**

**Interrogatory No. 63:**

Identify all person(s) who participated in any way in the preparation of the answers or responses to these interrogatories and state specifically, with reference to interrogatory numbers, the areas of participation of each such person(s).

**Answer:**

Dated: December 7, 2022

Respectfully submitted:

/Edward B. Marvin/  
Edward B. Marvin  
Reg. No. 60,581  
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GUNN, LEE & CAVE, P.C.  
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**ATTORNEYS FOR REGISTRANT**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Registrant's First Set of Interrogatories to Petitioner was served via email on December 7, 2022 to following counsel of record for Petitioner via email:

Gwen R. Acker Wood  
ACKER WOOD INTELLECTUAL PROPERTY LAW LLC  
4981 MCKNIGHT ROAD, PO BOX 11096  
PITTSBURGH, PA 15237  
UNITED STATES  
grwood@ackerwoodiplaw.com  
Phone: 412-486-1038

Executed on December 7, 2022

/ Edward B. Marvin/

Edward B. Marvin



# Exhibit B

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

In re Matter of U.S. Trademark Registration No.: 5,561,588

For the Mark: BRAIN CANDY

Registration Date: September 11, 2018

ADAM BUTLER,

Petitioner,

v.

GO TECHNOLOGIES,

Registrant.

Cancellation No. 92079495

**REGISTRANT’S FIRST REQUEST FOR PRODUCTION  
OF DOCUMENTS AND THINGS TO PETITIONER**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice of the U.S. Patent and Trademark Office, Registrant, Go Technologies (“Go Technologies” or “Registrant”), serves its First Request for Production of Documents and Things to Petitioner, Adam Butler (“Butler” or “Petitioner”).

Registrant requests that within thirty (30) days of the date of service of this request, Petitioner produce all records, documents, or tangible things requested. The items requested are relevant to the subject matter of this cancellation proceeding and/or reasonably calculated to lead to the discovery of admissible evidence.

Petitioner is further advised that production, inspection, and copying of the requested documents and things shall be at the offices of Gunn, Lee & Cave, P.C., 8023 Vantage Drive, Suite 1500, San Antonio, Texas 78230. Responsive documents shall be produced as they are kept in the ordinary course of business, or organized and labeled to correspond to the categories of this

request. These requests for production are continuing in character so as to require Petitioner to seasonably amend and supplement its production if Petitioner learns that in some material respect its production is incomplete or inaccurate as required by Rule 26(e) of the Federal Rules of Civil Procedure.

### **GENERAL INSTRUCTIONS**

1. If You object to any request in part, You shall respond fully to the extent not objected to and shall set forth specifically the grounds upon which the objection is based.

2. If You object to any request, You must state whether any responsive materials are being withheld on the basis of that objection.

3. You must label all records, documents, and tangible things You produce and all items you withhold under any objection or on the basis of any asserted privilege or immunity with a unique number to identify same. When identifying any item withheld under any objection or on the basis of any asserted privilege or immunity, you shall state the unique number or number ranges of same.

4. If You contend that any document requested to be produced is protected from discovery by some type of privilege or immunity, Petitioner must comply with the following instructions:

- a. You must state the particular rule or privilege upon which the claim is based.
- b. There must be appended to the claim, any information, in addition to identifying information for the document itself, necessary to establish the factual elements required by the privilege rule invoked. The information must be sufficiently detailed to permit decision on the claim and must be verified by affidavit by a person or persons having knowledge of the facts asserted.

- c. When a document contains both privileged and unprivileged material, the unprivileged material must be disclosed to the fullest extent possible without thereby disclosing the privileged material. If a privilege is asserted with regard to part of the material contained in the document, the party claiming the privilege must clearly indicate the portions to which the privilege is claimed.

5. In the event that You wish to assert the attorney-client privilege and/or the work-product exemption or any other privilege or exemption as to any document requested by any of the following requests, then, as to each assertion, identify the document or copy thereof, including the date, authors, all recipients (including but not limited to those receiving blind or forwarded copies), and a description of the subject matter, the nature of the privilege or exemption claimed, and the facts or grounds supporting the claim of privilege or exemption in sufficient detail to permit the Board to reach a determination as to the propriety of such assertion.

6. If You claim any information contained in any document is confidential, then you should produce a redacted copy of the document that redacts such confidential information and produce a non-redacted copy under the appropriate designation and in accordance with the Standard Protective Order imposed on this Cancellation Proceeding.

7. If any document requested herein was, but no longer is, within Petitioner's possession, custody, or control, state in detail: (a) a summary of the contents of the document; (b) what disposition was made of the document; (c) the date of such disposition; (d) the reason for such disposition; (e) whether the original or a copy thereof is within the possession, custody, or control of any other natural person or entity; and (f) if the answer to (e) is affirmative, the identity of that natural person or entity.

8. If there are any terms in these requests that have not been specifically defined, You should look to the following sources in the following order of precedence: (a) The Lanham Act,

(b) the Rules governing Trademark Trial and Appeal Board Proceedings set forth in Title 37 of the Code of Federal Regulations, (c) the Federal Rules of Civil Procedure, and (d) the Trademark Trial and Appeal Board Manual of Procedure.

