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

Proceeding no.	92081122
Party	Plaintiff iEnjoy Ventures, LLC
Correspondence address	MARK C JOHNSON JOHNSON DALAL 111 N PINE ISLAND ROAD SUITE 105 PLANTATION, FL 33324 UNITED STATES Primary email: Info@JohnsonDalal.com 954-507-4500
Submission	Motion to Compel Discovery or Disclosure
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Signature	/Mark C. Johnson/
Date	06/26/2023
Attachments	Composite Exhibit.pdf(994188 bytes ) Motion to Compel.pdf(176897 bytes )

# **EXHIBIT A**

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

iEnjoy Ventures, LLC,

Applicant,

v.

Franktex, Inc.,

Registrant.

Cancellation No. 92081122

Mark: CASUAL COMFORT

Registration No. 6,072,759

Serial No. 88/446,327

Date of Registration: June 09, 2020

**PLAINTIFF’S FIRST REQUEST FOR PRODUCTION**

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure and Trademark Rule of Practice 2.120(e) (37 C.F.R. § 2.120), Applicant/Plaintiff, iEnjoy Ventures, LLC (“Plaintiff”), hereby requests that Registrant/Defendant Franktex, Inc. (hereinafter “Defendant”), by its undersigned counsel, respond to the following requests for the production of documents and things by providing written responses thereto and producing for inspection and copying the documents requested herein to the offices of Defendant’s attorneys, Johnson Dalal, 111 N. Pine Island Rd. Suite 105, Plantation, FL 33324, Attn: Mark Johnson, within thirty (30) days of service of this request.

**DEFINITIONS AND INSTRUCTIONS**

A. For purposes of these requests, unless otherwise indicated or unless the context otherwise requires:

1. The term "any" shall be construed to include the word "all" and "all" shall be construed to include the word "any" as necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.

2. The term "between" shall be construed to include the word "among" and "among" shall be construed to include the word "between" as necessary to bring within the scope of a request all responses which might otherwise be construed to be outside its scope.

3. The terms "you" or "your" or "Defendant" shall refer to Franktex, Inc., and any affiliated corporations or other business entities under its control, any predecessors or successors in interest with respect to the CASUAL COMFORT Mark ("the Mark") embodied in U.S. Trademark Registration No. 6,072,759 ("the '759 Registration"), any licensees or other entities that have or are intended to use the mark therein with the consent of Defendant, and any of its directors, officers, employees, agents or representatives.

4. The term "document" shall mean the original and each non-identical copy (whether different from the original because of notes made on the copy or otherwise) or draft of each writing of every kind and description (together with all worksheets, supporting documents, and other relevant material), whether inscribed by hand or mechanical, electronic, microfilm, photographic or other means (such as recording, film, tape, videotape, disc, diskette, CD-ROM disc, laser disc, or other means including data processing files and other computer readable records or programs and all other data compilations from which information can be obtained, transcribed and translated), and including, but not limited to, correspondence, letters, telegrams, telefaxes, telexes, E-Mail, messages, TWX's, telephone logs, diaries, teletype messages, memoranda, notes, reports, printouts, records of meetings, conferences or telephone or other conversations or communications, appointment calendars, surveys, studies, statistical analyses, technical analyses, test reports, search reports, tabulations, drawings, plans, blueprints, specifications, graphs, books, magazines, newspapers, publications, articles, booklets, pamphlets, circulars, bulletins, brochures,

advertising copy, contract bids, contracts, contract addenda, amendments, changes and modifications.

5. The term “Plaintiff” shall refer to iEnjoy Ventures, LLC, in this proceeding and, where appropriate in the context, its predecessors in interest, parents, subsidiaries and/or affiliated corporations.

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

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

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

E. Unless otherwise indicated, the geographical scope of these requests is limited to the United States of America.

F. If you believe that a request is unclear or contains an obvious typo, answer the request to the best of your ability noting how the request was construed by you in order to respond.

G. If an objection is made, please state the reason for the objection.

H. If denying the matter, please set forth in detail the reasons why the answering party cannot produce such documentation.

### **REQUEST FOR PRODUCTION**

1. Any and all documents used, referred to, referenced or relating to your responses to Plaintiff’s First Set of Interrogatories.

2. Any and all correspondence (emails, letters, text messages, memos, etc.), except those between you and your attorney, relating to the issues raised in the Petition to Cancel.
3. Any and all business reports, ledger, marketing, meeting minutes, correspondence, payment, contracts, analytics, drafts, worksheets, tabulations, or other documents prepared regarding the CASUAL COMFORT Mark.
4. Any and all logs, notes, photographs, videotapes or any digital file regarding the '759 Registration and the CASUAL COMFORT Mark.
5. A document sufficient to identify the names and addresses of all the parties that will testify or produce evidence regarding the '759 Registration and the CASUAL COMFORT Mark.
6. Any and all documentation Defendant obtained regarding the '759 Registration.
7. Any and all documents relating to the registration of the Mark, including the '759 Registration, registration certificate, and any amendments or renewals.
8. Any and all documentation Defendant obtained regarding the CASUAL COMFORT Mark.
9. All documents containing any statements made to you by anyone with personal knowledge of the facts at issue in this case or about the facts at issue in this case.
10. Any and all flyers, brochures, leaflets, mailers, business cards, Internet postings, and any other marketing and advertising materials prepared or circulated bearing the CASUAL COMFORT Mark.
11. At least one document sufficient to identify your alleged first use of the CASUAL COMFORT Mark.
12. At least one document sufficient to identify your alleged first use of the CASUAL COMFORT Mark in commerce.

13. At least one document sufficient to identify your first sale of a good or service using, displaying, or otherwise bearing the CASUAL COMFORT Mark.
14. All agreement(s) relating to the ownership or transfer of ownership of the CASUAL COMFORT Mark.
15. All documents relating to your selection and/or adoption of the CASUAL COMFORT Mark.
16. All documents relating to the consideration of alternate mark(s), to the extent there were any.
17. Exemplars of all goods and services with which the CASUAL COMFORT Mark is or is intended to be used.
18. All documents relating to the manner of use of the CASUAL COMFORT Mark and the manner in which the CASUAL COMFORT Mark is intended to be depicted or portrayed.
19. Any and all documentation and things sufficient to identify the geographic locations in which Defendant offers, has offered, or intends to offer goods and services in connection with the CASUAL COMFORT Mark or a variation thereof.
20. All documents sufficient to identify the duration that the CASUAL COMFORT Mark has been used in each identified territory listed in Request for Production No. 19.
21. All documents and things sufficient to identify Defendant's actual and potential customers, including, but not limited to, market research, customer profiles, and demographics, to whom Defendant has been, is, or intends to be promoting marketing, advertising, and/or selling any good and/or service in connection with the CASUAL COMFORT Mark.

22. Any and all documentation of known or reported incidents of actual or possible consumer confusion, mistake, deception, or association of any kind between Defendant's use of the CASUAL COMFORT Mark and Plaintiff's use of the CASUAL COMFORT Mark.
23. Any and all documentation of known or reported incidents of actual or possible consumer confusion, mistake, deception, or association of any kind between Plaintiff and Defendant.
24. All documents and things referring or relating to any correspondence or inquiry received by Defendant which were intended for or should have been or were ultimately directed to Plaintiff.
25. All documents sufficient to identify any person comparing or otherwise noting any relationship between the Plaintiff and Defendant or between their respective uses of the CASUAL COMFORT Mark.
26. Any and all documentation relating to the channels of trade used, or intended to be used, in offering for sale any goods and services under the CASUAL COMFORT Mark.
27. Any and all documentation relating to the channels of trade used, or intended to be used, in marketing or advertising the goods and services sold or offered under the CASUAL COMFORT Mark.
28. All documents relating to the use, ownership, registration, and control of the domain [www.franktex.com](http://www.franktex.com).
29. All documents relating to the ownership, registration and control of the Defendant's Facebook page "Franktex Inc."
30. At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2012.



31. At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2013.
32. At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2014.
33. At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2015.
34. At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2016.
35. At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2017.
36. At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2018.
37. At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2019.
38. At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2020.
39. At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2021.
40. At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2022.
41. At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2023.

42. Any and all documents reflecting any efforts by Defendant or any affiliated or related entity to police or enforce the Mark.
43. Any and all documents reflecting any communication with the United States Patent and Trademark Office (USPTO) or any other governmental agency regarding the CASUAL COMFORT Mark, including but not limited to, correspondence, filing, and responses to office actions.
44. Any and all documents of any complaints or inquiries received by the Defendant or any affiliated or related entity regarding the CASUAL COMFORT Mark.
45. Any and all documentation of any instances where Defendant has been involved in any legal disputes relating to the CASUAL COMFORT Mark.
46. Copies of any lease or rental agreements for Defendant's office or other physical location.
47. Any and all documents that may provide proof of Defendant's address, including but not limited to property tax bills, business licenses, or insurance policies.
48. All documents and correspondences discussing, referencing, or relating to the specimen of use ("Specimen") submitted by Defendant on May 24, 2019, to the USPTO.
49. Any and all correspondences, except those between you and your attorney, discussing, referencing, or relating to the Plaintiff.
50. All documents and correspondences discussing, referencing, or relating to the products depicted in the Specimen.
51. All purchase orders, order confirmations, receipts, and records relating to your inventory of "Pillows, namely, bed pillows" and "Mattress pads, down comforters, feather beds; sheets, namely, bed sheets" (collectively, "Defendant's Goods").

Submitted By: /Mark C. Johnson/

Date: April 6, 2023

JOHNSON DALAL  
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# **EXHIBIT B**

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

iEnjoy Ventures, LLC,

Applicant,

v.

Franktex, Inc.,

Registrant.

Cancellation No. 92081122

Registration No. 6,072,759

Mark: CASUAL COMFORT

Serial No. 88/446,327

**PLAINTIFF'S FIRST SET OF INTERROGATORIES**

Pursuant to Trademark Rule of Practice 2.120(d) (37 C.F.R. § 2.120), Trademark Trial and Appeal Board Manual of Procedure § 405, and Federal Rule of Civil Procedure 33, Applicant/Plaintiff, iEnjoy Ventures, LLC, (“Plaintiff”) requests that Registrant/Defendant Franktex, Inc. (“Defendant”), answer the following interrogatories under oath within thirty (30) days after service of the same.

Respectfully submitted,

JOHNSON | DALAL

By: /Mark C. Johnson/

MARK C. JOHNSON, ESQ.

Florida Board Certified Expert in Intellectual  
Property Law

Fla. Bar. No. 84365

MJ@JohnsonDalal.com

**CERTIFICATE OF SERVICE**

I certify that on April 6, 2023, the foregoing First Set of Interrogatories was served by electronic mail to Defendant at [efiling@knobbe.com](mailto:efiling@knobbe.com), [2jvh@knobbe.com](mailto:2jvh@knobbe.com), and [cheryl@knobbe.com](mailto:cheryl@knobbe.com) pursuant to 37 C.F.R. § 2.119.

By: /Mark C. Johnson/  
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**[This portion was intentionally left blank]**

For the purpose of these Interrogatories, the following definitions and instructions shall apply.

### **DEFINITIONS**

1. The terms “you,” or “your” or “Defendant” shall refer to Franktex, Inc., and include any affiliated corporations or other business entities under its control, any predecessors or successors in interest with respect to U.S. Trademark Registration No. 6,072,759 (“the ‘759 Registration”), any licensees or other entities that have or are intended to use the mark therein with the consent of Defendant, and any of its directors, officers, employees, agents or representatives.
2. The term “Plaintiff” refers to iEnjoy Ventures, LLC, and includes any persons controlled by or acting on behalf of that entity, including but not limited to all officers and directors.
3. The term “Trademark(s)” or “Mark(s)” means any word, name, symbol or device or other designation of origin incorporating the “CASUAL COMFORT” letter string referenced or its phonetic equivalent, in which you use or claim rights (whether protectable or otherwise), including any trademark, service mark, or Internet domain name, or any trademark or service mark application or registration.
4. The term “person” means any natural person or any business, legal or governmental entity, or association.
5. The term “document” as used herein is synonymous in meaning and equal in scope to the usage of this term in Federal Rule of Civil Procedure 34, any “writings and recording” and “photographs” as defined by Federal Rule of Evidence 1001, and its interpretation by the courts, and includes, without limitation, all originals, drafts, and non-identical copies of any written, printed, typed, recorded, electronic, magnetic, optical, punched, copied, graphic or other tangible thing in, upon or from which information may be conveyed, embodied,

translated, or stored (including, but not limited to, papers, records, books, correspondence, contracts, minutes of meetings, memoranda, notes or desk calendars and appointment books, intra-office communications, canceled checks, invoices, telegrams, telexes, dictation or other audio tapes, video tapes, studies, electronic mail, information stored in computer readable form, on a compact disc, or any other type of data storage device or medium, computer printouts, microfilm, microfiche, laser disks, diaries, calendars, photographs, charts, viewgraphs, drawings, sketches and all other writings or drafts thereof), as well as all other tangible things subject to production under Federal Rule of Civil Procedure 34.

