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

Proceeding no.	92087430
Party	Defendant Next Level Private LLC
Correspondence address	NEXT LEVEL PRIVATE LLC DUANE MORRIS LLP 230 PARK AVENUE SUITE 1130 NEW YORK, NY 10169 UNITED STATES Primary email: malerner@duanemorris.com Secondary email(s): trademarks@duanemorris.com 212-404-8714
Submission	Other Motions/Submissions
Filer's name	MARK A LERNER
Filer's email	malerner@duanemorris.com, LSILVA@DUANEMORRIS.COM, pbois-son@duanemorris.com
Signature	/MARK LERNER/
Date	12/11/2025
Attachments	2025 12 09 - Respondent Motion for Sanctions -Cancellation No. 920-30 0887515.2.pdf(156555 bytes) 2025 12 09 - Exhibits A-I ISO Respondent Motion for Sanctions-Cancell ation No. 92087430.pdf(4796989 bytes) 2025 12 09 - Declaration of Lerner ISO Motion for Sanctions -30089585 0.2.pdf(148735 bytes)

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

In the Matter of Trademark Registration No. 6,829,211
Registered: August 23, 2022
For the Mark: NEXT LEVEL PRIVATE

NXT LEVEL HOLDINGS LLC,	:	
Petitioner,	:	
v.	:	**Cancellation No.:** 92087430
NEXT LEVEL PRIVATE LLC,	:	
Respondent.	:	

RESPONDENT'S MOTION FOR SANCTIONS

Respondent Next Level Private LLC ("Respondent") respectfully moves the Trademark Trial and Appeal Board ("Board") for sanctions against Petitioner Next Level Holdings LLC ("Petitioner") under 37 C.F.R. § 2.120(h)(1), Fed. R. Civ. P. 37(b)(2), and TBMP § 527. Petitioner failed to comply with the Board's September 23, 2025, Order (TTABVUE #20), which directed it to answer Respondent's First Set of Interrogatories, serve amended responses and produce documents in response to Respondent's First Set of Requests for Production. Petitioner has not complied with the Order despite ample opportunity and explicit direction.

Accordingly, Respondent respectfully requests that the Board impose appropriate sanctions under Fed. R. Civ. P. 37(b)(2) and TBMP § 527, including striking the Petition for Cancellation (TTABVUE #1) and entering judgment against Petitioner.

FACTUAL BACKGROUND

Petitioner initiated this cancellation proceeding on February 3, 2025, alleging priority and likelihood of confusion against Respondent's Registration No. 6,829,211. Since then, it has

engaged in a pattern of willful disobedience of the TBMP, Federal Rules of Civil Procedure and Board Orders, culminating in its non-compliance with the Board's September 23, 2025, Order.

The Board's April 10, 2025, scheduling order (TTABVUE #9), set June 6, 2025, as the opening of discovery and the deadline for serving initial disclosures. Petitioner failed to serve initial disclosures or seek an extension, and remained unresponsive to Respondent's repeated attempts to confer, necessitating the filing of a motion to compel on July 3, 2025. *See* Lerner Decl. ¶ 6; TTABVUE #10. On July 14, 2025, five weeks after the due date for its initial disclosures, and only after Respondent moved to compel, Petitioner belatedly served its initial disclosures. *See* Lerner Decl. ¶ 7 & Ex. C. Petitioner offered no explanation for the delay or its still-overdue discovery responses.

On June 6, 2025, Respondent served its First Set of Interrogatories and Requests for Production ("Respondent's Discovery Requests"). *See* 37 C.F.R. § 2.120(a)(3); TBMP §§ 403.03, 405.04(a), 406.04(a); Fed. R. Civ. P. 33(b)(2), 34(b)(2)(A); *See* Lerner Decl. ¶ 8. Petitioner did not respond to Respondent's Discovery Requests by the deadline of July 7, 2025, seek an extension, or reply to further communications from Respondent regarding the outstanding discovery. *See* TTABVUE #12 at 2–3; *See* Lerner Decl. ¶ 8.. On July 28, 2025, Respondent filed a motion to compel Petitioner's overdue discovery responses. *See* TTABVUE #12; *See* Lerner Decl. ¶ 8.

On August 6, 2025, while Respondent's motion to compel was pending, Petitioner provided a Google Drive link purportedly containing its responses to Respondent's Requests for Production. See Lerner Decl. ¶ 9 & Exs. F and G. This submission included only objections and unsigned responses, along with a limited number of documents, and lack verified interrogatory responses. Petitioner's responses to the Requests for Production acknowledged that responses to

Respondent's Interrogatories were still "forthcoming." *See* TTABVUE #12, Exhibit C, Petitioner's Response No. 2 to Respondent's Request for Production; *See* Lerner Decl. ¶ 9, Ex. H. Despite this, Petitioner opposed Respondent's motion to compel, falsely asserting Respondent's motion was moot because Petitioner had served "Responses to First Request for Production of Documents and Things, and Interrogatories." *See* TTABVUE #13; *See* Lerner Decl. ¶ 10, Ex. I. In a subsequent filing, Petitioner further misrepresented that it had served "complete, signed, and verified responses" to Respondent's Discovery Requests. *See* TTABVUE #16; *See* Lerner Decl. ¶ 11.

