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

Proceeding no.	92081595
Party	Defendant Honest History Co.
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Attachments	Honest History Co.'s Notice of Rebuttal Expert Disclosure 4866-1761-0 942 v.2.pdf(108051 bytes)

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

Mercury One, Inc.,)	
)	
)	
v.)	Cancellation No. 92081595
)	
Honest History Co,)	
)	
Respondent)	
)	

**RESPONDENT HONEST HISTORY CO.’S NOTICE OF
REBUTTAL EXPERT DISCLOSURE**

Pursuant to an Order dated May 13, 2024 by the Trademark Trial and Appeal Board (“TTAB”), Dkt. 25, Respondent Honest History Co. (“Respondent” or “Honest History”) hereby provides the TTAB with notice under TBMP 401.03 of its intention to use Mr. Hal Poret as a rebuttal expert in this cancellation proceeding. On March 2, 2024, Respondent timely served the Expert Rebuttal Report of Hal Poret on counsel for Mercury One, Inc. (“Petitioner”), including Mr. Poret’s opinions and appendices, in Response to the Expert Reports of Brian Sowers and Herbert Hammond.

The rebuttal expert report served on March 2, 2024, complies with Rule 26 of the Federal Rules of Civil Procedure and contains Mr. Poret’s responses and rebuttals to the alleged expert reports of Brian Sowers and Herbert Hammond, which Petitioner served on January 18, 2024, and January 22, 2024, respectively. The response and rebuttal opinions set forth in Mr. Poret’s Rebuttal Expert Report are material to Respondent’s case, and include, *inter alia*, the following: (1) the secondary meaning survey that Mr. Sowers conducted contains significant flaws that render it unreliable for assessing secondary meaning of the HONEST HISTORY mark; (2) the opinion of

Mr. Hammond that the HONEST HISTORY mark is generic or and descriptive is belied by a rebuttal consumer survey conducted by Mr. Poret which showed that HONEST HISTORY is primarily perceived to be a brand name, with 61.7% of respondents classifying it as such, and only 32.7% of respondents classifying it as a common term; (3) Mr. Hammond's opinions regarding genericness/descriptiveness are unsupported; and (4) HONEST HISTORY is primarily perceived to be a brand name.

Respectfully submitted,

NIXON PEABODY LLP

Dated: May 22, 2024

/Kaleigh P. Morrison/

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