6. The term “identify,” when referring to:

- a. a natural person, means to give his or her full name, present or last known address and telephone number, last known place of employment and job title;
- b. a public or private corporation, partnership, association, agency or other entity, means to give its present or last known address and telephone number, and state of incorporation, if applicable;
- c. a document, means to state its general character, title, date, addressee or recipient, author or signatory, present location, and who has possession, custody or control of the document;
- d. a product, means to provide a description of the item which is offered for sale, and the intended customer groups, channels of trade, approximate price, and market for the product;
- e. a service, means to describe the service and the intended customer groups, channels of trade, approximate price, and market for the service;



- f. any other thing: A description with sufficient particularity that such thing may thereafter be specified and recognized as such; and
  - g. The identification of each person to whom such statement or communication was made, each person by whom such statement or communication was made, and each person who was present when such statement or communication was made.
7. The term “communication” is defined as any transmission or exchange of information between two (2) or more persons, orally or in writing, and includes, without limitation, any conversation or discussion, whether face-to-face or by means of telephone, letter, facsimile, electronic, digital or other media.
  8. The terms “relating to” and “related to” mean concerning, containing, evidencing, describing, constituting, referring to, explaining, discussing or reflecting.
  9. The connectives “and” and “or” and the term “and/or” shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the request all documents that might otherwise be construed to be outside its scope.
  10. The use of a present tense shall include past tenses.
  11. The use of the singular form of any word also includes the plural and *vice versa*.
  12. The terms “all” and “each” shall each be construed to include the other.
  13. The term “Describe” means to specify in detail and to particularize the contents of the answer to the question and not just to state the reply in summary or outline fashion.
  14. The term “Third Party” means any person other than Plaintiff or Defendant.

## INSTRUCTIONS

1. In answering these interrogatories, furnish all information, however obtained, including hearsay, which is available and information known by or in possession of Defendant.
2. Defendant is reminded that it is under a duty to conduct a reasonable investigation in connection with its answers, and that its answers to these interrogatories must contain all information possessed by it.
3. If Defendant cannot answer the following interrogatories in full after conducting a reasonable investigation to secure the full information to do so, state an answer to the extent possible, specifying Defendant's inability to answer the remainder stating whatever information or knowledge Defendant has concerning the unanswered portion and detailing what Defendant did in attempting to secure the unknown information.
4. These interrogatories shall be deemed to be continuing and it is requested that Defendant serve supplementary answers as required by Federal Rule of Civil Procedure 26(e).
5. For the convenience of the Board and counsel, it is requested that each interrogatory be set forth immediately preceding the answer thereto.
6. As to any document or thing of which identification is requested herein which is not presently in your possession or subject to your control, identify each person whom you have reason to believe had or has knowledge of its contents and each person whom you have a reason to believe received a copy thereof.
7. To the extent any request calls for identification or description of any person or thing in the present tense, the request should be interpreted to encompass identification or description of any responsive person or thing at any time relevant to the instant action.

## **INTERROGATORIES**

### **INTERROGATORY NO. 1:**

Identify the name and address of the person answering these Interrogatories, and the person's official position or relationship with the party to whom the interrogatories are directed.

### **RESPONSE:**

### **INTERROGATORY NO. 2:**

For each year since Defendant's purported first use of the Mark, identify all goods and/or services marketed, offered for sale, and sold under the CASUAL COMFORT mark ("the Mark"), the dollar amount of all United States gross sales of all such goods and/or services, the dollar amount of all marketing and advertising expenses expended by Defendant in connection therewith, and the number of units sold.

### **RESPONSE:**

**INTERROGATORY NO. 3:**

For each year since Defendant's purported first use of the Mark, describe in detail the nature, extent, and scope of your use of the Mark in commerce (including, without limitation, all channels of trade through which the Mark was advertised and duration of the same, all channels of trade through which you sold any goods or services under the Mark and duration of the same, and all forms and types of advertising on which the Mark was displayed and duration of the same) and all periods of non-use.

**RESPONSE:**

**INTERROGATORY NO. 4:**

Describe in detail, the circumstances surrounding your selection, creation, and submission of the specimen of use ("Specimen") submitted by Defendant on May 24, 2019, to the USPTO, including how, when, why, and from where you obtained it.

**RESPONSE:**

**INTERROGATORY NO. 5:**

Describe in detail, the circumstances surrounding how, when, where, and why you first learned of the Applicant, of Applicant's use of the Mark, and of Applicant's U.S. Application Serial No. 97/698,006, including the identity of any person(s) who can substantiate your response.

**RESPONSE:**

**INTERROGATORY NO. 6:**

Describe in detail the circumstances surrounding your selection and/or adoption of the Mark and identify all Persons who participated in the selection and adoption of the CASUAL COMFORT Mark and in the decision to file the Trademark Registration No. 6,072,759 ("the '759 Registration") and describe the nature, extent, and scope of their involvement in said decision(s).

**RESPONSE:**

**INTERROGATORY NO. 7:**

Provide the names and addresses of all retailers, distributors, wholesalers, licensees, individuals, and entities that have used the Mark with your authorization in the past five years or that have marketed, offered for sale, or sold your goods or services under or in connection with the Mark with your authorization in the past five years.

**RESPONSE:**

**INTERROGATORY NO. 8:**

Have you ever been sued or threatened with legal action by any other party for infringement on their trademark rights? If so, describe in detail.

**RESPONSE:**

**INTERROGATORY NO. 9:**

Identify any and all agreements entered into, which refer or relate to the Mark.

**RESPONSE:**

**INTERROGATORY NO. 10:**

Identify all individuals whose testimony you may or will rely upon in this proceeding and provide a brief statement of the expected testimony of such witnesses.

**RESPONSE:**

**INTERROGATORY NO. 11:**

Describe with particularity any known or reported instances of actual or possible consumer confusion between the Mark used by Plaintiff and the Mark used by Defendant wherein current or prospective consumers expressed confusion, mistake, or deception of any kind as to the affiliation between Plaintiff and Defendant, including the time, place, and date of said instances and the identity of any such person(s) from whom you obtained said information and identifying all communications and other evidence in support of Defendant's response.

**RESPONSE:**

**INTERROGATORY NO. 12:**

Describe with particularity the circumstances surrounding your first use of the Mark anywhere and in commerce, including the date and location of such use, and identify all documents that substantiate such use.

**RESPONSE:**



**INTERROGATORY NO. 13:**

Describe with particularity the circumstances surrounding your first sale of a good or service using or displaying the Mark in commerce, including the date and location of such use, the particular good or service sold, and all documents that substantiate such use.

**RESPONSE:**

**INTERROGATORY NO. 14:**

Identify any and all periods of non-use of the domain [www.franktex.com](http://www.franktex.com), including but not limited to abandonment or sale of the domain, and including the dates associated therewith and the factual circumstances necessitating any such non-use, sale, or abandonment.

**RESPONSE:**

By: \_\_\_\_\_

Date: \_\_\_\_\_

STATE OF \_\_\_\_\_)

)SS:

COUNTY OF \_\_\_\_\_)

BEFORE ME, the undersigned authority, personally appeared, on this \_\_\_\_ day of \_\_\_\_\_, 2023, \_\_\_\_\_, who produced \_\_\_\_\_ as identification, or who is to me well known, and executed the foregoing responses to **Plaintiff's First Set of Interrogatories** and stated that such answers are true and correct.

\_\_\_\_\_  
(Signature of Notary Public)

\_\_\_\_\_  
(Print, Type or Stamp Commissioned  
Name of Notary Public)

\_\_\_\_\_  
COMMISSION NUMBER  
My Commission Expires:

\_\_\_\_ DID take oath

\_\_\_\_ DID NOT take oath

# **EXHIBIT C**

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

IENJOY VENTURES, LLC,

Petitioner,

v.

FRANKTEX, INC.,

Respondent.

Cancellation No. 92081122

Registration No. 6072759

Mark: CASUAL COMFORT

**RESPONDENT FRANKTEX, INC.'S RESPONSES TO PETITIONER'S FIRST SET OF  
REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS (NOS. 1-51)**

Pursuant to the Rules of Practice of the United States Patent and Trademark Office, and the applicable Federal Rules of Civil Procedure, Franktex, Inc. ("Respondent") hereby responds to iEnjoy Ventures, LLC's ("Petitioner") First Set of Requests for the Production of Documents and Things (Nos. 1-51) as follows:

1. The following responses are based upon information presently available to and located by Respondent and its counsel and reflect the current state of Respondent's knowledge, understanding and belief respecting the matters about which inquiry was made. Respondent has not completed its investigation of the facts relating to this Opposition or preparation for trial and anticipates that as this Opposition proceeds, further facts may be discovered. Without obligating itself to do so, Respondent reserves the right to modify or supplement these responses with any such pertinent information.

2. Respondent's responses are made without in any way waiving or intending to waive, but on the contrary, intending to preserve and preserving:

a. The right to raise all questions of authenticity, relevancy, materiality, privilege and admissibility as evidence for any purpose of the information

and the documents identified and/or produced in response to these requests, which may arise in any subsequent proceeding in, or trial of, this or any other action;

- b. The right to object to the use of the information and/or documents in any subsequent proceeding in, or the trial of, this or any other action on any grounds;
- c. The right to object on any ground at any time to other requests or other discovery involving the information and/or documents or the subject matter thereof; and
- d. The right to make subsequent answers if Respondent uncovers additional information and/or documents called for by these Requests as discovery is still ongoing and Respondent's investigation of the facts and the evidence pertinent to this action has not been completed.

3. Words and terms used in the following responses shall be construed in accordance with their normal meanings and connotations, and shall in no way be interpreted as terms of art or statutorily defined terms used in the trademark laws, and Respondent specifically disavows any such meaning or connotation that might be accorded such terms.

4. A statement that Respondent will produce responsive documents and/or things represents only that they will be produced or made available if they exist, are in Respondent's possession, custody, or control, and not that such documents and/or things exists or ever have existed, or are in Respondent's possession, custody, or control.

5. Specific objections to various requests are made in the responses set forth below. In addition to those specific objections, Respondent generally objects to the Requests as follows:

## **GENERAL OBJECTIONS**

1. Respondent generally objects to the instructions and definitions in the Requests to the extent that those instructions and definitions fail to comply with or impose obligations in excess of Rule 34 of the Federal Rules of Civil Procedure.

2. Respondent generally objects to the Requests to the extent they seek “all documents” concerning a particular subject on the grounds that Respondent would be required to search for documents from every person in the company and such requests are not proportional to the needs of this Opposition and are unduly burdensome and therefore violate Fed. R. Civ. P. 26(b)(2)(C). Therefore, Respondent objects to performing searches of such breadth on the grounds of undue burden and expense. Searching for relevant documents, Respondent has made, and will make, inquiry of all persons who are reasonably likely to have such documents.

3. Respondent generally objects to the Requests to the extent that they call for the production of information, documents or things protected from disclosure by the attorney-client privilege, the work-product doctrine, or any other applicable privilege, immunity or other limitation on discovery. Respondent has stated its privilege objections expressly in its response to each request that would, in its view, reasonably be interpreted to encompass privileged information, documents, or things. Should any other request encompass privileged information, documents or things, however, Respondent hereby asserts this general objection. Moreover, should any such response by Respondent occur, it was inadvertent and shall not constitute a waiver of privilege or of Respondent’s right to object during this Opposition or otherwise to the use of any such information, documents or things.