On August 22, 2025, Petitioner filed a frivolous motion to compel, requesting the Board order Respondent to provide discovery responses, despite never having served any discovery requests. *See* TTABVUE #17; *See* Lerner Decl. ¶ 12. Petitioner made this motion without conferring with Respondent in good faith, despite its representation to the contrary in its motion. *See* TTABVUE #18. Petitioner failed to serve its motion on Respondent as required by TBMP § 113.01 ("Every document filed in an inter partes proceeding before the Board…must be served by the filing party upon every other party to the proceeding") and 37 CFR § 2.119(a), just as it had failed to serve its opposition to Respondent's motion. Petitioner also attempted to submit an impermissible sur-reply to Respondent's motion couched as the first part of its reply on its motion to compel. *See* TTABVUE #19. In that reply, Petitioner again made explicit misrepresentations to the Board, claiming to have "re-served its complete Set of Interrogatories and Requests for Production by email on September 9, 2025," though it had never previously served either discovery request and did not serve Requests for Production via that email.

On September 23, 2025, the Board resolved all pending motions. *See* TTABVUE #20. It denied Petitioner's motion to compel and granted Respondent's, ordering Petitioner to serve

"written responses, without objection on the merits, to Respondent's first set of interrogatories and requests for production," and to produce responsive documents "within thirty (30) days." *Id*. at 5.

Petitioner's deadline to comply with the Board's September 23, 2025, Order was October 23, 2025. To date, Petitioner has not served amended responses, produced documents, or explained its noncompliance. More than four months have passed since Respondent served its discovery requests. Petitioner's silence and inaction constitute a clear violation of the Board's September 23, 2025, Order.

Opposer's failure to comply with the Board's order is not simply an inadvertent oversight. On November 4, 2025, counsel for Respondent contacted Petitioner's counsel to address not only Petitioner's failure to comply with the Board's September 23, 2025, Order, but also its complete failure to provide any of the outstanding discovery responses long overdue in this proceeding, including responses to Respondent's First Set of Requests for Admissions to Petitioner, which were due by November 3, 2025, pursuant to Fed. R. Civ. P. 36(a)(3), 37 C.F.R. § 2.120(a)(3), and TBMP § 407.03(a); *See* Lerner Decl. ¶ 13 & Ex. J.

Following the outreach on November 4, 2025, Respondent finally received a response from Petitioner's counsel after weeks of silence. *See* Lerner Decl. ¶ 14 & Ex. K. That response, however, did not address Petitioner's outstanding discovery obligations or its violations of the Board's September 23, 2025, Order. Instead, Petitioner proposed that the parties engage in settlement discussions. *Id*. The parties have indeed engaged in such discussions and have exchanged a proposed draft agreement. However, during the parties' discussions, Petitioner never addressed the overdue discovery, nor acknowledged its ongoing violation of the Board's Order. *Id*. To date, Petitioner remains in complete default of its discovery obligations and no settlement has been reached. While Respondent is hopeful that the proceedings can be resolved, the ongoing failure to

provide the required discovery responses will further delay the proceedings and continues to prejudice Respondent in its attempts to prepare its defense.

ARGUMENT

The Federal Rules of Civil Procedure, the Trademark Rules of Practice, and the TBMP require parties to participate in good faith in the discovery process and to comply with Board orders. See Fed. R. Civ. P. 37(b); 37 C.F.R. § 2.120(h)(1); TBMP §§ 408.01, 527.01(a). Pursuant to TBMP § 527.01(a), "If a party fails to comply with an order of the Board relating to discovery, including a protective order or an order compelling discovery, the Board may enter appropriate sanctions, as defined in 37 CFR § 2.120(h)(1)." *See* TBMP § 527.01(a). Appropriate sanctions for a party's failure to comply with a discovery order may include compelling discovery, or, in some instances, entry of judgment, pursuant to Trademark Rule 2.120(h)(1) and Fed. R. Civ. P. 37(b)(2). *See Baron Philippe de Rothschild S.A. v. Styl Rite Optical Mfg. Co*., 55 USPQ2d 1848 (TTAB 2000); *New Orleans Louisiana Saints LLC & NFL Props. LLC*, 2022 WL 4092985 (TTAB 2022); and TBMP § 527.01.

The Board has entered a judgment against a disobedient party where there has been continuing avoidance of discovery. *See e.g.*, *Unicut Corporation v. Unicut, Inc*., 222 USPQ 341 (TTAB 1984) (judgment appropriate sanction for violating prior Board order compelling appearance at deposition and responses to document requests); *SFM, LLC v. Corcamore, LLC*, 129 USPQ2d 1072, 1074-75 (TTAB 2018), aff'd, 978 F.3d 1298, 2020 USPQ2d 11277 (Fed. Cir. 2020) (motion for judgment under Trademark Rule 2.120(h)(1) granted as sanction for discovery abuses and egregious conduct; upheld on appeal).