9. If there are any terms in these requests that have not been specifically defined and that You contend are either vague or ambiguous, give such terms their ordinary meaning as understood by You and state such ordinary meaning you applied in the response to such requests.

10. Unless otherwise specifically stated in a request, You must produce all documents and tangible things responsive to the requests herein for the time period from the beginning of Petitioner's alleged date of first use anywhere of Petitioner's Mark to the present date.

11. If documents or tangible things responsive to any request herein are stored in electronic form or computer memory, You must produce all documents and tangible things responsive to the request from each computer owned, operated, or controlled by Petitioner for the time period stated in above paragraph 10.

12. Produce all electronically stored information in the form or forms in which it is ordinarily maintained. If the electronically stored information is ordinarily maintained in more than one form, each form shall be separately responsive to the request. If electronically stored information is ordinarily maintained in its native format, any and all metadata associated with the native format must be produced including, but not limited to, the filename, the custodian of the file, the author, the date of creation, the date of last modification, the identity of who or what computer last modified, the last saved date, all revision history, all email fields, the date sent, the time sent, the time received, all formulas entered into any spreadsheet, the file size, and the file extension.

13. You shall produce each document responsive to the request in its entirety, including all attachments, tabs, appendices, exhibits, or documents attached thereto, and each document should be produced in a manner to maintain and specify accurate unitization of the document as it was maintained in the ordinary course of business.

14. An evasive or incomplete answer is deemed to be a failure to answer under Federal Rules of Civil Procedure, Rule 37(a)(4).

### **DEFINITIONS**

1. “Cancellation Proceeding” means the above captioned cancellation proceeding number 92079495 pending in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board.

2. The term “Petitioner,” “You,” and “Your” as used herein refers to the plaintiff in this Cancellation Proceeding, namely Adam Butler, and includes all business entities under his control, along with such business entity’s or entities’ present and former subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, officers, agents, assigns, and employees, as well as all attorneys, accountants, consultants, and/or all other persons acting or purporting to act on any of the foregoing’s behalf.

3. As used herein, “Petitioner’s Mark” shall refer to the trademark BRAIN CANDY purportedly owned by Petitioner which forms the basis for this Cancellation Proceeding.

4. The “ ‘436 Application” shall refer to U.S. Trademark Application Serial No. 97/489,436.

5. The “ ‘007 Application” shall refer to U.S. Trademark Application Serial No. 88/365,007.

6. As used herein, “Registrant’s Mark” shall refer to the mark BRAIN CANDY that is registered as U.S. Trademark Reg. No. 5,561,588 and is the subject of this Cancellation Proceeding.

7. The term “Registrant” as used herein refers to, Go Technologies, the defendant in this Cancellation Proceeding.

8. The term “Registrant’s Services” as used herein refer to the services recited in U.S. Trademark Reg. No. 5,561,588.

9. The terms “communication” or “correspondence” include, but are not limited to, each and every disclosure, transfer, or exchange of oral or written information which may be transmitted face-to-face, by telephone or facsimile, electronically (e.g., email and text messages, social media messages and posts), by mail, by personal delivery, or otherwise, including, but not limited to, any notes, recordings or records thereof, and any related documents as defined below.

10. The term “document” as used in its broadest sense includes, without limitation, all writings of every kind, including, without limitation, letters, telegrams, memoranda, reports, studies, calendar and daily entries, maps, pamphlets, notes, charts, tabulations, analyses, statistical or information accumulations, audits, and associated work papers, any kind of records, meetings or conversations, film impressions, magnetic tape, sound or mechanical recordings, all stored compilations of information of any kind which may be retrievable (such as, without limitation, the contents of computer memory or information storage facilities, e-mail messages, text messages, social media messages and posts, and computer programs, and any instructions or interpretive materials associated with them), and copies of documents that are not identical to duplicates of the originals (e.g., because handwritten or “blind” notes appear thereon or are attached thereto), whether or not the originals are in Registrant’s possession, custody, or control. The term

“document” specifically includes, without limitation, all drafts and preliminary versions of documents, and any non-identical copy is a separate document within the meaning of this term.

11. The term “person” shall mean and include any natural person, business, legal, or governmental entity, association, or organization, including but not limited to, a corporation, partnership, limited liability company, sole proprietorship, limited partnership or the like.

12. The terms “governmental entity” means any Federal, State, County, Parish, City, or Municipal government and any agency, department, or office thereof.

13. “Possession, custody, or control” means in Your physical possession, as “Your” is defined above, and/or if You have the right, power, or ability, whether in law or in fact, to secure the document or a copy thereof from another person having physical possession thereof.

14. The term “concerning” as used herein means in whole or in part, and directly or indirectly: referring to, relating to, connected with, commenting on, responding to, showing, describing, evidencing, analyzing, reflecting, regarding, concerning, constituting, received by, prepared by, or written by.