4. Respondent generally objects to the Requests to the extent that they call for the production or identification of attorney-client privilege and/or work product documents generated by Respondent’s counsel or its agents for internal use and/or privileged communications between or among Respondent and its counsel since the commencement of this Opposition. The applicability of the attorney-client privilege and/or work product doctrine to such documents is so

clear and the burden of identifying each such document is so great that requiring Respondent to do so would be so burdensome as to result in injustice and would be oppressive in that the burden imposed thereby would be incommensurate with the result sought by Petitioner.

5. Respondent generally objects to the Requests to the extent that they seek information, documents or things that are not relevant to the parties' claims or defenses in this Opposition, or are not proportional to the needs of this Opposition. Specifically, Respondent objects to producing documents related to information outside of the United States.

6. Respondent generally objects to the Requests to the extent that they seek information, documents or things not in Respondent's possession, custody or control.

7. Respondent generally objects to the Requests to the extent that they are overbroad, unduly burdensome, or fail to describe the information, documents, or things sought with a reasonable degree of specificity, including as to the time periods purportedly covered by the Requests.

8. Respondent generally objects to the Requests to the extent that they call for information that is protected from disclosure by agreements Respondent has with another entity, if any, or obligations Respondent has to another entity, if any.

9. Some of Petitioner's Requests contain discrete subparts. To the extent Petitioner considers any request having discrete subparts to constitute a single request, Respondent considers the subpart(s) of the request to count towards the total number of requests that one party may serve pursuant to 37 C.F.R. § 2.120(e).

10. Respondent generally objects to Petitioner's request that Respondent produce documents within 30 days of the date of service of the Requests. Respondent's collection and review of documents is continuing, and Respondent will produce documents responsive to the Requests on an ongoing basis.

11. Discovery is ongoing and Respondent's investigation is continuing. Respondent reserves its right to supplement its responses herein and its production with any responsive, non-

privileged information, documents or things that may be subsequently discovered.

12. Respondent generally objects to Petitioner's definitions and instructions in the Requests to the extent they make the individual requests vague, ambiguous or unintelligible, in that Petitioner attributes new meanings to ordinary words or defines the same word to have multiple meanings. Respondent will attempt to construe the terms and phrases used by Petitioner in ways to give those terms and phrases meanings that will result in the production of relevant information, documents and things designed to lead to the discovery of admissible evidence.

13. Respondent generally objects to the Requests to the extent that they rely on Petitioner's definitions of "Respondent," "You," and "Your." These definitions make the Requests overbroad, unduly burdensome, and not relevant to the parties' claims or defenses, or proportional to the needs of this Opposition, including to the extent these definitions include individuals or entities that Respondent does not control.

14. As used in Respondent's responses, the term "Respondent" refer to Franktex, Inc.

15. As used in Respondent's responses, the term "non-privileged documents" refers to documents which are not protected by the attorney-client privilege, the work product doctrine or any other privileges or immunity precluding discovery.

16. As used in Respondent's responses, the term "Respondent's Mark" shall mean the mark CASUAL COMFORT as shown in U.S. Trademark Registration Number 6,072,759.

17. As used in Respondent's responses, the term "Respondent's Goods" shall mean and refer to the goods Respondent offers or sells, has offered or sold, or intends to offer or sell identified in connection with Respondent's Mark, including but not limited to Respondent's goods identified in Respondent's Registration for Respondent's Mark, namely, "pillows, namely, bed pillows" in International Class 20 and "mattress pads, down comforters, feather beds; sheets, namely, bed sheets" in International Class 24.

18. As used in Respondent's responses, the term "Petitioner" refers to iEnjoy Ventures, LLC.



## **RESPONSES TO REQUESTS FOR PRODUCTION**

### **REQUEST FOR PRODUCTION NO. 1:**

Any and all documents used, referred to, referenced or relating to your responses to Plaintiff's First Set of Interrogatories.

### **RESPONSE TO REQUEST FOR PRODUCTION NO. 1:**

Petitioner will produce representative, non-privileged documents responsive to this Request, to the extent such documents are within Petitioner's possession, custody, or control and are located after a reasonable search.

### **REQUEST FOR PRODUCTION NO. 2:**

Any and all correspondence (emails, letters, text messages, memos, etc.), except those between you and your attorney, relating to the issues raised in the Petition to Cancel.

### **RESPONSE TO REQUEST FOR PRODUCTION NO. 2:**

Petitioner is not aware of any documents responsive to this Request.

### **REQUEST FOR PRODUCTION NO. 3:**

Any and all business reports, ledger, marketing, meeting minutes, correspondence, payment, contracts, analytics, drafts, worksheets, tabulations, or other documents prepared regarding the CASUAL COMFORT Mark.

### **RESPONSE TO REQUEST FOR PRODUCTION NO. 3:**

Representative samples of non-privileged documents responsive to this Request will be produced.

### **REQUEST FOR PRODUCTION NO. 4:**

Any and all logs, notes, photographs, videotapes or any digital file regarding the '759 Registration and the CASUAL COMFORT Mark.

### **RESPONSE TO REQUEST FOR PRODUCTION NO. 4:**

Representative samples of non-privileged documents responsive to this Request will be produced.

**REQUEST FOR PRODUCTION NO. 5:**

A document sufficient to identify the names and addresses of all the parties that will testify or produce evidence regarding the '759 Registration and the CASUAL COMFORT Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 5:**

Respondent will produce the requested document once the information requested for this document is available.

**REQUEST FOR PRODUCTION NO. 6:**

Any and all documentation Defendant obtained regarding the '759 Registration.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 6:**

Respondent is unable to respond to this Request as the word "obtained" is undefined and unanswerable in the context of this Request.

**REQUEST FOR PRODUCTION NO. 7:**

Any and all documents relating to the registration of the Mark, including the '759 Registration, registration certificate, and any amendments or renewals.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 7:**

Petitioner will produce representative, non-privileged documents responsive to this Request, to the extent such documents are within Petitioner's possession, custody, or control and are located after a reasonable search.

**REQUEST FOR PRODUCTION NO. 8:**

Any and all documentation Defendant obtained regarding the CASUAL COMFORT Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 8:**

Respondent is unable to respond to this Request as the word "obtained" is undefined and unanswerable in the context of this Request.

**REQUEST FOR PRODUCTION NO. 9:**

All documents containing any statements made to you by anyone with personal knowledge of the facts at issue in this case or about the facts at issue in this case.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 9:**

Respondent is unable to respond to this Request as “you” is defined as the Respondant and unanswerable in the context of this Request.

**REQUEST FOR PRODUCTION NO. 10:**

Any and all flyers, brochures, leaflets, mailers, business cards, Internet postings, and any other marketing and advertising materials prepared or circulated bearing the CASUAL COMFORT Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 10:**

Representative samples of non-privileged documents responsive to this Request will be produced.

**REQUEST FOR PRODUCTION NO. 11:**

At least one document sufficient to identify your alleged first use of the CASUAL COMFORT Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 11:**

Respondent is determining if any document from 2012 responsive to this Request is still available.

**REQUEST FOR PRODUCTION NO. 12:**

At least one document sufficient to identify your alleged first use of the CASUAL COMFORT Mark in commerce.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 12:**

Respondent is determining if any document from 2012 responsive to this Request is still available.

**REQUEST FOR PRODUCTION NO. 13:**

At least one document sufficient to identify your first sale of a good or service using, displaying, or otherwise bearing the CASUAL COMFORT Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 13:**

Respondent is determining if any document from 2012 responsive to this Request is still available.

**REQUEST FOR PRODUCTION NO. 14:**

All agreement(s) relating to the ownership or transfer of ownership of the CASUAL COMFORT Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 14:**

Respondent is not presently aware of any documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 15:**

All documents relating to your selection and/or adoption of the CASUAL COMFORT Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 15:**

Representative non-privileged documents responsive to this request will be produced to the extent such documents exist.

**REQUEST FOR PRODUCTION NO. 16:**

All documents relating to the consideration of alternate mark(s), to the extent there were any.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 16:**

Respondent is not aware of any documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 17:**

Exemplars of all goods and services with which the CASUAL COMFORT Mark is or is intended to be used.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 17:**

Representative samples of non-privileged documents responsive to this Request will be produced.

**REQUEST FOR PRODUCTION NO. 18:**

All documents relating to the manner of use of the CASUAL COMFORT Mark and the manner in which the CASUAL COMFORT Mark is intended to be depicted or portrayed.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 18:**

Representative samples of non-privileged documents responsive to this Request will be produced.

**REQUEST FOR PRODUCTION NO. 19:**

Any and all documentation and things sufficient to identify the geographic locations in which Defendant offers, has offered, or intends to offer goods and services in connection with the CASUAL COMFORT Mark or a variation thereof.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 19:**

Representative samples of non-privileged documents responsive to this Request will be produced.

**REQUEST FOR PRODUCTION NO. 20:**

All documents sufficient to identify the duration that the CASUAL COMFORT Mark has been used in each identified territory listed in Request for Production No. 19.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 20:**

Representative samples of non-privileged documents responsive to this Request will be produced.

**REQUEST FOR PRODUCTION NO. 21:**

All documents and things sufficient to identify Defendant's actual and potential customers, including, but not limited to, market research, customer profiles, and demographics, to whom Defendant has been, is, or intends to be promoting marketing, advertising, and/or selling any good and/or service in connection with the CASUAL COMFORT Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 21:**

Representative samples of non-privileged documents responsive to this Request will be produced.

**REQUEST FOR PRODUCTION NO. 22:**

Any and all documentation of known or reported incidents of actual or possible consumer confusion, mistake, deception, or association of any kind between Defendant's use of the CASUAL COMFORT Mark and Plaintiff's use of the CASUAL COMFORT Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 22:**

Petitioner is not aware of any documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 23:**

Any and all documentation of known or reported incidents of actual or possible consumer confusion, mistake, deception, or association of any kind between Plaintiff and Defendant.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 23:**

Petitioner is not aware of any documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 24:**

All documents and things referring or relating to any correspondence or inquiry received by Defendant which were intended for or should have been or were ultimately directed to Plaintiff.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 24:**

Petitioner is not aware of any documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 25:**

All documents sufficient to identify any person comparing or otherwise noting any relationship between the Plaintiff and Defendant or between their respective uses of the CASUAL COMFORT Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 25:**

Petitioner is not aware of any documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 26:**

Any and all documentation relating to the channels of trade used, or intended to be used, in offering for sale any goods and services under the CASUAL COMFORT Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 26:**

Representative samples of non-privileged documents responsive to this Request will be produced.

**REQUEST FOR PRODUCTION NO. 27:**

Any and all documentation relating to the channels of trade used, or intended to be used, in marketing or advertising the goods and services sold or offered under the CASUAL COMFORT Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 27:**

Representative samples of non-privileged documents responsive to this Request will be produced.

**REQUEST FOR PRODUCTION NO. 28:**

All documents relating to the use, ownership, registration, and control of the domain [www.franktex.com](http://www.franktex.com).

**RESPONSE TO REQUEST FOR PRODUCTION NO. 28:**

Representative samples of non-privileged documents responsive to this Request will be produced.

**REQUEST FOR PRODUCTION NO. 29:**

All documents relating to the ownership, registration and control of the Defendant's Facebook page "Franktex Inc."

**RESPONSE TO REQUEST FOR PRODUCTION NO. 29:**

Representative samples of non-privileged documents responsive to this Request will be produced.

**REQUEST FOR PRODUCTION NO. 30:**

At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2012.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 30:**

Respondent is determining if any document from 2012 responsive to this Request is still available.

**REQUEST FOR PRODUCTION NO. 31:**

At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2013.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 31:**

Respondent is determining if any document from 2013 responsive to this Request is still available.

**REQUEST FOR PRODUCTION NO. 32:**

At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2014.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 32:**

Respondent is determining if any document from 2014 responsive to this Request is still available.

**REQUEST FOR PRODUCTION NO. 33:**

At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2015.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 33:**

Respondent is determining if any document from 2015 responsive to this Request is still available.



**REQUEST FOR PRODUCTION NO. 34:**

At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2016.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 34:**

Respondent is determining if any document from 2016 responsive to this Request is still available.