On September 23, 2025, after months of delay and unresponsiveness, the Board issued a clear and reasonable order requiring Petitioner to serve written, unobjected responses to

Respondent's First Set of Interrogatories and Requests for Production, and to produce all responsive materials within thirty (30) days. *See* TTABVUE #20. Petitioner's compliance deadline was October 23, 2025. That deadline has long passed, and Petitioner has served no amended responses, produced no additional documents, nor communicated any explanation for its noncompliance.

Petitioner's noncompliance with the Board's September 23, 2025, Order is neither inadvertent nor isolated. It is the culmination of a pattern of delay, noncommunication, and disregard for discovery rules that has persisted since this proceeding began. Petitioner has repeatedly violated its discovery obligations, including by ignoring Respondent's meet and confer efforts, misrepresenting its compliance to the Board, filing frivolous motions requesting to compel responses to discovery it never served, mispresenting good faith efforts to resolve disputes, and now directly violating a clear discovery order.

Respondent has been substantially prejudiced by Petitioner's conduct. Over six months after Respondent served its discovery requests, Petitioner has not provided a single verified interrogatory response or any meaningful document production. It has objected to certain of Respondent's discovery requests on confidentiality grounds despite the automatically imposed Standard Protective Order, and has refused and failed to withdraw those objections. Respondent has thus been forced to expend significant time and resources merely to secure basic discovery to defend its valid registration.

In addition, Petitioner has engaged in its own frivolous motion practice, seeking responses to non-existent discovery requests before engaging in the required good faith efforts to resolve the purported dispute. Petitioner's motion practice has further necessitated Respondent's expending time and resources. Moreover, Petitioner has given no assurances or indication, either by its actions

or its submissions to the Board, that it will cooperate in the future. In fact, Petitioner's pattern of noncompliance has continued even after the issuance of the Board's September 23, 2025, Order, with its failure to serve responses to Respondent's First Set of Requests for Admissions that were served on October 3, 2025, with responses due by November 3, 2025. Where Petitioner has demonstrated that it will continue to disregard important discovery deadlines, in the face of an order from the Board compelling its compliance and participation, severe sanctions are therefore appropriate. *See Baron Philippe de Rothschild S.A. v. Styl Rite Optical Mfg. Co.*, 55 USPQ2d at 7 ("Opposers argue that applicant's long history of delays and dilatory tactics have increased the costs to opposers, requiring them to respond to numerous motions, as well as resulting in prejudice to opposers because of the increased overall delay to the proceedings. We agree."); *See Hot Tamale Mama...and More, LLC v. SF Invs., Inc*., 110 USPQ2d 1080, 1081 n.1 (TTAB 2014) (simply ignoring deadlines to serve discovery responses or seek an extension of time to do so "is inconsistent with the Board's expectation that the parties and their attorneys cooperate in the discovery process"); see also TBMP § 408.01(c) (discussing the duty to cooperate in discovery). Petitioner's recent effort to engage with Respondent in settlement discussions are no excuse. *See Atlanta-Fulton County Zoo, Inc. v. DePalma*, 45 USPQ2d 1858 (TTAB 1998) ("Parties engaged in proceedings before the Board frequently discuss settlement, but the existence of such negotiations or offers, without more, does not excuse them from complying with the deadlines set by the Board or imposed by the rules."). Indeed, in the absence of a completed settlement, such discussions can be viewed as a further delay tactic.

Given this record, striking the Petition for Cancellation and entering judgment for Respondent is not only authorized but necessary. Petitioner brought this cancellation proceeding,

then refused to participate. It's pattern of noncompliance demonstrates that it has no intention of prosecuting its case or complying with its obligations.

CONCLUSION

For the foregoing reasons, Respondent respectfully moves this Board to impose sanctions upon Petitioner pursuant to 37 C.F.R. § 2.120(h)(1), Fed. R. Civ. P. 37(b)(2), and TMEP § 527.01 and for any other relief it deems appropriate. Petitioner has clearly failed to comply with its discovery obligations and the Board's September 23, 2025, Order. Sanctions including striking the Petition for Cancellation and judgment against Petitioner are appropriate.

Dated: December 11, 2025

Respectfully submitted,

DUANE MORRIS LLP

By: */Mark A. Lerner/*

Mark A. Lerner
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
MALerner@duanemorris.com
(212) 404-8714
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that, on the 11th day of December, 2025, I served a copy of the Motion For Sanctions and Declaration of Mark A. Lerner In Support Thereof, by email, upon the following party identified as correspondents and counsel of record for the Petitioner:

Andrew Delaney
NXT Level Holdings LLC
6 South Street, Suite 203
Morristown, NJ 07960
862-812-6874
adelaney@andrewdelaneylaw.com

Dated: December 11, 2025

By: */pboisson/*

Respondent's Motion for Sanctions

EXHIBIT A

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

September 23, 2025

Cancellation No. 92087430

NXT Level Holdings LLC

v.