15. The term “between” is used herein in its broadest sense, and means among, between, involving, or to which one or more persons specified in the request is a party or recipient.

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

17. The words “and” and “or” shall be interpreted both conjunctively and disjunctively as necessary to bring within the scope of the request the broadest number of documents and greatest amount of information.

18. The masculine, feminine, or neuter form of any noun or verb includes its other forms, as necessary to bring within the scope of the request the broadest number of documents and greatest amount of information.



19. The term “any” should be understood in its most or its least inclusive sense as necessary to bring within the scope of the request the broadest number of documents and greatest amount of information.

20. The term “each” means each and every.

21. The term “tangible thing” means a physical object that is not a document or electronically stored information.

## **REQUESTS FOR PRODUCTION**

Please produce all records, documents, and tangible things (whether in physical form or stored in computer memory or on memory storage devices) showing, tending to show, or concerning the following:

1. Petitioner's selection and adoption of Petitioner's Mark, including but not limited to the origin of Petitioner's Mark and the motive or any reason(s) for selecting and adopting same.
2. Petitioner's decision to change the prominently displayed THE BRAIN CANDY PODCAST or BRAIN CANDY PODCAST to BRAIN CANDY on the home page of the website found at the domain [www.thebraincandypodcast.com](http://www.thebraincandypodcast.com)
3. All documents reviewed or relied on by Petitioner in drafting its Petition to Cancel in this Cancellation Proceeding.
4. Petitioner's first use of Petitioner's Mark.
5. A representative sample of Petitioner's first use of Petitioner's Mark in connection with each good and service provided by Petitioner under Petitioner's Mark prior to June 23, 2016.
6. Documents sufficient to identify the date of each document produced in response to request number 5.
7. Petitioner's date of first use of the BRAIN CANDY stylized mark shown in the '436 Application for each service listed in such application.
8. A representative sample of Petitioner's first use of the BRAIN CANDY stylized mark shown in the '436 Application in connection with each service listed in such application prior to June 23, 2016.
9. Documents sufficient to identify the date of each document produced in response to request number 8.
10. Methods or manners by which Petitioner's goods and services under Petitioner's Mark were distributed to consumers prior to June 23, 2016.
11. Methods or manners by which subscribers to, or listeners of, Petitioner's podcast services under Petitioner's Mark were informed of new episodes of the podcast prior to June 23, 2016.

12. Methods or manners by which subscribers to, or listeners of, Petitioner's podcast services under Petitioner's Mark were informed of new episodes of the podcast prior on or after June 23, 2016 to the present.
13. Documents sufficient to show the number of subscribers to, or listeners of, Petitioner's podcasts under Petitioner's Mark for each year from the date of first use of such mark to the present.
14. Representative samples of each advertisement or promotional material (e.g. print, radio, television, brochures, flyers, press releases, website pages, website banners, etc.) for Petitioner's services under Petitioner's Mark prior to June 23, 2016.
15. Representative samples of each advertisement or promotional material (e.g. print, radio, television, brochures, flyers, press releases, website pages, website banners, etc.) for Petitioner's services under Petitioner's Mark from June 23, 2016 to the present time.
16. Documents sufficient to identify the class or classes of consumers to whom Petitioner has specifically advertised, promoted, or provided services in connection with Petitioner's Mark.
17. The dollar amount spent by Petitioner on a yearly basis in advertising and/or marketing under Petitioner's Mark in the U.S. since the inception of such mark to the present.
18. Contracts, agreements, or other understandings, written or oral, concerning each natural person or business entity which creates advertisements or promotional materials for goods or services bearing Petitioner's Mark.
19. Petitioner's past, present, and future marketing plans or strategies for goods and/or services offered under Petitioner's Mark, including, but not limited to dollar amount of expenditures, target markets, channels of trade, and demographic studies.
20. Contracts, agreements, or other understandings, written or oral, between Petitioner and any third party concerning goods or services offered under Petitioner's Mark or variations thereof, including but not limited to, all license, franchise, or distribution agreements.
21. Documents sufficient to identify all channels of trade through which Petitioner has advertised, promoted, or provided services in connection with Petitioner's Mark.
22. Documents sufficient to show all non-purchased media coverage for Petitioner's Mark or any goods or service offered by Petitioner in connection with Petitioner's Mark, whether or not authored by any official member of the press.
23. Excluding filings and correspondence between counsel for this Cancellation Proceeding, all documents concerning Registrant.