**REQUEST FOR PRODUCTION NO. 35:**

At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2017.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 35:**

Respondent is determining if any document from 2017 responsive to this Request is still available.

**REQUEST FOR PRODUCTION NO. 36:**

At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2018.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 36:**

Respondent is determining if any document from 2018 responsive to this Request is still available.

**REQUEST FOR PRODUCTION NO. 37:**

At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2019.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 37:**

Respondent is determining if any document from 2019 responsive to this Request is available.

**REQUEST FOR PRODUCTION NO. 38:**

At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2020.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 38:**

Respondent will produce the requested document once the information requested for this document is available.

**REQUEST FOR PRODUCTION NO. 39:**

At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2021.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 39:**

Respondent will produce the requested document once the information requested for this document is available.

**REQUEST FOR PRODUCTION NO. 40:**

At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2022.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 40:**

Respondent will produce the requested document once the information requested for this document is available.

**REQUEST FOR PRODUCTION NO. 41:**

At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2023.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 41:**

Respondent will produce the requested document once the information requested for this document is available.

**REQUEST FOR PRODUCTION NO. 42:**

Any and all documents reflecting any efforts by Defendant or any affiliated or related entity to police or enforce the Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 42:**

Respondent is not aware of any documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 43:**

Any and all documents reflecting any communication with the United States Patent and Trademark Office (USPTO) or any other governmental agency regarding the CASUAL COMFORT Mark, including but not limited to, correspondence, filing, and responses to office actions.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 43:**

Representative non-privileged documents responsive to this request will be produced to the extent such documents exist.

**REQUEST FOR PRODUCTION NO. 44:**

Any and all documents of any complaints or inquiries received by the Defendant or any affiliated or related entity regarding the CASUAL COMFORT Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 44:**

Respondent is not aware of any documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 45:**

Any and all documentation of any instances where Defendant has been involved in any legal disputes relating to the CASUAL COMFORT Mark.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 45:**

Respondent is not aware of any documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 46:**

Copies of any lease or rental agreements for Defendant's office or other physical location.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 46:**

Representative samples of non-privileged documents responsive to this Request will be produced.

**REQUEST FOR PRODUCTION NO. 47:**

Any and all documents that may provide proof of Defendant's address, including but not limited to property tax bills, business licenses, or insurance policies.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 47:**

Representative samples of non-privileged documents responsive to this Request will be produced.

**REQUEST FOR PRODUCTION NO. 48:**

All documents and correspondences discussing, referencing, or relating to the specimen of use ("Specimen") submitted by Defendant on May 24, 2019, to the USPTO.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 48:**

Representative samples of non-privileged documents responsive to this Request will be produced.

**REQUEST FOR PRODUCTION NO. 49:**

Any and all correspondences, except those between you and your attorney, discussing, referencing, or relating to the Plaintiff.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 49:**

Respondent is not aware of any documents responsive to this Request.

**REQUEST FOR PRODUCTION NO. 50:**

All documents and correspondences discussing, referencing, or relating to the products depicted in the Specimen.

**RESPONSE TO REQUEST FOR PRODUCTION NO. 50:**

Representative samples of non-privileged documents responsive to this Request will be produced.

**REQUEST FOR PRODUCTION NO. 51:**


All purchase orders, order confirmations, receipts, and records relating to your inventory of “Pillows, namely, bed pillows” and “Mattress pads, down comforters, feather beds; sheets, namely, bed sheets” (collectively, “Defendant’s Goods”).

**RESPONSE TO REQUEST FOR PRODUCTION NO. 51:**

Representative non-privileged documents to the extent that they exist responsive to this Request will be produced.

Respectfully submitted,  
KNOBBE, MARTENS, OLSON & BEAR, LLP

Dated: May 11, 2023

By:   
\_\_\_\_\_  
Jeffrey L. Van Hoosear  
2040 Main Street  
Fourteenth Floor  
Irvine, CA 92614  
(949) 760-0404  
efiling@knobbe.com  
Attorneys for Respondent, Franktex, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the **RESPONDENT FRANKTEX, INC.'S RESPONSES TO PETITIONER'S FIRST SET OF REQUESTS FOR THE PRODUCTION OF DOCUMENTS AND THINGS (NOS. 1-51)** has been served on Petitioner's counsel by forwarding said copy on May 11, 2023, via email to:

Mark C. Johnson, Esq.  
JOHNSON | DALAL  
Info@JohnsonDalal.com  
MJ@JohnsonDalal.com  
JT@JohnsonDalal.com



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Doreen P. Buluran, Paralegal

57492425

# **EXHIBIT D**

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

IENJOY VENTURES, LLC,

Petitioner,

v.

FRANKTEX, INC.,

Respondent.

Cancellation No. 92081122

Registration No. 6072759

Mark: CASUAL COMFORT

**RESPONDENT FRANKTEX, INC.'S RESPONSES TO PETITIONER'S  
FIRST SET OF INTERROGATORIES (NOS. 1-14)**

Pursuant to the Rules of Practice of the United States Patent and Trademark Office, and the applicable Federal Rules of Civil Procedure, Franktex, Inc. ("Respondent") hereby responds to iEnjoy Ventures, LLC's ("Petitioner") First Set of Interrogatories (Nos. 1-14) as follows:

**PRELIMINARY STATEMENT**

1. The following responses are based upon information presently available to and located by Respondent and its counsel and reflect the current state of Respondent's knowledge, understanding and belief respecting the matters about which inquiry was made. Respondent has not completed its investigation of the facts relating to this Cancellation or preparation for trial and anticipates that as this Cancellation proceeds, further facts may be discovered. Without obligating itself to do so, Respondent reserves the right to modify or supplement these responses with any such pertinent information.

2. Respondent's responses are made without in any way waiving or intending to waive, but on the contrary, intending to preserve and preserving:

- a. The right to raise all questions of authenticity, relevancy, materiality, privilege and admissibility as evidence for any purpose of the information and the documents



identified and/or produced in response to these Interrogatories, which may arise in any subsequent proceeding in, or trial of, this or any other action;

- b. The right to object to the use of the information and/or documents in any subsequent proceeding in, or the trial of, this or any other action on any grounds;
- c. The right to object on any ground at any time to other Interrogatories, Interrogatorys, or other discovery involving the information and/or documents or the subject matter thereof; and
- d. The right to make subsequent answers if Respondent uncovers additional information and/or documents called for by these Interrogatories as discovery is still ongoing and Respondent's investigation of the facts and the evidence pertinent to this action has not been completed.

3. Words and terms used in the following responses shall be construed in accordance with their normal meanings and connotations, and shall in no way be interpreted as terms of art or statutorily defined terms used in the trademark laws, and Respondent specifically disavows any such meaning or connotation that might be accorded such terms.

4. Without waiving objections set forth below, and subject to the limitations stated above, Respondent has provided the information it believes is responsive and the subject of legitimate discovery which has been uncovered by reasonable investigation.

5. Specific objections to various interrogatories are made in the responses set forth below. In addition to those specific objections, Respondent generally objects to the Interrogatories as follows:

### **GENERAL OBJECTIONS**

The following General Objections are incorporated by reference in response to each of Petitioner's Interrogatories and are not waived with respect to any response.

1. Respondent generally objects to Petitioner's Interrogatories to the extent that they seek disclosure of any information protected, privileged or immune, or otherwise exempt from

discovery pursuant to applicable state and federal statutes, the Federal Rules of Civil Procedure, case law, regulations, administrative orders, or any other applicable rules, decisions or laws including, but not limited to, information protected by the attorney-client privilege, the work product doctrine and/or other applicable privilege. The specific objections stated below on the grounds of attorney-client privilege and/or work product in no way limit the generality of this objection. Nothing contained in these responses is intended to be nor should be considered a waiver of any attorney-client privilege, work product protection, the right of privacy or any other applicable privilege or doctrine, and to the extent that any Interrogatory may be construed as calling for disclosure of information protected by such privileges or doctrines, a continuing objection to each and every such interrogatory is hereby imposed. Any such protected information will not be provided.

2. Respondent generally objects to Petitioner's Interrogatories to the extent that Petitioner purports to require Respondent to identify any documents or information protected by the attorney-client privilege, the work product doctrine or other applicable privilege that were generated by its counsel or agents for internal use and/or privileged communications between or among Respondent and its counsel since the commencement of this proceeding. The applicability of the attorney-client privilege and/or work product doctrine is so clear and the burden of identifying each such document is so great that requiring Respondent to do so would be so burdensome as to result in injustice and would be oppressive in that the burden imposed thereby would be incommensurate with the result sought by Petitioner.

3. Respondent generally objects to Petitioner's Interrogatories, including the instructions and definitions, to the extent they purport to impose upon Respondent obligations greater than those imposed by the Federal Rules of Civil Procedure, 37 C.F.R. § 2.120(d), or other applicable rules or law.

4. Respondent generally objects to Petitioner's Interrogatories to the extent that they seek information that is not relevant to the parties' claims or defenses and not proportional to the

needs of this Cancellation or to the extent that Petitioner's Interrogatories seek the disclosure of information, documents or things beyond the scope of discovery as provided by the Federal Rules of Civil Procedure, 37 C.F.R. § 2.120(d), or other applicable rules or law.

5. Some of Petitioner's Interrogatories contain discrete subparts. To the extent Petitioner considers any interrogatory having discrete subparts to constitute a single interrogatory, Respondent objects to each interrogatory as being contrary to the Fed. R. Civ. P. 33(a) and 37 C.F.R. § 2.120(d).

6. Respondent generally objects to Petitioner's Interrogatories to the extent they seek information concerning "all" or "any" documents, persons or entities concerning a particular subject on the grounds that performing searches of such breadth is unduly burdensome. In responding to the Interrogatories, Respondent has made, or will make, a reasonable search as required by the Federal Rules of Civil Procedure.

7. Respondent generally objects to Petitioner's Interrogatories to the extent that they call for information that is protected from disclosure by agreements Respondent has with another entity, if any, or obligations Respondent has to another entity, if any.

8. Respondent further objects to Petitioner's definitions and instructions in the Interrogatories to the extent they make the individual Interrogatories vague, ambiguous or unintelligible, in that Petitioner attributes new meanings to ordinary words or defines the same word to have multiple meanings.

9. Respondent generally objects to Petitioner's Interrogatories to the extent that they seek information, documents or things not in Respondent's possession, custody or control.

10. Respondent generally objects to Petitioner's Interrogatories to the extent that they are overbroad and unduly burdensome, including as to the time periods purportedly covered by the Interrogatories, or fail to describe the information, documents or things sought with a reasonable degree of specificity.

11. Respondent generally objects to Petitioner's Interrogatories to the extent that Petitioner Interrogatory Respondent to set forth a separate response for each of Respondent's Marks when an Interrogatory Interrogatory information as to Respondent's Marks.

12. As used in Respondent's responses, the term "non-privileged documents" refers to documents that are not protected by the attorney-client privilege, the work-product doctrine or any other privilege or immunity precluding discovery.

13. Respondent generally objects to Petitioner's definition of "Respondent" to the extent this definition includes entities that are not parties to this proceeding and/or that Respondent does not control. The term "Respondent" refers to Franktex, Inc.

14. As used in Respondent's responses, the term "Respondent's Mark" shall mean the mark CASUAL COMFORT as shown in U.S. Trademark Registration Number 6,072,759.

15. As used in Respondent's responses, the term "Respondent's Goods" shall mean and refer to the goods Respondent offers or sells, has offered or sold, or intends to offer or sell identified in connection with Respondent's Mark, including but not limited to Respondent's goods identified in Respondent's Registration for Respondent's Mark, namely, "pillows, namely, bed pillows" in International Class 20 and "mattress pads, down comforters, feather beds; sheets, namely, bed sheets" in International Class 24.

16. As used in Respondent's responses, the term "Petitioner" refers to iEnjoy Ventures, LLC.

## **RESPONSES TO INTERROGATORIES**

### **INTERROGATORY NO. 1:**

Identify the name and address of the person answering these Interrogatories, and the person's official position or relationship with the party to whom the interrogatories are directed.

### **RESPONSE TO INTERROGATORY NO. 1:**

Documents responsive to this Interrogatory will be produced.