Next Level Private LLC

Jill M. McCormack, Interlocutory Attorney:

This case comes before the Board for consideration of Respondent's motion to compel initial disclosures, Respondent's motion to compel responses to its first set of interrogatories and requests for production, and Petitioner's motion to compel discovery responses.

I. Motion To Compel Initial Disclosures Denied As Moot

The deadline for initial disclosures in this proceeding was previously set for June 6, 2025. On July 3, 2025, Respondent filed a timely motion to compel initial disclosures from Petitioner.

On July 14, 2025, Petitioner filed an "objection" to Respondent's motion that did not include proof of service of the submission on counsel for Respondent. All submissions to the Board must include a certificate of service in compliance with Trademark Rule 2.119(a)-(b), 37 C.F.R. § 2.119(a)-(b), failing which they may be denied consideration. The parties were advised of the rules regarding service in the

institution order, 2 TTABVUE 2, and the discovery conference order, 9 TTABVUE 10–11. As a result, Petitioner's response to the motion will receive no consideration.

Despite the foregoing, it is clear from Respondent's subsequently-filed motion to compel that Petitioner served its initial disclosures on July 14, 2025.[1] As a result, although the Board does not condone Petitioner's failure to comply with the Board's schedule, Respondent's motion to compel initial disclosures is **denied as moot**.

II. Respondent's Motion To Compel Granted

On July 28, 2025, Respondent filed a motion to compel (i) written responses, without objection on the merits, to its first set of interrogatories and requests for production, and (ii) the production of responsive documents. On August 7, 2025, Petitioner filed an "objection" to the motion to compel, without a certificate of service. On August 19, 2025, Respondent filed a reply in support of its motion to compel. On August 22, 2025, Petitioner filed what the Board construes as two surreplies with respect to Respondent's motion to compel.

As an initial matter, because Respondent filed a reply in the time provided by Trademark Rule 2.127(a), and to avoid further delay in this proceeding, the Board will exercise its discretion to consider Petitioner's response to the motion to compel. However, as noted above, further submissions that do not comply with the Board's rules regarding service may be denied consideration. In addition, the Board will not accept a surreply in opposition to a motion. *See* Trademark Rule 2.127(a) ("The Board

[1] 12 TTABVUE 3–4 ("While the timing of service rendered Respondent's motion technically moot, Petitioner never acknowledged or explained its prior failure to comply, nor did it respond to any of Respondent's prior outreach.").

will consider no further papers in support of or in opposition to a motion."). Accordingly, Petitioner's surreplies, 15-16 TTABVUE, will be given no consideration.

A. Copies of the Disputed Discovery

"A motion to compel discovery shall include . . . 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." Trademark Rule 2.120(f)(1), 37 C.F.R. § 2.120(f)(1). Respondent's motion to compel includes the required copies of its first set of interrogatories and requests for production.

B. Good Faith Effort

A motion to compel must also be supported by a written statement from the moving party that it has made a good faith effort to resolve the dispute with the other party and has been unable to do so. Trademark Rule 2.120(f)(1), 37 C.F.R. § 2.120(f)(1); *Hot Tamale Mama … and More, LLC v. SF Invs., Inc.*, Opp. No. 91209030, 2014 WL 1390527, at *1 (TTAB 2014); TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 523.02 (2025). Through email correspondence, the records shows that Respondent made a good faith effort to resolve its dispute with Petitioner prior to seeking Board intervention.

C. Interrogatories and Requests For Production

Petitioner's responses to Respondent's first set of interrogatories and requests for production were due on July 7, 2025. On August 6, 2025, after the filing of Respondent's motion to compel, Petitioner served responses to Respondent's requests

for production, which Respondent provided with its reply brief. Based on the record before the Board, it is not clear if Petitioner has served complete responses to Respondent's interrogatories as of the date of this order.

Because Petitioner did not serve timely responses to Respondent's discovery requests, Respondent seeks an order compelling Petitioner to respond to the requests in full, without objection on the merits. In its reply brief, Respondent further contends that Petitioner's responses to the requests for production are heavily reliant on boilerplate objections and do not comply with the Board's rules.

A party that fails to respond to interrogatories or document requests during the time allowed therefore, and that is unable to show that its failure was the result of excusable neglect, may be found, upon a motion to compel filed by the propounding party, to have forfeited its right to object to the discovery requests on their merits.[2] *See No Fear Inc. v. Rule*, Opp. No. 91104503, 2000 WL 390033, at *2 (TTAB 2000). "[T]he Board is invested with great discretion in determining whether such forfeiture should be found." *Id.* Petitioner did not provide an explanation for its failure to comply with its discovery obligations in a timely manner and did not argue that its failure to respond was the result of excusable neglect. As a result, the Board finds that Petitioner has waived its right to object to the discovery requests on their merits.