24. Searches, investigations, surveys, market research, or opinions concerning Petitioner's Mark, including, but not limited to, any documents comparing Petitioner Mark to Registrant's Mark or concerning similarity, actual confusion, or likelihood of confusion between Petitioner's Mark and Registrant's Mark.
25. Any actual confusion with respect to Registrant's Mark, including but not limited to communications concerning same.
26. Any actual confusion between Petitioner's goods or services offered under Petitioner's Mark and online quizzes or trivia services provided by another party, including, but not limited to, Registrant.
27. Any actual confusion experienced by one or more consumers or potential consumers of Petitioner's goods or services offered under Petitioner's Mark with Registrant's Services, including but not limited to communications concerning same.
28. Inquiries as to whether (a) Registrant's Services are performed by, sponsored by, endorsed by, or in any manner associated or affiliated with Petitioner; or (b) there is any relationship between, on the one hand, Petitioner or Petitioner's services under Petitioner's Mark and, on the other hand, Registrant or Registrant's Services.
29. Assignments, licenses, or any other transfer of ownership rights concerning Petitioner's Mark.
30. Settlement agreements, coexistence agreements, consents, or any similar agreement concerning Petitioner's Mark or any mark which contains either the words "Brain", "Candy", or both words.
31. Documents sufficient to identify any lawsuit, administrative proceeding, or Trademark Trial and Appeal Board proceeding involving Petitioner's Mark, excluding this Cancellation Proceeding.
32. Complaints, cease and desist letters, or similar communications sent to any third party regarding the third party's use or registration of a mark that contains the words "Brain", "Candy", or both words.
33. Agreements or understandings concerning any third party's use or registration of any mark that contains the words "Brain", "Candy", or both words.
34. Communications with the applicant, or with any representative of the applicant, for U.S. Trademark App. Serial No. 90/520,741 or U.S. Trademark Application Serial No. 90/520,795.

35. Documents sufficient to show the annual volume of sales of each good and service provided, directly or indirectly, by Petitioner in connection with Petitioner's Mark since the date of first use of such mark to the present.
36. Documents sufficient to show the price of each good and service provided, directly or indirectly, by Petitioner in connection with Petitioner's Mark for each year since the date of first use of such mark to the present.
37. Consumer or brand recognition, if any, of Petitioner's Mark.
38. Documents sufficient to show all website pages for the website having a home page appearing at the domain [www.thebraincandypodcast.com](http://www.thebraincandypodcast.com) as such pages existed prior to June 23, 2016.
39. All documents falling under any category of documents listed by Petitioner in Petitioner's Initial Disclosures in this Cancellation Proceeding.
40. All documents supporting any allegation made by Petitioner in the Petition to Cancel in this Cancellation Proceeding.
41. All documents Petitioner intends to rely upon at trial or otherwise in this Cancellation Proceeding, whether or not You intend to introduce or the enter the document into evidence in this Cancellation Proceeding.
42. Internal communications or considerations made by Petitioner concerning Registrant, Registrant's Mark, and/or the registration of Registrant's Mark excluding communications between Petitioner and his attorney of record in this Cancellation Proceeding.
43. Communications with any person identified in Petitioner's Initial Disclosures in this Cancellation Proceeding, concerning Registrant, Registrant's use of Registrant's Mark, and/or Registrant's registration of Registrant's Mark.
44. Communications with third parties, other than your counsel of record in this Cancellation Proceeding, concerning Registrant, Registrant's use of Registrant's Mark, and/or Registrant's registration of Registrant's Mark.
45. Common law rights to the mark BRAIN CANDY possessed by Petitioner prior to June 23, 2016.
46. Communications concerning the '007 Application including, but not limited to communications with the attorney or law firm who filed such application, but excluding all communications with the United States Patent and Trademark Office.

47. Corporate records for the applicant of the '007 Application including, but not limited to the articles of incorporation, the shareholder agreement and any amendments thereto, and those concerning dissolution or winding up of such applicant.
48. Documents sufficient to show all present and former shareholders for the applicant of the '007 Application for each year of such applicant's existence.
49. Tax returns for the applicant of the '007 Application for each year of its existence.
50. Documents sufficient to identify all employees or former employees of the applicant for the '007 Application for each year of such applicant's existence.
51. The reporting or relationship hierarchy for the applicant of the '007 Application including, but not limited to, any organization charts, org charts, organizational charts, or similar diagrams.
52. Corporate records for the corporation The Butler Did It Productions, Inc. referenced in Paragraph 1 of Petitioner's Petition to Cancel in this Cancellation Proceeding, including, but not limited to the articles of incorporation, the shareholder agreement, and any amendments thereto.
53. Documents sufficient to show all present and former shareholders for the corporation The Butler Did It Productions, Inc. referenced in Paragraph 1 of Petitioner's Petition to Cancel in this Cancellation Proceeding, for each year since such corporation's inception to the present.
54. Tax returns for the corporation The Butler Did It Productions, Inc. referenced in Paragraph 1 of Petitioner's Petition to Cancel in this Cancellation Proceeding for each year since such corporation's inception to the present.
55. Documents sufficient to identify all employees or former employees of the corporation The Butler Did It Productions, Inc. referenced in Paragraph 1 of Petitioner's Petition to Cancel in this Cancellation Proceeding, for each year since such corporation's inception to the present.
56. The reporting or relationship hierarchy for the corporation The Butler Did It Productions, Inc. referred in Paragraph 1 of Petitioner's Petition to Cancel in this Cancellation Proceeding, including, but not limited to, any organization charts, org charts, organizational charts, or similar diagrams.
57. Representative samples of each quiz offered by Petitioner under Petitioner's Mark.
58. Payments for the initial reservation and all subsequent renewals of the domain [www.thebraincandypodcast.com](http://www.thebraincandypodcast.com).