**INTERROGATORY NO. 2:**

For each year since Defendant's purported first use of the Mark, identify all goods and/or services marketed, offered for sale, and sold under the CASUAL COMFORT mark ("the Mark"), the dollar amount of all United States gross sales of all such goods and/or services, the dollar amount of all marketing and advertising expenses expended by Defendant in connection therewith, and the number of units sold.

**RESPONSE TO INTERROGATORY NO. 2:**

Documents responsive to this Interrogatory will be produced.

**INTERROGATORY NO. 3:**

For each year since Defendant's purported first use of the Mark, describe in detail the nature, extent, and scope of your use of the Mark in commerce (including, without limitation, all channels of trade through which the Mark was advertised and duration of the same, all channels of trade through which you sold any goods or services under the Mark and duration of the same, and all forms and types of advertising on which the Mark was displayed and duration of the same) and all periods of non-use.

**RESPONSE TO INTERROGATORY NO. 3:**

Documents responsive to this Interrogatory will be produced.

**INTERROGATORY NO. 4:**

Describe in detail, the circumstances surrounding your selection, creation, and submission of the specimen of use ("Specimen") submitted by Defendant on May 24, 2019, to the USPTO, including how, when, why, and from where you obtained it.

**RESPONSE TO INTERROGATORY NO. 4:**

Documents responsive to this Interrogatory will be produced.

**INTERROGATORY NO. 5:**

Describe in detail, the circumstances surrounding how, when, where, and why you first learned of the Applicant, of Applicant's use of the Mark, and of Applicant's U.S. Application Serial No. 97/698,006, including the identity of any person(s) who can substantiate your response.

**RESPONSE TO INTERROGATORY NO. 5:**

Respondent was not aware of Petitioner prior to the institution of this proceeding.

**INTERROGATORY NO. 6:**

Describe in detail the circumstances surrounding your selection and/or adoption of the Mark and identify all Persons who participated in the selection and adoption of the CASUAL COMFORT Mark and in the decision to file the Trademark Registration No. 6,072,759 ("the '759 Registration") and describe the nature, extent, and scope of their involvement in said decision(s).

**RESPONSE TO INTERROGATORY NO. 6:**

Documents responsive to this Interrogatory will be produced.

**INTERROGATORY NO. 7:**

Provide the names and addresses of all retailers, distributors, wholesalers, licensees, individuals, and entities that have used the Mark with your authorization in the past five years or that have marketed, offered for sale, or sold your goods or services under or in connection with the Mark with your authorization in the past five years.

**RESPONSE TO INTERROGATORY NO. 7:**

Documents responsive to this Interrogatory will be produced.

**INTERROGATORY NO. 8:**

Have you ever been sued or threatened with legal action by any other party for infringement on their trademark rights? If so, describe in detail.

**RESPONSE TO INTERROGATORY NO. 8:**

Respondent is not aware of any suit or threat as requested in this Interrogatory.

**INTERROGATORY NO. 9:**

Identify any and all agreements entered into, which refer or relate to the Mark.

**RESPONSE TO INTERROGATORY NO. 9:**

Documents responsive to this Interrogatory will be produced.

**INTERROGATORY NO. 10:**

Identify all individuals whose testimony you may or will rely upon in this proceeding and provide a brief statement of the expected testimony of such witnesses.

**RESPONSE TO INTERROGATORY NO. 10:**

Respondent will respond to this Interrogatory once information responsive to this Interrogatory is determined.

**INTERROGATORY NO. 11:**

Describe with particularity any known or reported instances of actual or possible consumer confusion between the Mark used by Plaintiff and the Mark used by Defendant wherein current or prospective consumers expressed confusion, mistake, or deception of any kind as to the affiliation between Plaintiff and Defendant, including the time, place, and date of said instances and the identity of any such person(s) from whom you obtained said information and identifying all communications and other evidence in support of Defendant's response.

**RESPONSE TO INTERROGATORY NO. 11:**

Respondent is not aware of any instances as requested by this Interrogatory.

**INTERROGATORY NO. 12:**

Describe with particularity the circumstances surrounding your first use of the Mark anywhere and in commerce, including the date and location of such use, and identify all documents that substantiate such use.

**RESPONSE TO INTERROGATORY NO. 12:**

Documents responsive to this Interrogatory will be produced.

**INTERROGATORY NO. 13:**

Describe with particularity the circumstances surrounding your first sale of a good or service using or displaying the Mark in commerce, including the date and location of such use, the particular good or service sold, and all documents that substantiate such use.

**RESPONSE TO INTERROGATORY NO. 13:**

Documents responsive to this Interrogatory will be produced.

**INTERROGATORY NO. 14:**

Identify any and all periods of non-use of the domain [www.franktex.com](http://www.franktex.com), including but not limited to abandonment or sale of the domain, and including the dates associated therewith and the factual circumstances necessitating any such non-use, sale, or abandonment.

**RESPONSE TO INTERROGATORY NO. 14:**

Documents responsive to this Interrogatory will be produced.

Respectfully submitted,  
KNOBBE, MARTENS, OLSON & BEAR, LLP



Dated: May 11, 2023

By: \_\_\_\_\_

Jeffrey L. Van Hoosear  
2040 Main Street  
Fourteenth Floor  
Irvine, CA 92614  
(949) 760-0404  
efiling@knobbe.com  
Attorneys for Respondent, Franktex, Inc.



CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the **RESPONDENT FRANKTEX, INC.'S RESPONSES TO PETITIONER'S FIRST SET OF INTERROGATORIES (NOS. 1-14)** has been served on Petitioner's counsel by forwarding said copy on May 11, 2023, via email to:

Mark C. Johnson, Esq.  
JOHNSON | DALAL  
Info@JohnsonDalal.com  
MJ@JohnsonDalal.com  
JT@JohnsonDalal.com



---

Doreen P. Buluran, Paralegal

57492091

# **EXHIBIT E**

## Veronika Balbuzanova

---

**From:** Jeff VanHoosear <Jeff.VanHoosear@knobbe.com>  
**Sent:** Wednesday, June 14, 2023 7:39 PM  
**To:** Veronika Balbuzanova <VB@JohnsonDalal.com>  
**Cc:** 2jvh <2jvh@knobbe.com>; Doreen Buluran <Doreen.Buluran@knobbe.com>  
**Subject:** RE: SERVICE OF DISCOVERY: Cancellation No. 92081122

Hi Veronika, I just heard further from Hinfan Tsang. We are meeting on Friday at 8:30 am. He is to be sending me material prior to the meeting. I will provide you with whatever material is responsive to your discovery requests. Regards, Jeff

**Jeff Van Hoosear**  
Partner  
[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)  
949-584-2824 Mobile  
**Knobbe Martens**  
2040 Main St., 14th Fl.  
Irvine, CA 92614  
[www.knobbe.com/jeff-van-hoosear](http://www.knobbe.com/jeff-van-hoosear)

---

**From:** Jeff VanHoosear  
**Sent:** Wednesday, June 14, 2023 1:25 PM  
**To:** 'Veronika Balbuzanova' <VB@JohnsonDalal.com>  
**Cc:** 2jvh <2jvh@knobbe.com>; Doreen Buluran <Doreen.Buluran@knobbe.com>  
**Subject:** RE: SERVICE OF DISCOVERY: Cancellation No. 92081122

Hi Veronika, Thank you. I did receive a message this morning from Hinfan Tsang, the CEO of Franktex, that he wants to visit my office this Friday to discuss this matter. I have asked for details of the visit, and what information and material he is able to bring with him. I will advise once I hear further. Regards, Jeff

**Jeff Van Hoosear**  
Partner  
[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)  
949-584-2824 Mobile  
**Knobbe Martens**  
2040 Main St., 14th Fl.  
Irvine, CA 92614  
[www.knobbe.com/jeff-van-hoosear](http://www.knobbe.com/jeff-van-hoosear)

---

**From:** Veronika Balbuzanova <VB@JohnsonDalal.com>  
**Sent:** Wednesday, June 14, 2023 1:15 PM  
**To:** Jeff VanHoosear <Jeff.VanHoosear@knobbe.com>; Jade Taylor <JT@JohnsonDalal.com>; efilng <efiling@knobbe.com>; 2jvh <2jvh@knobbe.com>; Doreen Buluran <Doreen.Buluran@knobbe.com>  
**Cc:** Mark Johnson <MJ@JohnsonDalal.com>; Pascal Peng <PP@JohnsonDalal.com>  
**Subject:** RE: SERVICE OF DISCOVERY: Cancellation No. 92081122

Hi Jeff,

Following up on this, please let me know if you heard back from your client. Thank you.

Best Regards,

Veronika Balbuzanova, Esq.  
*Attorney*

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---

**From:** Veronika Balbuzanova  
**Sent:** Friday, June 9, 2023 2:37 PM  
**To:** Jeff VanHoosear <[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)>; Jade Taylor <[JT@JohnsonDalal.com](mailto:JT@JohnsonDalal.com)>; efilng <[efiling@knobbe.com](mailto:efiling@knobbe.com)>; 2jvh <[2jvh@knobbe.com](mailto:2jvh@knobbe.com)>; Doreen Buluran <[Doreen.Buluran@knobbe.com](mailto:Doreen.Buluran@knobbe.com)>  
**Cc:** Mark Johnson <[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)>; Pascal Peng <[PP@JohnsonDalal.com](mailto:PP@JohnsonDalal.com)>  
**Subject:** RE: SERVICE OF DISCOVERY: Cancellation No. 92081122

Hi Jeff,

To memorialize our call from earlier today, in the event we do not receive a date certain from you regarding production of the outstanding documents and the unverified interrogatory responses by Wednesday, June 14<sup>th</sup>, we will be filing our motion to compel that day. While I sympathize with the position you are in due to the unresponsiveness of your client, we cannot prejudice our client by continuing to wait for documents that should have been produced weeks ago. To confirm, you have agreed to withdraw the "General Objections" in your document responses. I look forward to hearing from you soon.

Thank you.

Best Regards,

Veronika Balbuzanova, Esq.  
*Attorney*

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---

**From:** Jeff VanHoosear <[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)>  
**Sent:** Wednesday, June 7, 2023 8:27 PM  
**To:** Veronika Balbuzanova <[VB@JohnsonDalal.com](mailto:VB@JohnsonDalal.com)>; Jade Taylor <[JT@JohnsonDalal.com](mailto:JT@JohnsonDalal.com)>; efilng <[efiling@knobbe.com](mailto:efiling@knobbe.com)>; 2jvh <[2jvh@knobbe.com](mailto:2jvh@knobbe.com)>; Doreen Buluran <[Doreen.Buluran@knobbe.com](mailto:Doreen.Buluran@knobbe.com)>  
**Cc:** Mark Johnson <[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)>; Pascal Peng <[PP@JohnsonDalal.com](mailto:PP@JohnsonDalal.com)>  
**Subject:** RE: SERVICE OF DISCOVERY: Cancellation No. 92081122

Thank you. Regards, Jeff

**Jeff Van Hoosear**  
Partner  
[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)  
949-584-2824 Mobile  
**Knobbe Martens**  
2040 Main St., 14th Fl.  
Irvine, CA 92614  
[www.knobbe.com/jeff-van-hoosear](http://www.knobbe.com/jeff-van-hoosear)

---

**From:** Veronika Balbuzanova <[VB@JohnsonDalal.com](mailto:VB@JohnsonDalal.com)>  
**Sent:** Wednesday, June 7, 2023 5:25 PM  
**To:** Jeff VanHoosear <[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)>; Jade Taylor <[JT@JohnsonDalal.com](mailto:JT@JohnsonDalal.com)>; efilng <[efiling@knobbe.com](mailto:efiling@knobbe.com)>; 2jvh <[2jvh@knobbe.com](mailto:2jvh@knobbe.com)>; Doreen Buluran <[Doreen.Buluran@knobbe.com](mailto:Doreen.Buluran@knobbe.com)>  
**Cc:** Mark Johnson <[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)>; Pascal Peng <[PP@JohnsonDalal.com](mailto:PP@JohnsonDalal.com)>  
**Subject:** Re: SERVICE OF DISCOVERY: Cancellation No. 92081122

Hi Jeff,

Let's do 10:30 a.m. Pacific (1:30 p.m. Eastern). I look forward to speaking with you then. Thank you.