[2] "Objections going to the merits of a discovery request include those which challenge the request as overly broad, unduly vague and ambiguous, burdensome and oppressive, as seeking non-discoverable information on expert witnesses, or as not calculated to lead to the discovery of admissible evidence. In contrast, claims that information sought by a discovery request is trade secret, business-sensitive or otherwise confidential, is subject to attorney-client or a like privilege, or comprises attorney work product, goes not to the merits of the request but to a characteristic or attribute of the responsive information." 2000 WL 390033, at *2.

Accordingly, Respondent's motion to compel discovery is **granted**.

Within **THIRTY (30) DAYS** of the date of this order, Petitioner is ordered to serve written responses, without objection on the merits, to Respondent's first set of interrogatories and requests for production. Petitioner is also ordered to produce responsive documents, to the extent they have not already been produced, within the same time period. Prior to serving responses in light of this order, Petitioner should review the discovery guidelines provided at the end of this order for information regarding the Board's rules on discovery.

III. Petitioner's Motion To Compel Denied Without Prejudice

On August 22, 2025, Petitioner filed a motion to compel discovery. Petitioner appears to request an order compelling Respondent to serve responses to requests for production. However, Petitioner does not specifically identify the requests at issue, nor does Petitioner attach any requests (or the relevant responses thereto) to its motion to compel.[3] *See* Trademark Rule 2.120(f)(1).

Accordingly, Petitioner's motion to compel is **denied without prejudice**.[4]

IV. Proceeding Schedule

Pursuant to the Board's inherent authority to control the cases on its docket, proceeding dates are reset as follows:

Expert Disclosures Due	12/13/2025
Discovery Closes	1/12/2026

[3] The Board also notes that Petitioner's motion to compel does not include a certificate of service. As noted above, further submissions that do not comply with the Board's rules regarding service may be denied consideration. *See* Trademark Rule 2.119(a)-(b).

[4] Because Petitioner's motion to compel is being denied consideration, Respondent's brief in opposition to the motion and Petitioner's reply will be given no consideration.

Plaintiff's Pretrial Disclosures Due	2/26/2026
Plaintiff's 30-day Trial Period Ends	4/12/2026
Defendant's Pretrial Disclosures Due	4/27/2026
Defendant's 30-day Trial Period Ends	6/11/2026
Plaintiff's Rebuttal Disclosures Due	6/26/2026
Plaintiff's 15-day Rebuttal Period Ends	7/26/2026
Plaintiff's Opening Brief Due	9/24/2026
Defendant's Brief Due	10/24/2026
Plaintiff's Reply Brief Due	11/8/2026
Request for Oral Hearing (optional) Due	11/18/2026

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Such briefs should utilize citations to the TTABVUE record created during trial, to facilitate the Board's review of the evidence at final hearing. Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

V. Discovery Guidelines

Fed. R. Civ. P. 26(b) governs the scope of discovery, and provides that "[p]arties may obtain discovery regarding any nonprivileged matter that is relevant to any

party's claim or defense and proportional to the needs of the case," and that "[i]nformation within this scope of discovery need not be admissible in evidence to be discoverable." The requirement of relevancy is generally construed liberally and discovery generously allowed unless it is clear that the information which is sought can have no possible bearing on the issues involved in the particular proceedings. *See, e.g.*, *Johnston Pump/General Valve Inc. v. Chromalloy Am. Corp.*, Opp. No. 91076991, 1988 WL 252400, at *3 (TTAB 1988); *Varian Assocs. v. Fairfield-Noble Corp.*, 1975 WL 20871, at *2 (TTAB 1975). The parties should review TBMP § 414 for additional information regarding relevancy, namely, selected categories of information previously found to be discoverable in Board proceedings.

"Boilerplate" objections are not acceptable because they repeat bald and uninformative objections to individual discovery requests which merit individual responses or objections.[5] *See SFM, LLC v. Corcamore, LLC*, Can. No. 92060308, 2018 WL 6929684, at *2 n. 20 (TTAB 2018). Objections, if any, must be specifically asserted in response to each interrogatory or document request and the ground for objecting must be stated with specificity. *Medtronic, Inc. v. Pacesetter Sys., Inc.*, Opp. No. 91064639, 1984 WL 64049, at *4 (TTAB 1984) (answering party must articulate objections with particularity); *see also* Fed. R. Civ. P. 34(b)(2)(B)-(C); TBMP § 406.04(c).

The fact that information is publicly available is generally not a ground for objecting to written discovery. *See* Wright & Miller, 8 Fed. Prac. & Proc. Civ. § 2014.

[5] This includes both so-called "general" objections raised as to all discovery requests and also boilerplate objections recited in response to each request without distinction.

Thus, an objection or response that requested information may be found online or in another publicly available source does not excuse the responding party from substantively responding or producing responsive, non-privileged documents in its possession, custody, or control. *See Petruska v. Johns-Manville*, 83 F.R.D. 32, 35 (E.D. Pa. 1979). Furthermore, because the Board's standard protective order is automatically applicable to Board proceedings, objections on the ground of confidentiality are improper.[6] *See* Trademark Rule 2.116(g), 37 C.F.R. § 2.116(g); *Intex Recreation Corp. v. Coleman Co., Inc.*, Opp. No. 91220432, 2016 WL 1056685, at *3 (TTAB 2016).