59. Documents sufficient to identify the person or persons who designed, created, and maintained the website having a home page located at the domain [www.thebraincandypodcast.com](http://www.thebraincandypodcast.com).
60. Payments for the design, creation, and maintenance of the website having a home page located at the domain [www.thebraincandypodcast.com](http://www.thebraincandypodcast.com).
61. Communications with actual or potential witnesses in this Cancellation Proceeding.
62. Opinion of any consulting or testifying expert witness for Petitioner in this Cancellation Proceeding.
63. All documents that were referred to when responding to Registrant's First Set of Interrogatories or Registrant's First Request for Admissions or that are identified in response to the Registrant's First Set of Interrogatories.
64. Petitioner's contention that Registrant's Services are similar to goods and services provided by Petitioner under Petitioner's Mark.
65. Any podcast provided under Petitioner's Mark when a consumer communicated with the podcast or any host of the podcast in response to any question any podcast host asked during the podcast and such consumer communication was discussed during the podcast.

Dated: December 7, 2022

Respectfully submitted:

/Edward B. Marvin/  
Edward B. Marvin  
Reg. No. 60,581  
Texas SBN 24055917  
GUNN, LEE & CAVE, P.C.  
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**ATTORNEYS FOR REGISTRANT**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Registrant's First Request for Production of Documents and Things to Petitioner was served via email on December 7, 2022 to following counsel of record for Petitioner via email:

Gwen R. Acker Wood  
ACKER WOOD INTELLECTUAL PROPERTY LAW LLC  
4981 MCKNIGHT ROAD, PO BOX 11096  
PITTSBURGH, PA 15237  
UNITED STATES  
grwood@ackerwoodiplaw.com  
Phone: 412-486-1038

Executed on December 7, 2022

/ Edward B. Marvin/\_\_\_\_\_  
Edward B. Marvin



# **Exhibit C**

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

In re Matter of U.S. Trademark Registration No.: 5,561,588

For the Mark: BRAIN CANDY

Registration Date: September 11, 2018

ADAM BUTLER,

Petitioner,

v.

GO TECHNOLOGIES,

Registrant.

Cancellation No. 92079495

**REGISTRANT'S SECOND SET OF INTERROGATORIES  
TO PETITIONER**

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice of the U.S. Patent and Trademark Office, Registrant Go Technologies serves its Second Set of Interrogatories to Petitioner Adam Butler. These interrogatories are to be answered separately and fully in writing and under oath not later than thirty (30) days after service hereof. These interrogatories are continuing in character so as to require Petitioner to seasonably amend and supplement its answers if Petitioner learns that in some material respects its answers are incomplete or inaccurate as required by Rule 26(e) of the Federal Rules of Civil Procedure.

## **GENERAL INSTRUCTIONS**

1. The answers to these interrogatories should be made within thirty (30) days from the date of service stated in the Certificate of Service above and the answers should be served on the undersigned attorney in accordance with the rules governing Trademark Trial and Appeal Board proceedings.

2. Answer each interrogatory separately and fully in writing, under oath, unless it is objected to, in which event answer the interrogatory to the extent it is not objected to and identify all information or materials for which privilege is claimed and state the reasons for the objection.

3. To the extent You object to any interrogatory, You must state the ground(s) of any such objection(s) with specificity. As part of this specificity, You must identify what part or parts of the interrogatory You object to.

4. To the extent You object to any interrogatory on the basis of privilege, You must state the particular rule or privilege upon which the claim is based and supply enough information about the basis for the privilege necessary to establish the factual elements required by the privilege rule invoked. You must also indicate whether any responsive information is being withheld on the basis of privilege and, if so, generally describe the responsive information without conveying the substance of it. The information concerning the basis for the privilege must be sufficiently detailed to permit decision on the claim and must be verified by affidavit by a person or persons having knowledge of the facts asserted.

5. If You claim any information requested by any interrogatory is confidential, then you should produce a redacted response that redacts such confidential information and produce a non-redacted response under the appropriate designation and in accordance with the Standard Protective Order imposed on this Cancellation Proceeding.

6. If there are any terms in these interrogatories that have not been specifically defined, You should look to the following sources in the following order of precedence: (a) The Lanham Act, (b) the Rules governing Trademark Trial and Appeal Board Proceedings set forth in Title 37 of the Code of Federal Regulations, (c) the Federal Rules of Civil Procedure, and (d) the Trademark Trial and Appeal Board Manual of Procedure.

7. If there are any terms in these interrogatories that have not been specifically defined and that You contend are either vague or ambiguous, give such terms their ordinary meaning as understood by You and state such ordinary meaning you applied in the response to such interrogatory.

8. Unless otherwise specifically stated in an interrogatory, Your response must pertain to the time period from the beginning of Petitioner's alleged date of first use anywhere of Petitioner's Mark to the present date.

9. In answering the following interrogatories, furnish all information known or reasonably available to You or subject to Your custody, possession, or control.