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---

**From:** Jeff VanHoosear <[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)>  
**Sent:** Wednesday, June 7, 2023 8:09:46 PM  
**To:** Veronika Balbuzanova <[VB@JohnsonDalal.com](mailto:VB@JohnsonDalal.com)>; Jade Taylor <[JT@JohnsonDalal.com](mailto:JT@JohnsonDalal.com)>; efilng <[efiling@knobbe.com](mailto:efiling@knobbe.com)>; 2jvh <[2jvh@knobbe.com](mailto:2jvh@knobbe.com)>; Doreen Buluran <[Doreen.Buluran@knobbe.com](mailto:Doreen.Buluran@knobbe.com)>  
**Cc:** Mark Johnson <[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)>; Pascal Peng <[PP@JohnsonDalal.com](mailto:PP@JohnsonDalal.com)>  
**Subject:** RE: SERVICE OF DISCOVERY: Cancellation No. 92081122

Hi Veronika, Thank you. If you are offering a call at 10:00 Pacific, I can do a call at 10:30 am Pacific. I have a have a 9:30 am Pacific call with opposing counsel and I expect it might go slightly longer than 30 minutes. If you meant 10:00 am Florida time (7:00 am Pacific), I can do that as well. Regards, Jeff

**Jeff Van Hoosear**

Partner

[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)

949-584-2824 Mobile

**Knobbe Martens**

2040 Main St., 14th Fl.

Irvine, CA 92614

[www.knobbe.com/jeff-van-hoosear](http://www.knobbe.com/jeff-van-hoosear)

---

**From:** Veronika Balbuzanova <[VB@JohnsonDalal.com](mailto:VB@JohnsonDalal.com)>

**Sent:** Wednesday, June 7, 2023 4:29 PM

**To:** Jeff VanHoosear <[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)>; Jade Taylor <[JT@JohnsonDalal.com](mailto:JT@JohnsonDalal.com)>; efilig <[efiling@knobbe.com](mailto:efiling@knobbe.com)>; 2jvh <[2jvh@knobbe.com](mailto:2jvh@knobbe.com)>; Doreen Buluran <[Doreen.Buluran@knobbe.com](mailto:Doreen.Buluran@knobbe.com)>

**Cc:** Mark Johnson <[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)>; Pascal Peng <[PP@JohnsonDalal.com](mailto:PP@JohnsonDalal.com)>

**Subject:** RE: SERVICE OF DISCOVERY: Cancellation No. 92081122

Hi Jeff,

Thank you for your response. The week of June 25<sup>th</sup> would potentially work on our end but we cannot re-set the deposition until we receive your client's outstanding production documents and amended discovery responses (to cure the deficiencies set forth in our letter) sufficiently in advance of the deposition so we have sufficient time to review and prepare. To that end, yes, I can be available this Friday 6/9 to meet and confer on the discovery issues. If we are able to resolve said issues on our call, then we could likely also confirm a date for the deposition to be re-set. Please let me know if 10 a.m. this Friday 6/9 works on your end. If so, our office will circulate a calendar invite in the morning.

Thank you.

Best Regards,

Veronika Balbuzanova, Esq.

*Attorney*

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**From:** Jeff VanHoosear <[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)>

**Sent:** Wednesday, June 7, 2023 7:06 PM

**To:** Jade Taylor <[JT@JohnsonDalal.com](mailto:JT@JohnsonDalal.com)>; efilng <[efiling@knobbe.com](mailto:efiling@knobbe.com)>; 2jvh <[2jvh@knobbe.com](mailto:2jvh@knobbe.com)>; Doreen Buluran <[Doreen.Buluran@knobbe.com](mailto:Doreen.Buluran@knobbe.com)>

**Cc:** Mark Johnson <[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)>; Veronika Balbuzanova <[VB@JohnsonDalal.com](mailto:VB@JohnsonDalal.com)>; Pascal Peng <[PP@JohnsonDalal.com](mailto:PP@JohnsonDalal.com)>

**Subject:** RE: SERVICE OF DISCOVERY: Cancellation No. 92081122

Hi Jade, My apologies for the delay. My client has been out of the country and unavailable. I understand that he would like to be in our Irvine, California office for the video deposition. Does June 19-20 or the week of June 25 work for your office. Regards, Jeff

**Jeff Van Hoosear**

Partner

[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)

949-584-2824 Mobile

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2040 Main St., 14th Fl.

Irvine, CA 92614

[www.knobbe.com/jeff-van-hoosear](http://www.knobbe.com/jeff-van-hoosear)

---

**From:** Jade Taylor <[JT@JohnsonDalal.com](mailto:JT@JohnsonDalal.com)>

**Sent:** Wednesday, May 24, 2023 2:04 PM

**To:** Jeff VanHoosear <[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)>; efilng <[efiling@knobbe.com](mailto:efiling@knobbe.com)>; 2jvh <[2jvh@knobbe.com](mailto:2jvh@knobbe.com)>; Doreen Buluran <[Doreen.Buluran@knobbe.com](mailto:Doreen.Buluran@knobbe.com)>

**Cc:** Mark Johnson <[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)>; Veronika Balbuzanova <[VB@JohnsonDalal.com](mailto:VB@JohnsonDalal.com)>; Pascal Peng <[PP@JohnsonDalal.com](mailto:PP@JohnsonDalal.com)>

**Subject:** RE: SERVICE OF DISCOVERY: Cancellation No. 92081122

Hi Jeff,

Circling back on this, we understand and can coordinate this deposition for sometime in early June. Can you please provide dates of availability for your client so I can re-notice?

Thank you.

Jade Taylor, Paralegal to Mark C. Johnson, Esq.

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**From:** Jeff VanHoosear <[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)>  
**Sent:** Sunday, April 23, 2023 12:55 PM  
**To:** Jade Taylor <[JT@JohnsonDalal.com](mailto:JT@JohnsonDalal.com)>; efiling <[efiling@knobbe.com](mailto:efiling@knobbe.com)>; 2jvh <[2jvh@knobbe.com](mailto:2jvh@knobbe.com)>; Doreen Buluran <[Doreen.Buluran@knobbe.com](mailto:Doreen.Buluran@knobbe.com)>  
**Cc:** Mark Johnson <[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)>; Veronika Balbuzanova <[VB@JohnsonDalal.com](mailto:VB@JohnsonDalal.com)>; Pascal Peng <[PP@JohnsonDalal.com](mailto:PP@JohnsonDalal.com)>  
**Subject:** RE: SERVICE OF DISCOVERY: Cancellation No. 92081122

Dear Ms. Taylor, Our client's corporate representative, based in San Francisco, can be available for discovery deposition in early June. We are away much of May to attend the annual INTA conference in Singapore. Regards. Jeff Van Hoosear

**Jeff Van Hoosear**  
Partner  
949-721-5274 Direct  
**Knobbe Martens**

---

**From:** Jade Taylor <[JT@JohnsonDalal.com](mailto:JT@JohnsonDalal.com)>  
**Sent:** Wednesday, April 19, 2023 9:22 AM  
**To:** efiling <[efiling@knobbe.com](mailto:efiling@knobbe.com)>; 2jvh <[2jvh@knobbe.com](mailto:2jvh@knobbe.com)>; Jeff VanHoosear <[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)>; Doreen Buluran <[Doreen.Buluran@knobbe.com](mailto:Doreen.Buluran@knobbe.com)>  
**Cc:** Mark Johnson <[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)>; Veronika Balbuzanova <[VB@JohnsonDalal.com](mailto:VB@JohnsonDalal.com)>; Pascal Peng <[PP@JohnsonDalal.com](mailto:PP@JohnsonDalal.com)>  
**Subject:** RE: SERVICE OF DISCOVERY: Cancellation No. 92081122

Hello,

Following up again on the below Notice of Taking Deposition. Please advise as to the dates of availability for your client's Corporate Representative deposition as soon as possible. If we do not hear from you by Friday, we will proceed with unilaterally setting this deposition to occur in May.

Thank you.

Jade Taylor, Paralegal to Mark C. Johnson, Esq.

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---

**From:** Jade Taylor  
**Sent:** Monday, April 10, 2023 11:10 AM



To: [efiling@knobbe.com](mailto:efiling@knobbe.com); [2jvh@knobbe.com](mailto:2jvh@knobbe.com); [cheryl@knobbe.com](mailto:cheryl@knobbe.com)

Cc: Mark Johnson <[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)>; Veronika Balbuzanova <[VB@JohnsonDalal.com](mailto:VB@JohnsonDalal.com)>; Pascal Peng <[PP@JohnsonDalal.com](mailto:PP@JohnsonDalal.com)>

Subject: RE: SERVICE OF DISCOVERY: Cancellation No. 92081122

Hello,

Following up on the below Notice of Taking Deposition. Please advise as to the dates of availability for your client's Corporate Representative deposition as soon as possible.

Thank you.

---

From: Jade Taylor

Sent: Thursday, April 6, 2023 1:12 PM

To: [efiling@knobbe.com](mailto:efiling@knobbe.com); [2jvh@knobbe.com](mailto:2jvh@knobbe.com); [cheryl@knobbe.com](mailto:cheryl@knobbe.com)

Cc: Mark Johnson <[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)>; Veronika Balbuzanova <[VB@JohnsonDalal.com](mailto:VB@JohnsonDalal.com)>; Pascal Peng <[PP@JohnsonDalal.com](mailto:PP@JohnsonDalal.com)>

Subject: SERVICE OF DISCOVERY: Cancellation No. 92081122

Dear Counsel:

**RE: Cancellation No. 92081122**

Please see the attached:

- Plaintiff's First Set of Interrogatories;
- Plaintiff's First Request for Production;
- Plaintiff's First Request for Admissions; and
- Plaintiff's Notice of Taking 30(b)(6) Deposition of Corporate Representative.

Please advise as to the dates of availability of your client's Corporate Representative deposition as soon as possible.

Thank you.

Jade Taylor, Paralegal to Mark C. Johnson, Esq.

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## Veronika Balbuzanova

---

**From:** Jeff VanHoosear <Jeff.VanHoosear@knobbe.com>

**Sent:** Wednesday, June 7, 2023 7:10 PM

**To:** Pascal Peng <PP@JohnsonDalal.com>; efilng <efiling@knobbe.com>; 2jvh <2jvh@knobbe.com>; cheryl@knobbe.com; Doreen Buluran <Doreen.Buluran@knobbe.com>

**Cc:** Mark Johnson <MJ@JohnsonDalal.com>; Jade Taylor <JT@JohnsonDalal.com>; Veronika Balbuzanova <VB@JohnsonDalal.com>

**Subject:** RE: Discovery Deficiency Letter Pursuant to 37 C.F.R. § 2.120(f) (Cancellation No. 92081122)

Dear Veronika, Are you available for a call tomorrow June 8 or Friday June 9 to discuss the issues raised in your letter of May 18, 2023. Please let me know. Regards, Jeff

**Jeff Van Hoosear**

Partner

[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)

949-584-2824 Mobile

**Knobbe Martens**

2040 Main St., 14th Fl.

Irvine, CA 92614

[www.knobbe.com/jeff-van-hoosear](http://www.knobbe.com/jeff-van-hoosear)

---

**From:** Pascal Peng <[PP@JohnsonDalal.com](mailto:PP@JohnsonDalal.com)>

**Sent:** Wednesday, June 7, 2023 12:21 PM

**To:** Jeff VanHoosear <[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)>; efilng <[efiling@knobbe.com](mailto:efiling@knobbe.com)>; 2jvh <[2jvh@knobbe.com](mailto:2jvh@knobbe.com)>; [cheryl@knobbe.com](mailto:cheryl@knobbe.com); Doreen Buluran <[Doreen.Buluran@knobbe.com](mailto:Doreen.Buluran@knobbe.com)>

**Cc:** Mark Johnson <[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)>; Jade Taylor <[JT@JohnsonDalal.com](mailto:JT@JohnsonDalal.com)>; Veronika Balbuzanova <[VB@JohnsonDalal.com](mailto:VB@JohnsonDalal.com)>

**Subject:** RE: Discovery Deficiency Letter Pursuant to 37 C.F.R. § 2.120(f) (Cancellation No. 92081122)

Dear Counsel:

Following up on Ms. Balbuzanova's email below. We look forward to hearing from you soon!