A party served with a request for discovery has a duty to thoroughly search its records for all information properly sought in the request, and to provide such information to the requesting party within the time allowed for responding to the request. *See No Fear Inc.*, 2000 WL 390033, at *4. In responding to a document request, a party must state whether or not it has responsive documents in its possession, custody or control and, if so, state that such documents will be produced or that such documents are being withheld, based on a claim of privilege or a specified objection.[7] Fed. R. Civ. P. 34(b)(2)(C); *see No Fear Inc.*, 2000 WL 390033, at *4 (applicant's written responses that "[r]esponsive documents, if any, will be produced … suggests that applicant has not actually searched for responsive documents and,

[6] If a party believes that the Board's standard protective order is not sufficient to protect certain information, the proper procedure would be to seek modification of the order.

[7] If a party withholds any responsive documents or information based on a claim of privilege, it must provide a privilege log in accordance with Fed. R. Civ. P. 26(b)(5)(A)(i)-(ii).

therefore, has no idea whether there are documents responsive to particular requests for production"). A producing party is required to produce all responsive documents and things (including electronically stored information) in its possession, custody, or control that are not subject to a claim of privilege or an appropriate, specified objection.[8] *See* Fed. R. Civ. P. 34(a).

[8] A producing party is not under an obligation to create or prepare documents that do not already exist. *See* TBMP § 406.02 ("Generally, a party does not have an obligation to locate documents that are not in its possession, custody, or control and produce them during discovery . . . A party also is not under an obligation in response to a discovery request to create or prepare documents that do not already exist.").

Respondent's Motion for Sanctions

EXHIBIT B

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

April 10, 2025

Cancellation No. 92087430

NXT Level Holdings LLC

v.

Next Level Private LLC

Jill M. McCormack, Interlocutory Attorney:

On April 7, 2025, the Board participated in the discovery conference. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 401.01 (2024). The participants included Andrew Delaney, in-house counsel for Petitioner, representing itself pro se; Mark Lerner and Lauren Silva, counsel for Respondent; and Jill McCormack, Interlocutory Attorney for the Board.

I. RELATED PROCEEDINGS

In the event that a civil action or separate Board proceeding between the parties is instituted, the parties must promptly advise the Board so it can determine if suspension or consolidation is appropriate. *See* TBMP §§ 510.02(a) and 511; *see also* Trademark Rule 2.117(a).

II. SETTLEMENT

Because its jurisdiction is limited to registrability determinations, unlike the federal courts, the Board does not take an active role in the settlement process.

However, the Board typically will grant a consented or joint motion to suspend proceedings for a reasonable period of time in order to allow the parties to engage in settlement negotiations. *See* TBMP § 510.03(a); *see also* Trademark Rule 2.117(c). Any stipulations to suspend the proceeding for settlement negotiations should be filed promptly because, absent suspension, the Board presumes the parties are preparing for trial and adhering to the disclosure, discovery, and trial deadlines set by the Board. *Atlanta-Fulton County Zoo Inc. v. De Palma*, 45 USPQ2d 1858, 1859 (TTAB 1998) ("[I]t is well established that the mere existence of settlement negotiations alone does not justify a party's inaction or delay.").

III. PLEADED CLAIMS AND DEFENSES

Respondent owns a registration for the standard-character mark NEXT LEVEL PRIVATE for "financial planning and investment advisory services," in Class 36.[1]

A. PETITION FOR CANCELLATION

On February 3, 2025, Petitioner filed a petition to cancel on the sole ground of likelihood of confusion. Petitioner pleads ownership of a registration for the mark shown below for "consulting services, namely, expert analysis and management consulting in economics and accounting; brand imagery consulting services; business consulting and information services; business consulting for enterprises; business consulting services; business consulting, inquiries or information; business management consulting; business marketing consulting services; business organization consulting; business organization and management consulting;

[1] Registration No. 6829211 was issued on August 23, 2022; "private" disclaimed.

corporate image consulting services; direct marketing consulting services; marketing consulting; personnel management consulting; professional business consulting," in Class 35:  .[2] This is sufficient to plead Petitioner's entitlement to a statutory cause of action. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000). Petitioner has also pleaded a legally sufficient claim of likelihood of confusion. *See Nike, Inc. v. Palm Beach Crossfit Inc.*, 116 USPQ2d 1025, 1030 (TTAB 2015).