10. You are under a continuing duty to reasonably supplement Your response with respect to any interrogatory, particularly including, but not limited to, the identity and location of witnesses having knowledge of discoverable matters, the identity of each person expected to be called as an expert at trial, and the subject matter upon which the expert is expected to testify. Furthermore, you are under a similar duty to correct any incorrect response which you later learn is incorrect.

11. An evasive or incomplete answer is deemed to be a failure to answer under Federal Rules of Civil Procedure, Rule 37(a)(4).

## **DEFINITIONS**

1. “Cancellation Proceeding” means the above captioned cancellation proceeding number 92079495 pending in the United States Patent and Trademark Office before the Trademark Trial and Appeal Board.

2. The term “Petitioner,” “You,” and “Your” as used herein refers to the plaintiff in this Cancellation Proceeding, namely Adam Butler, and includes all business entities under his control, along with such business entity’s or entities’ present and former subsidiaries, divisions, affiliates, partners, corporate parents, predecessors, successors, officers, agents, assigns, and employees, as well as all attorneys, accountants, consultants, and/or all other persons acting or purporting to act on any of the foregoing’s behalf.

3. As used herein, “Petitioner’s Mark” shall refer to the trademark BRAIN CANDY purportedly owned by Petitioner which forms the basis for this Cancellation Proceeding.

4. “Petitioner’s Asserted Goods and Services” shall refer to the goods and services provided by Petitioner under Petitioner’s Mark which Petitioner contends are substantially similar to “the goods and services identified Registrant’s Mark registration,” as alleged in paragraph 10 of Petitioner’s Petition to Cancel in this Cancellation Proceeding.

5. The “ ‘436 Application” shall refer to U.S. Trademark Application Serial No. 97/489,436.

6. The “ ‘007 Application” shall refer to U.S. Trademark Application Serial No. 88/365,007.

7. As used herein, “Registrant’s Mark” shall refer to the mark BRAIN CANDY that is registered as U.S. Trademark Reg. No. 5,561,588 and is the subject of this Cancellation Proceeding.

8. The term “Registrant” as used herein refers to, Go Technologies, the defendant in this Cancellation Proceeding.

9. The term “Registrant’s Services” as used herein refer to the services recited in U.S. Trademark Reg. No. 5,561,588.

10. The terms “communication” or “correspondence” include, but are not limited to, each and every disclosure, transfer, or exchange of oral or written information which may be transmitted face-to-face, by telephone or facsimile, electronically (e.g., email and text messages, social media messages and posts), by mail, by personal delivery, or otherwise, including, but not limited to, any notes, recordings or records thereof, and any related documents as defined below.

11. The term “document” as used in its broadest sense includes, without limitation, all writings of every kind, including, without limitation, letters, telegrams, memoranda, reports, studies, calendar and daily entries, maps, pamphlets, notes, charts, tabulations, analyses, statistical or information accumulations, audits, and associated work papers, any kind of records, meetings or conversations, film impressions, magnetic tape, sound or mechanical recordings, all stored compilations of information of any kind which may be retrievable (such as, without limitation, the contents of computer memory or information storage facilities, e-mail messages, text messages, social media messages and posts, and computer programs, and any instructions or interpretive materials associated with them), and copies of documents that are not identical to duplicates of the originals (e.g., because handwritten or “blind” notes appear thereon or are attached thereto), whether or not the originals are in Registrant’s possession, custody, or control. The term “document” specifically includes, without limitation, all drafts and preliminary versions of documents, and any non-identical copy is a separate document within the meaning of this term.

12. The term “person” shall mean and include any natural person, business, legal, or governmental entity, association, or organization, including but not limited to, a corporation, partnership, limited liability company, sole proprietorship, limited partnership or the like.

13. The terms “governmental entity” means any Federal, State, County, Parish, City, or Municipal government and any agency, department, or office thereof.

14. “Possession, custody, or control” means in Your physical possession, as “Your” is defined above, and/or if You have the right, power, or ability, whether in law or in fact, to secure the document or a copy thereof from another person having physical possession thereof.

15. The term “concerning” as used herein means in whole or in part, and directly or indirectly: referring to, relating to, connected with, commenting on, responding to, showing, describing, evidencing, analyzing, reflecting, regarding, concerning, constituting, received by, prepared by, or written by.

16. The term “between” is used herein in its broadest sense, and means among, between, involving, or to which one or more persons specified in the request is a party or recipient.

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

18. The words “and” and “or” shall be interpreted both conjunctively and disjunctively as necessary to bring within the scope of the request the broadest number of documents and greatest amount of information.

19. The masculine, feminine, or neuter form of any noun or verb includes its other forms, as necessary to bring within the scope of the request the broadest number of documents and greatest amount of information.

20. The term “any” should be understood in its most or its least inclusive sense as necessary to bring within the scope of the request the broadest number of documents and greatest

amount of information.