Thank you!

Pascal Peng, Legal Assistant

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SUITE 105

PLANTATION, FLORIDA 33324

OFFICE: (954) 507-4500

FAX: (954) 507-4502

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---

**From:** Veronika Balbuzanova <[VB@JohnsonDalal.com](mailto:VB@JohnsonDalal.com)>

**Sent:** Thursday, June 1, 2023 11:10 AM

**To:** Jeff VanHoosear <[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)>; [efiling@knobbe.com](mailto:efiling@knobbe.com); [2jvh@knobbe.com](mailto:2jvh@knobbe.com); [cheryl@knobbe.com](mailto:cheryl@knobbe.com); [doreen.buluran@knobbe.com](mailto:doreen.buluran@knobbe.com)

**Cc:** Mark Johnson <[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)>; Jade Taylor <[JT@JohnsonDalal.com](mailto:JT@JohnsonDalal.com)>; Pascal Peng <[PP@JohnsonDalal.com](mailto:PP@JohnsonDalal.com)>

**Subject:** RE: Discovery Deficiency Letter Pursuant to 37 C.F.R. § 2.120(f) (Cancellation No. 92081122)

Dear Counsel:

It has now been two weeks since we served our discovery deficiency letter and, despite following up, we have not yet received any type of response to the detailed points and issues set forth in our letter, the most significant of which is the fact that absolutely no production documents have been produced to date. Please accept this as our last attempt to meet and confer before we proceed with filing a motion to compel on the issues. Please either provide a written response to the issues identified in our letter or provide a date and time when we may schedule a call to confer on the issues. In the event we do not receive a substantive response from you **by Thursday, June 8<sup>th</sup>**, we will proceed with filing our motion.

Thank you.

Best Regards,

Veronika Balbuzanova, Esq.  
*Associate Attorney*

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---

**From:** Veronika Balbuzanova

**Sent:** Thursday, May 25, 2023 8:46 AM

**To:** Jeff VanHoosear <[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)>; [efiling@knobbe.com](mailto:efiling@knobbe.com); [2jvh@knobbe.com](mailto:2jvh@knobbe.com); [cheryl@knobbe.com](mailto:cheryl@knobbe.com); [doreen.buluran@knobbe.com](mailto:doreen.buluran@knobbe.com)

**Cc:** Mark Johnson <[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)>; Jade Taylor <[JT@JohnsonDalal.com](mailto:JT@JohnsonDalal.com)>; Pascal Peng <[PP@JohnsonDalal.com](mailto:PP@JohnsonDalal.com)>

**Subject:** RE: Discovery Deficiency Letter Pursuant to 37 C.F.R. § 2.120(f) (Cancellation No. 92081122)

Dear Counsel:

Following up on the below, please provide your response and/or provide your availability for a call to discuss the matters set forth in our letter. Thank you.

Best Regards,

Veronika Balbuzanova, Esq.  
*Associate Attorney*

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---

**From:** Veronika Balbuzanova  
**Sent:** Thursday, May 18, 2023 6:37 PM  
**To:** Jeff VanHoosear <[Jeff.VanHoosear@knobbe.com](mailto:Jeff.VanHoosear@knobbe.com)>; [efiling@knobbe.com](mailto:efiling@knobbe.com); [2jvh@knobbe.com](mailto:2jvh@knobbe.com); [cheryl@knobbe.com](mailto:cheryl@knobbe.com); [doreen.buluran@knobbe.com](mailto:doreen.buluran@knobbe.com)  
**Cc:** Mark Johnson <[MJ@JohnsonDalal.com](mailto:MJ@JohnsonDalal.com)>; Jade Taylor <[JT@JohnsonDalal.com](mailto:JT@JohnsonDalal.com)>; Pascal Peng <[PP@JohnsonDalal.com](mailto:PP@JohnsonDalal.com)>  
**Subject:** Discovery Deficiency Letter Pursuant to 37 C.F.R. § 2.120(f) (Cancellation No. 92081122)

Dear Counsel:

Please see the attached correspondence for your immediate attention. Thank you.

Best Regards,

Veronika Balbuzanova, Esq.  
*Associate Attorney*

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MARK C. JOHNSON, ESQ.  
ABDUL-SUMI DALAL, ESQ.  
VERONIKA BALBUZANOVA, ESQ.

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May 18, 2023

**Via Email:** [jeff.vanhoosear@knobbe.com](mailto:jeff.vanhoosear@knobbe.com); [efiling@knobbe.com](mailto:efiling@knobbe.com); [2jvh@knobbe.com](mailto:2jvh@knobbe.com);  
[cheryl@knobbe.com](mailto:cheryl@knobbe.com); [doreen.buluran@knobbe.com](mailto:doreen.buluran@knobbe.com)

Jeff Van Hoosear, Esq.  
Knobbe Martens Olson & Bear LLP  
2040 Main St., 14th Fl.  
Irvine, CA 92614

**Re: Discovery Deficiency Letter Pursuant to 37 C.F.R. § 2.120(f) (Cancellation No. 92081122)**

Dear Counsel:

We are in receipt of Respondent Franktex, Inc. (“Respondent”) responses to Petitioner iEnjoy Ventures, LLC’s (“Petitioner”) First Request for Production, First Set of Interrogatories, and First Request for Admissions in this proceeding (collectively, the “Discovery Responses”). Pursuant to 37 C.F.R. § 2.120(f), and before resorting to judicial intervention, we have drafted this letter to address and attempt to resolve a number of issues that relate to your Discovery Responses.

Please note that we expect to receive all of the items delineated in this letter **no later than five (5) calendar days after receipt of this letter.**

**Absence of Production of Documents**

In violation of Rule 34(b)(2)(B) of the Federal Rules of Civil Procedure, a number of your Discovery Responses state that “Documents responsive to this Interrogatory will be produced” and/or “Representative samples of non-privileged documents responsive to this Request will be produced.” Specifically, Interrogatory Nos. 1-4, 6-7, 9, and 12-14 and Production Request Nos. 1, 3-5, 7, 10-13, 15, 17-21, 26-41, 43, 46-48, and 50-51, suggest that responsive documents *will be* produced at some unspecified point in the future, i.e., without providing a date certain by when said documents will be produced. *See* FRCP 34(b)(2)(B) (“The production must then be completed no later than the time for inspection specified in the request or another reasonable time specified in the response.”). As of the undersigned date, we have not yet received Respondent’s responsive documents. In the event Respondent fails to produce all documents responsive to Interrogatory Nos. 1-4, 6-7, 9, and 12-14 and Production

Request Nos. 1, 3-5, 7, 10-13, 15, 17-21, 26-41, 43, 46-48, and 50-51 by May 23, 2023, we intend to file a motion to compel and seek appropriate relief from the Board.

### **General Objections**

Respondent's responses to the production requests, interrogatory requests, and requests for admission all contain a laundry list of what are dubbed "General Objections" that are wholly improper under the Federal Rules. The Middle District of Florida previously addressed similar such general objections and aptly explained as follows:

Miner interposed thirteen "General Objections" to the requests for production and interrogatories (Doc. 37-2 at 1-4). These "General Objections" include objecting "to each interrogatory and request to the extent it is overly broad, unduly burdensome, irrelevant, and/or not proportional to the needs of this case" and "to the extent it requires disclosure of documents and information relating to matters not raised by Miner's Complaint on the grounds that such information is not relevant to the subject matter of this proceeding." (Doc. 37-2, ¶¶ 4-5). All of Miner's "General Objections" are overruled. As the Court has explained before in other cases "[t]he grounds for objecting to an interrogatory must be stated with specificity." Fed. R. Civ. P. 33(b)(4). Since the Federal Rules of Civil Procedure were amended effective December 1, 2015, Rule 34 has required a party objecting to requests for production to: (1) "state with specificity the grounds for objecting to the request, including the reasons;" (2) "state whether any responsive materials are being withheld on the basis of that objection;" and (3) "[a]n objection to part of a request must specify the part and permit inspection of the rest." As the court observed in *Liguria Foods, Inc. v. Griffith Laboratories, Inc.*, 320 F.R.D. 168, 2017 U.S. Dist. LEXIS 35370, at \*32 (N.D. Iowa 2017), "[t]he key requirement in both Rules 33 and 34 is that objections require 'specificity.'" So-called "generalized objections are inadequate and tantamount to not making any objection at all." *Id.* at \*36 (quoting Jarvey, *Boilerplate Discovery Objections*, 61 DRAKE L. REV. at 916).

*Miner, Ltd.*, 2019 U.S. Dist. LEXIS 111023, \*1, \*5; see also *Forte Young v. Whiting-Turner Contr. Co.*, 2019 U.S. Dist. LEXIS 239915, \*1, \*7 n.4 (M.D. Fla. Sept. 20, 2019) ("The Court also overrules FYI's general objections, which are viewed by courts as being 'inadequate and tantamount to not making any objection at all.'"); *Benfatto v. Wachovia Bank, N.A.*, No. 08-60646-CIV, 2008 U.S. Dist. LEXIS 95952, 2008 WL 4938418, at \*2 (S.D. Fla. Nov. 19, 2008) ("generalized objections, which purported to object to each and every category of documents, are not recognized by this Court.").

Moreover, and in particular, if Respondent intends to stand on its purported claims of privilege (namely, the attorney-client privilege and work product doctrine), we respectfully request that it produce a privilege log in accordance with Federal Rule of Civil Procedure 26(b)(5) to substantiate said claims of privilege. Fed. R. Civ. P. 26(b)(5) ("When a party withholds information otherwise discoverable by claiming that the information is privileged or subject to protection as trial-preparation material, the party must . . . describe the nature of the documents, communications, or tangible things not produced or disclosed—and do so in a manner that, without revealing information itself privileged or protected, will enable other parties to assess the claim."). Otherwise, we shall deem all claims of privilege waived and/or file a motion to compel with the Board.

In view of the foregoing, Respondent's general objections violate Rules 33 and 34 of the Federal Rules of Civil Procedure, are improper, and should be promptly withdrawn.



**Unverified Interrogatory Responses**

Additionally, the Interrogatory Responses are not verified by Respondent but are, instead, seemingly submitted by defense counsel. Interrogatories must be answered “separately and fully in writing under oath.” Fed. R. Civ. P. 33(b)(3); TBMP § 405.04(b). As such, please produce verified versions of Respondent’s interrogatory responses.

To eliminate the need for the Board’s intervention in connection with the discovery matters discussed herein, we hereby propose coordinating a conferral call for a convenient date and time next week and request that Respondent amend and/or supplement its responses as needed **within five (5) calendar days after receipt of this letter.**

Thank you for your attention to these matters.

Respectfully submitted,

/s/ Mark C. Johnson  
Mark C. Johnson (FBN: 84365)  
Email: [mj@johnsonDalal.com](mailto:mj@johnsonDalal.com)  
JOHNSON | DALAL  
*Attorneys for Petitioner*  
111 N. Pine Island Road  
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Facsimile: (954) 507-4502

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

iEnjoy Ventures, LLC,  
  
Petitioner,  
  
v.  
  
Franktex, Inc.,  
  
Respondent.

Cancellation No. 92081122  
  
Mark: CASUAL COMFORT  
  
U.S. Trademark Registration No. 6,072,759  
  
Registration Date: June 09, 2020

**PETITIONER’S MOTION TO COMPEL PRODUCTION**

COMES NOW, iEnjoy Ventures, LLC (hereinafter, “Petitioner” or “Plaintiff”) and, pursuant to TBMP §§ 523 and 411.02 and Rule 37 of the Federal Rules of Civil Procedure, moves to compel Franktex, Inc. (“Respondent” or “Defendant”) to comply with its discovery obligations. In support of this Motion, Petitioner states as follows.