B. ANSWER

On March 14, 2025, Respondent filed a legally sufficient answer that denies the salient allegations in the petition to cancel and asserts a number of "Affirmative Defenses." As explained during the conference,

- Respondent's First and Fourth Affirmative Defenses are **stricken without prejudice**. *See* Fed. R. Civ. P. 12(f). A legally sufficient pleading of a defense must include enough factual detail to provide fair notice of the basis for the defense. Fed. R. Civ. P. 8(b)(1). Respondent's First and Fourth Affirmative Defenses are insufficiently pleaded because Respondent has failed to plead any specific allegations of conduct that, if proven, would prevent Petitioner from prevailing on its claim of likelihood of confusion. *See Midwest Plastic Fabricators Inc. v. Underwriters Labs. Inc.*, 5 USPQ2d 1067, 1069 (TTAB 1987).[3]

[2] Registration No. 7490958 was issued on September 3, 2024.

[3] To plead acquiescence, the defendant must allege: (1) that the plaintiff actively represented that it would not assert a right or claim; (2) that the delay between the active representation and assertion of the right or claim was not excusable; and (3) that the delay caused the defendant undue prejudice. *Coach House Rest., Inc. v. Coach & Six Rests., Inc.*, 19 USPQ2d 1401, 1409 (11th Cir. 1991). Waiver is the "intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). To plead laches, the defendant must allege "that there was undue or unreasonable delay [by plaintiff] in asserting its rights, and prejudice to [defendant] resulting from the delay." *Bridgestone/Firestone Research, Inc. v. Auto. Club*, 58 USPQ2d 1460, 1462 (Fed. Cir. 2001). To plead unclean hands, the defendant must allege specific allegations of misconduct that, if proved, would prevent the plaintiff from prevailing on its claim. *Midwest Plastic*, 5 USPQ2d at 1069.

- Respondent's Second Affirmative Defense is **stricken**. While Fed. R. Civ. P. 12(b)(6) allows a party to assert the defense in its answer, failure to state a claim is not a true affirmative defense because it relates to an assertion of the insufficiency of the pleading of Petitioner's claims rather than a statement of a defense to a properly pleaded claim. *See Hornblower & Weeks Inc. v. Hornblower & Weeks Inc.*, 60 USPQ2d 1733, 1738 n.7 (TTAB 2001). Here, because Petitioner has sufficiently pleaded its entitlement and at least one valid statutory ground for cancellation, the defense of failure to state a claim is not applicable.

- Respondent's Third Affirmative Defense is not a true affirmative defense, but may remain in the answer as an amplification of Respondent's denials. The allegations provide fuller notice to Petitioner of how Respondent intends to defend this proceeding. *See Order of Sons of Italy in Am. v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221, 1223 (TTAB 1995).

The Board liberally grants leave to amend pleadings prior to trial when justice requires, unless entry of the proposed amended pleading would be prejudicial to the rights of the adverse party, would violate settled law, or would serve no useful purpose. Respondent is allowed **THIRTY (30) DAYS** from the date of this order to file and to serve an amended answer that repleads its First and Fourth Affirmative Defenses, failing which the defenses will remain stricken without prejudice.

IV. ARRANGEMENTS FOR DISCLOSURES, DISCOVERY, AND TRIAL

A. INITIAL DISCLOSURES

After the pleadings close, the parties next must serve each other with initial disclosures. Fed. R. Civ. P. 26(a) (1) provides "a party must, without awaiting a discovery request, provide to the other parties:

> (i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
>
> (ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing

> party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment ..."

The Board advises that initial disclosures should be promptly supplemented as the parties' trial strategy evolves, to avoid surprise at trial, and to allow discovery to be taken from prospective witnesses.[4]

B. DISCOVERY

With respect to discovery, the scope of the pleadings determines the scope of discovery. *See* Fed. R. Civ. P. 26(b) (1) ("Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense…"). The parties were advised to consult the "Discovery Guidelines" listed in the TBMP § 414 before making or objecting to discovery requests. The Board expects parties to cooperate with one another in the discovery process. *See* TBMP § 408.01. The parties each have a duty not only to make a good faith effort to satisfy the legitimate discovery needs of their adversary, but also to make a good faith effort to seek only such discovery as is proper and relevant to the issues in the case. *See* TBMP § 408.01.

The parties are limited to seventy-five interrogatories, including subparts; seventy-five requests for production of documents and things, including subparts; and seventy-five requests for admission. *See* Trademark Rules 2.120(d), 2.120(e), and 2.120(i). Interrogatories, requests for production, and requests for admission must be served early enough in the discovery period, as originally set or as may have been

[4] The parties should not file their initial disclosures, discovery requests, or discovery responses with the Board, except as permitted under Trademark Rule 2.120(k)(8); in connection with a motion to compel discovery, as required by Trademark Rule 2.120(f)(1); or in connection with a motion to determine the sufficiency of an answer or objection to a request for admission, as required by Trademark Rule 2.120(i)(1).

reset by the Board, so that responses will be due no later than the close of the discovery period. Trademark Rule 2.120(a)(3). Similarly, discovery depositions must be properly noticed and taken during the discovery period. *Id.*

If either party plans to file a motion to compel discovery or a motion to test the sufficiency of a response or objection to a request for admission, the moving party must first confer with the other party in good faith to attempt to resolve or narrow the dispute, and then must demonstrate its good-faith efforts as part of its motion. *See* Trademark Rules 2.120(f)(1) and 2.120(i); *see also* TBMP § 523.02. The obligation to meet and confer in good faith is a mutual obligation. Motions to compel discovery, motions to test the sufficiency of responses or objections to a request for admission, and motions for summary judgment must be filed no later than the day before the deadline for pretrial disclosures for the first testimony period as originally set or as reset. Trademark Rules 2.120(f)(1), 2.120(i)(1), and 2.127(e)(1).