21. The term “each” means each and every.

22. The term “tangible thing” means a physical object that is not a document or electronically stored information.

23. “Identify” or any form of that word as used herein in connection with a document means to state: (a) the name, date and subject of the document; (b) the type of document (e.g., letter, memorandum, note, report); (c) the identity of the author and all recipients of the document; (d) the identity of the custodian or possessor of the document or a copy thereof; and (e) the location of the document or copy thereof.

24. “Identify” or any form of that word as used herein with respect to a person, if the person is an individual, means to state: (a) the full name; (b) the present employer, if known; and (c) the present address and telephone number or, if unknown, the last known address and telephone number and last known employer of such person. 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 identification of that person.

25. “Identify” or any form of that word as used herein with respect to a person, if the person is a business entity, means to state: (a) the legal name; (b) the state of legal formation and current existence; (c) the name of all officers, directors, partners and/or principals; and (d) the address of the entity’s principal place of business. 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 identification of that person.

26. “Communication Method” means any method by which one engages in communication with another including, but not limited to telephone, text message, email,



Facebook, Twitter, Instagram, YouTube, and messenger applications.

### **INTERROGATORIES**

#### **Interrogatory No. 64:**

Describe all Communication Methods by which consumers of the podcast provided under Petitioner's Mark communicate with the podcast or anyone acting on behalf of the podcast by stating the method of communication and the unique identifier (e.g., physical address, email address, phone number, account, page, etc.) to where such consumers direct such communication.

**Answer:**

#### **Interrogatory No. 65:**

For each unique identifier provided in response to Interrogatory Number 64, state the number of consumer communications received annually from the date of first use of Petitioner's Mark to the present, e.g., 2016 – xxx number of emails; 2016 – yyy number of Facebook posts, etc.

**Answer:**

Dated: December 9, 2022

Respectfully submitted:

/Edward B. Marvin/  
Edward B. Marvin  
Reg. No. 60,581  
Texas SBN 24055917  
GUNN, LEE & CAVE, P.C.  
8023 Vantage Dr., Suite 1500  
San Antonio, TX 78230  
T: (210) 886-9500  
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E-mail: [emarvin@gunn-lee.com](mailto:emarvin@gunn-lee.com)

**ATTORNEYS FOR REGISTRANT**

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Registrant's Second Set of Interrogatories to Petitioner was served via email on December 9, 2022 to following counsel of record for Petitioner via email:

Gwen R. Acker Wood  
ACKER WOOD INTELLECTUAL PROPERTY LAW LLC  
4981 MCKNIGHT ROAD, PO BOX 11096  
PITTSBURGH, PA 15237  
UNITED STATES  
grwood@ackerwoodiplaw.com  
Phone: 412-486-1038

Executed on December 9, 2022

/ Edward B. Marvin/

Edward B. Marvin

# **Exhibit D**

## Brandon Cook

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**From:** Edward B. Marvin  
**Sent:** Wednesday, January 18, 2023 10:35 AM  
**To:** Gwen Acker Wood, PhD, Esq.  
**Cc:** Samantha Ketzel  
**Subject:** RE: BRAIN CANDY Cancellation Proceeding No. 92079495 - Deposition Cancellation and Conference concerning Motion to Compel; FOR SETTLEMENT PURPOSES ONLY

Hi Gwen. I just called and left you a voicemail about Registrant's revised settlement counterproposal I emailed earlier this morning and asking about the status of Petitioner's overdue responses to Registrant's discovery requests, as well as the deposition scheduling question stated in my Jan. 16 email below. Please check your voicemail and let me know if you have any questions or want to further discuss.

Thanks,  
Ed

---

**From:** Edward B. Marvin  
**Sent:** Monday, January 16, 2023 2:30 PM  
**To:** Gwen Acker Wood, PhD, Esq. <[grwood@ackerwoodiplaw.com](mailto:grwood@ackerwoodiplaw.com)>  
**Cc:** Samantha Ketzel <[SKetzel@gunn-lee.com](mailto:SKetzel@gunn-lee.com)>  
**Subject:** RE: BRAIN CANDY Cancellation Proceeding No. 92079495 - Deposition Cancellation and Conference concerning Motion to Compel; FOR SETTLEMENT PURPOSES ONLY

Gwen, good afternoon.

Thank you for the two-week extension to receive Registrant's responses to Petitioner's discovery requests stated in your email below.

I have also passed along your comments about your client's response to our December 30 settlement proposal to my client. We may be able to address at least some of your client's concerns and I will let you know in due course.

Concerning depositions, I appreciate your willingness to confirm the availability of Mr. Butler, Ms. Meister, and Ms. Rice. Please let me know their available dates for deposition Jan. 30 – Feb. 17. I rather know dates when they are available before I send amended deposition notices.

Best,  
Ed

---

**From:** Gwen Acker Wood, PhD, Esq. <[grwood@ackerwoodiplaw.com](mailto:grwood@ackerwoodiplaw.com)>  
**Sent:** Thursday, January 12, 2023 12:35 PM  
**To:** Edward B. Marvin <[Edward.Marvin@gunn-lee.com](mailto:Edward.Marvin@gunn-lee.com)>  
**Cc:** Samantha Ketzel <[SKetzel@gunn-lee.com](mailto:SKetzel@gunn-lee.com)>  
**Subject:** RE: BRAIN CANDY Cancellation Proceeding No. 92079495 - Deposition Cancellation and Conference concerning Motion to Compel; FOR SETTLEMENT PURPOSES ONLY

Hello Ed,

Thank you for holding off filing the motion to compel. We do consent to the two-week extension to receive Registrant's responses to our discovery requests. I should have Petitioner's responses to Registrant's written discovery requests completed by early next week and will send them to you at that time.