**FACTUAL BACKGROUND**

On April 6, 2023, Petitioner served its First Request for Production, First Set of Interrogatories, and First Request for Admissions (collectively, “the Discovery Requests”) on Respondent. The First Request for Admissions is not at issue in this motion. Petitioner’s First Request for Production is attached hereto as **Exhibit A**. Petitioner’s First Set of Interrogatories is attached hereto as **Exhibit B**. On May 11, 2023, Respondent timely<sup>1</sup> served its responses to the Discovery Requests. Respondent’s responses to the First Request for Production are attached

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1. Petitioner served its Discovery Requests shortly prior to serving its Initial Disclosures. Specifically, Petitioner served the Discovery Requests on April 6, 2023, and served its Initial Disclosures on April 11, 2023. As such, the Discovery Requests were deemed served on April 11, 2023, and Respondent timely served its responses on May 11, 2023.

hereto as **Exhibit C**. Respondent's responses to the First Set of Interrogatories are attached hereto as **Exhibit D**. Respondent's discovery responses, however, were characterized by a number of deficiencies including (1) improper general objections, (2) failure to produce responsive documents, and (3) failure to verify Respondent's interrogatory responses. Consequently, on May 18, 2023, undersigned counsel remitted a discovery deficiency letter to Respondent's counsel pursuant to Petitioner's obligation to meet and confer in good faith pursuant to 37 C.F.R. § 2.120(f), TBMP §§ 523 and 411.02, and Rule 37 of the Federal Rules of Civil Procedure. On June 9, 2023, counsel for the Parties telephonically conferred on the issues and were able to resolve the (1) improper general objections issue. With respect to the (2) failure to produce responsive documents and (3) failure to verify Respondent's interrogatory responses, Respondent's counsel advised that his client was out of the country but was expected to return and produce the responsive documents and verified interrogatory responses in the coming days. Thereafter, Respondent's counsel advised that he would be meeting with the Respondent in-person on June 16, 2023, and that the Respondent was expected to produce material prior to the meeting. To date, however, no responsive documents or verified interrogatory responses have been produced by the Respondent, nor has a date certain by when such materials would be produced been given. As of the undersigned date, Respondent has been in possession of Petitioner's Discovery Requests for *eighty-one (81) days* and has, therefore, had ample time and opportunity to produce the documents requested. Discovery is set to close on September 8, 2023.

As Petitioner has exhausted its good faith in making numerous attempts to obtain the discovery materials from Respondent to no avail, Petitioner now respectfully moves the Board to compel Respondent to produce the same.

### **ARGUMENT**

Petitioner cannot reasonably conduct depositions, issue follow up discovery requests, or prepare for trial until Respondent has completely complied with its outstanding discovery obligations. Absent a stipulation or court order to the contrary, a responding party generally has thirty days from the date of service to serve its responses to interrogatories. TBMP § 405.04(a) (“Responses to interrogatories must be served within 30 days after the date of service of the interrogatories.”); 37 C.F.R. § 2.120(a)(3) (“Responses to interrogatories, requests for production of documents and things, and requests for admission must be served within thirty days from the date of service of such discovery requests.”); Fed. R. Civ. P. 33(b)(2) (“The responding party must serve its answers and any objections within 30 days after being served with the interrogatories.”).

“A motion to compel discovery shall include a copy of the request for designation of a witness or of the relevant portion of the discovery deposition; or a copy of the interrogatory with any answer or objection that was made; or a copy of the request for production, any proffer of production or objection to production in response to the request, and a list and brief description of the documents, electronically stored information, or tangible things that were not produced for inspection and copying.” 37 C.F.R. § 2.120(f)(1). As reflected in **Exhibit C**, the documents, electronically stored information, and/or tangible things that were not produced for inspection and copying (and that were not objected to and that Respondent responded it will produce responsive documents to)<sup>2</sup> are as follows:

---

2. In response to certain production requests, Respondent responded that it “is not aware of any documents responsive to this Request.” Because the Board cannot compel Respondent to produce documents it simply does not have, said requests are excluded from the list of production requests below. However, to the extent that Respondent does become aware of documents responsive to said requests, the same should be produced/supplemented in accordance with Respondent’s obligation under Fed. R. Civ. P. 26(e).

**REQUEST FOR PRODUCTION NO. 1:** Any and all documents used, referred to, referenced or relating to your responses to Plaintiff's First Set of Interrogatories.

**REQUEST FOR PRODUCTION NO. 3:** Any and all business reports, ledger, marketing, meeting minutes, correspondence, payment, contracts, analytics, drafts, worksheets, tabulations, or other documents prepared regarding the CASUAL COMFORT Mark.

**REQUEST FOR PRODUCTION NO. 4:** Any and all logs, notes, photographs, videotapes or any digital file regarding the '759 Registration and the CASUAL COMFORT Mark.

**REQUEST FOR PRODUCTION NO. 5:** A document sufficient to identify the names and addresses of all the parties that will testify or produce evidence regarding the '759 Registration and the CASUAL COMFORT Mark.

**REQUEST FOR PRODUCTION NO. 6:** Any and all documentation Defendant obtained regarding the '759 Registration.

**REQUEST FOR PRODUCTION NO. 7:** Any and all documents relating to the registration of the Mark, including the '759 Registration, registration certificate, and any amendments or renewals.

**REQUEST FOR PRODUCTION NO. 10:** Any and all flyers, brochures, leaflets, mailers, business cards, Internet postings, and any other marketing and advertising materials prepared or circulated bearing the CASUAL COMFORT Mark.

**REQUEST FOR PRODUCTION NO. 11:** At least one document sufficient to identify your alleged first use of the CASUAL COMFORT Mark.

**REQUEST FOR PRODUCTION NO. 12:** At least one document sufficient to identify your alleged first use of the CASUAL COMFORT Mark in commerce.

**REQUEST FOR PRODUCTION NO. 13:** At least one document sufficient to identify your first sale of a good or service using, displaying, or otherwise bearing the CASUAL COMFORT Mark.

**REQUEST FOR PRODUCTION NO. 15:** All documents relating to your selection and/or adoption of the CASUAL COMFORT Mark.

**REQUEST FOR PRODUCTION NO. 17:** Exemplars of all goods and services with which the CASUAL COMFORT Mark is or is intended to be used.

**REQUEST FOR PRODUCTION NO. 18:** All documents relating to the manner of use of the CASUAL COMFORT Mark and the manner in which the CASUAL COMFORT Mark is intended to be depicted or portrayed.

**REQUEST FOR PRODUCTION NO. 19:** Any and all documentation and things sufficient to identify the geographic locations in which Defendant offers, has offered, or intends to offer goods and services in connection with the CASUAL COMFORT Mark or a variation thereof.

**REQUEST FOR PRODUCTION NO. 20:** All documents sufficient to identify the duration that the CASUAL COMFORT Mark has been used in each identified territory listed in Request for Production No. 19.

**REQUEST FOR PRODUCTION NO. 21:** All documents and things sufficient to identify Defendant's actual and potential customers, including, but not limited to, market research, customer profiles, and demographics, to whom Defendant has been, is, or intends

to be promoting marketing, advertising, and/or selling any good and/or service in connection with the CASUAL COMFORT Mark.

**REQUEST FOR PRODUCTION NO. 26:** Any and all documentation relating to the channels of trade used, or intended to be used, in offering for sale any goods and services under the CASUAL COMFORT Mark.

**REQUEST FOR PRODUCTION NO. 27:** Any and all documentation relating to the channels of trade used, or intended to be used, in marketing or advertising the goods and services sold or offered under the CASUAL COMFORT Mark.

**REQUEST FOR PRODUCTION NO. 28:** All documents relating to the use, ownership, registration, and control of the domain [www.franktex.com](http://www.franktex.com).

**REQUEST FOR PRODUCTION NO. 29:** All documents relating to the ownership, registration and control of the Defendant's Facebook page "Franktex Inc."

**REQUEST FOR PRODUCTION NO. 30:** At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2012.

**REQUEST FOR PRODUCTION NO. 31:** At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2013.

**REQUEST FOR PRODUCTION NO. 32:** At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2014.

**REQUEST FOR PRODUCTION NO. 33:** At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2015.

**REQUEST FOR PRODUCTION NO. 34:** At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2016.

**REQUEST FOR PRODUCTION NO. 35:** At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2017.

**REQUEST FOR PRODUCTION NO. 36:** At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2018.

**REQUEST FOR PRODUCTION NO. 37:** At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2019.

**REQUEST FOR PRODUCTION NO. 38:** At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2020.

**REQUEST FOR PRODUCTION NO. 39:** At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2021.

**REQUEST FOR PRODUCTION NO. 40:** At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2022.

**REQUEST FOR PRODUCTION NO. 41:** At least one document sufficient to identify your use of the CASUAL COMFORT Mark in commerce in 2023.

**REQUEST FOR PRODUCTION NO. 43:** Any and all documents reflecting any communication with the United States Patent and Trademark Office (USPTO) or any other governmental agency regarding the CASUAL COMFORT Mark, including but not limited to, correspondence, filing, and responses to office actions.

**REQUEST FOR PRODUCTION NO. 46:** Copies of any lease or rental agreements for Defendant's office or other physical location.

**REQUEST FOR PRODUCTION NO. 47:** Any and all documents that may provide proof of Defendant's address, including but not limited to property tax bills, business licenses, or insurance policies.



**REQUEST FOR PRODUCTION NO. 48:** All documents and correspondences discussing, referencing, or relating to the specimen of use (“Specimen”) submitted by Defendant on May 24, 2019, to the USPTO.

**REQUEST FOR PRODUCTION NO. 50:** All documents and correspondences discussing, referencing, or relating to the products depicted in the Specimen.

**REQUEST FOR PRODUCTION NO. 51:** All purchase orders, order confirmations, receipts, and records relating to your inventory of “Pillows, namely, bed pillows” and “Mattress pads, down comforters, feather beds; sheets, namely, bed sheets” (collectively, “Defendant’s Goods”).

A requesting party may timely file a motion to compel answers to the interrogatories and production requests provided that said party demonstrates it “has in good faith conferred or attempted to confer with the person or party failing to make disclosure or discovery in an effort to obtain it without court action.” Fed. R. Civ. P. 37(a)(1); *see also* 37 CFR § 2.120(f)(1) (“If a party fails to . . . answer any question propounded in a discovery deposition, or any interrogatory, or fails to produce and permit the inspection and copying of any document, electronically stored information, or tangible thing, the party entitled to disclosure or seeking discovery may file a motion to compel disclosure, a designation, or attendance at a deposition, or an answer, or production and an opportunity to inspect and copy.”).

As evidenced in **Exhibit E** attached hereto, undersigned has made *repeated* attempts to confer with Respondent’s counsel with respect to the (2) failure to produce responsive documents, and (3) failure to verify Respondent’s interrogatory responses. To date, however, no responsive documents have been produced and no verified interrogatory responses have been served. Accordingly, because Petitioner has satisfied its obligation to confer in good faith with Respondent

to no avail, Petitioner respectfully requests the Board compel Respondent to produce the outstanding documents and things responsive to Petitioner’s First Request for Production. Indeed, Respondent’s production responses repeatedly state that, “Representative samples of non-privileged documents responsive to this Request will be produced” but no such documents have been produced as of the undersigned date, nor has a date certain by when such documents will be produced been identified. *See Exhibit C.*

Moreover, Petitioner also respectfully requests the Board compel Respondent to produce verified interrogatory responses because the responses produced by Respondent are not signed under oath, as they must be. *See Exhibit D.* Interrogatories must be answered “separately and fully in writing under oath.” Fed. R. Civ. P. 33(b)(3); TBMP § 405.04(b).

### **REQUEST FOR RELIEF**

Petitioner moves this Board for an Order compelling Respondent, within seven (7) days from the date of the Order, to (1) produce the outstanding documents and things responsive to Petitioner’s First Request for Production; and (2) produce verified interrogatory responses. Petitioner also moves the Board to reset the close of discovery, which is currently set for September 8, 2023, and subsequent deadlines to allow Petitioner time to conduct follow up discovery and depositions after the time allocated for Respondent to provide complete and full responses to the discovery detailed herein. Petitioner also further moves this Board for any other relief it deems appropriate.

WHEREFORE, Petitioner respectfully requests that the Trademark Trial and Appeal Board grant its Motion to Compel and grant all other appropriate relief.

Submitted By: /Mark C. Johnson/

Date: June 26, 2023

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**CERTIFICATE OF SERVICE**

I HEREBY CERTIFY that on this 26th day of June 2023, a true and correct copy of  
the foregoing was furnished via email to Respondent's attorney:

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Submitted By: /Mark C. Johnson/

Date: June 26, 2023

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