With respect to the three Notices of Deposition, I ask that you please revise the dates to reflect the additional two weeks extension. As soon as we receive the revised Notices of Deposition, I will let you know whether Mr. Butler, Ms. Rice and Ms. Meister are available on the revised proposed dates.

[REDACTED]

[REDACTED]

I thank you for your patience regarding responses to your discovery requests. Also, please expect Petitioner's second set of Interrogatories as well as Petitioner's Deposition Notices.

Wishing you a good weekend.

Best regards,

Gwen

**Gwen R. Acker Wood, PhD, Esq.**  
**ACKER WOOD Intellectual Property Law, LLC**  
*Global IP Assets Protection*  
**4981 McKnight Road**  
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[ackerwoodiplaw.com](http://ackerwoodiplaw.com)

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---

**From:** Edward B. Marvin <[Edward.Marvin@gunn-lee.com](mailto:Edward.Marvin@gunn-lee.com)>

**Sent:** Thursday, January 12, 2023 11:40 AM

**To:** Gwen Acker Wood, PhD, Esq. <[grwood@ackerwoodiplaw.com](mailto:grwood@ackerwoodiplaw.com)>

**Cc:** Samantha Ketzel <[SKetzel@gunn-lee.com](mailto:SKetzel@gunn-lee.com)>

**Subject:** RE: BRAIN CANDY Cancellation Proceeding No. 92079495 - Deposition Cancellation and Conference concerning Motion to Compel

Thanks for your response, Gwen.

While I can appreciate not being able to get ahold of a client, I have not received any communication from you concerning these matters for almost two weeks now. At the same time, your client has pressed a tight schedule for discovery and my client is spending time and money trying to respond to Petitioner's pending written discovery which, by my calculation, is due tomorrow.

Per your request, I will hold off filing the motion to compel as a sign of good faith and in deference to you. That said, will you concede to a two-week extension of time for Registrant to respond to Petitioner's written discovery requests? I figure we should know by then what the remaining path of this proceeding will be.

Thanks,  
Ed

---

**From:** Gwen Acker Wood, PhD, Esq. <[grwood@ackerwoodiplaw.com](mailto:grwood@ackerwoodiplaw.com)>

**Sent:** Thursday, January 12, 2023 10:14 AM

**To:** Edward B. Marvin <[Edward.Marvin@gunn-lee.com](mailto:Edward.Marvin@gunn-lee.com)>

**Cc:** Samantha Ketzel <[SKetzel@gunn-lee.com](mailto:SKetzel@gunn-lee.com)>

**Subject:** RE: BRAIN CANDY Cancellation Proceeding No. 92079495 - Deposition Cancellation and Conference concerning Motion to Compel

Good morning Ed,

My client has been indisposed in the last week, and thus I inadvertently did not respond to your requests. I will be speaking with him today to determine how he would like to proceed- either to respond to your settlement offer or pursue the cancellation proceeding. Either way, I will give you answer by the end of today and ask that you please hold off with filing the Motion to Compel unless I have not responded to your satisfaction by the end of today.

Thank you,

Gwen

**Gwen R. Acker Wood, PhD, Esq.**  
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*Global IP Assets Protection*  
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**From:** Edward B. Marvin <[Edward.Marvin@gunn-lee.com](mailto:Edward.Marvin@gunn-lee.com)>

**Sent:** Thursday, January 12, 2023 11:08 AM

**To:** Gwen Acker Wood, PhD, Esq. <[grwood@ackerwoodiplaw.com](mailto:grwood@ackerwoodiplaw.com)>

**Cc:** Samantha Ketzal <[SKetzal@gunn-lee.com](mailto:SKetzal@gunn-lee.com)>

**Subject:** BRAIN CANDY Cancellation Proceeding No. 92079495 - Deposition Cancellation and Conference concerning Motion to Compel

Gwen, good morning.

Please be advised, I have elected to cancel the depositions scheduled next week given that we have not received any response from Petitioner to Registrant's written discovery nor any response to my request that you either confirm Ms. Meister's and Ms. Rice's attendance or provide their address.

At this stage, Registrant intends to file a Motion to Compel with the Board seeking to compel Petitioner's responses to Registrant's written discovery and seeking to compel disclosure of Ms. Meister's and Ms. Rice's residential addresses for purposes of a subpoena. Please consider this email as my meet and confer concerning the Motion. If you want to present a workable solution to resolve this dispute short of Registrant filing its Motion, please do so.

Respectfully,  
Ed



**Ed Marvin**

Patent and Trademark Attorney

Tel: (210) 886-9500

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