To the extent either party plans to use an expert witness, such party must make their expert witness disclosure by the set deadline, and provide the Board with notification that the party will be employing an expert. Trademark Rule 2.120(a)(2)(iii). The Board may suspend proceedings to allow the parties to take discovery of a designated expert witness or to allow a rebuttal expert witness.

C. PRETRIAL AND TRIAL PROCEDURES

Pretrial disclosures are governed by Trademark Rule 2.121(e) and Fed. R. Civ. P. 26(a)(3) with one exception: the Board does not require pretrial disclosure of each document or other exhibit that a party plans to introduce at trial as required by Fed.

R. Civ. P. 26(a)(3)(A)(iii). Additionally, if a party does not plan to take testimony from any witness in any form, it must state so in its pretrial disclosures. A party need not disclose, prior to its testimony period, any notices of reliance it intends to file during its testimony period. Trademark Rule 2.121(e). For further information regarding pretrial disclosures, the parties should consult TBMP § 702.01.

In addition to submission of evidence under notices of reliance,[5] parties may introduce evidence in the form of testimony depositions taken by a party during its assigned testimony period, or in the form of affidavit or declaration testimony submitted during its testimony period, subject to the right of the adverse party to conduct cross-examination as provided under Trademark Rule 2.123(c).[6] *See* TBMP § 703.01. The submission of evidence and testimony during the parties' assigned testimony periods corresponds to the trial in court proceedings. A party may take trial testimony only during its assigned testimony period, except by stipulation of the parties approved by the Board, or, on motion, by order of the Board. *See Fossil Inc. v. Fossil Grp.*, 49 USPQ2d 1451, 1454 n.1 (TTAB 1998); *Of Counsel Inc. v. Strictly of Counsel Chartered*, 21 USPQ2d 1555, 1556 n.2 (TTAB 1991).

D. STANDARD PROTECTIVE ORDER

The Board's Standard Protective Order is automatically imposed in this proceeding pursuant to Trademark Rule 2.116(g), unless the parties, by stipulation

[5] For information concerning submission of evidence by notice of reliance, see TBMP § 704.

[6] If an affiant or declarant witness is not within the jurisdiction of the United States, then the adverse party may elect to take and bear the expense of cross-examination of the witness by written questions. *See* Trademark Rules 2.123(a)(1) and 2.124.

approved by the Board, agree to an alternative order, or a motion by a party to use an alternative order is granted by the Board. *See* TBMP §§ 412.01–.02. Although they are not required to do so, the parties may elect to exchange executed copies of the order. Because of the automatic imposition of the protective order, parties may designate information or documents as confidential but typically cannot withhold properly discoverable information or documents on that basis. *See* TBMP § 412.01.

V. ACCELERATED CASE RESOLUTION

During the conference, the Board informed the parties of its Accelerated Case Resolution (ACR) process. ACR is an alternative to typical Board inter partes proceedings. *See Chanel Inc. v. Makarczyk*, 110 USPQ2d 2013, 2016–17 (TTAB 2013); *Chanel Inc. v. Makarczyk*, 106 USPQ2d 1774, 1775 (TTAB 2013); *see also Bond v. Taylor*, 119 USPQ2d 1049, 1051 (TTAB 2016).

The form of ACR can vary, but the process often approximates a summary bench trial, or cross-motions for summary judgment and accompanying evidentiary submissions, that the parties agree to submit in lieu of creating a traditional trial record and post-trial briefing. If the parties stipulate to ACR they could avoid a formal trial altogether. Although the Board may not decide disputed issues of material fact when considering a motion for summary judgment, the parties may stipulate to the submission of such briefs and evidence in lieu of trial and agree that the Board may resolve and decide any genuine dispute of material fact that may be found to exist.

As an alternative to the "traditional" ACR process discussed above, the parties also may explore stipulating to facts, evidence, and/or procedures at trial. *See, e.g.*,

Target Brands, Inc. v. Hughes, 85 USPQ2d 1676, 1678 (TTAB 2007). The Board allows the parties to stipulate to a variety of deviations from the Board's rules in order to streamline discovery and testimony. If the parties adopt ACR early in the proceeding, they could realize a significant savings in time and cost. More information about the Board's ACR options can be found in TBMP §§ 528.05(a)(2), 702.04, and 705, and on the Board's website.

If the parties wish to revisit the issue of ACR after they review this order, they may call the assigned Interlocutory Attorney to schedule a teleconference regarding ACR.

VI. PROCEEDING SCHEDULE

Pursuant to the Board's inherent authority to control the cases on its docket, remaining dates are reset as follows:

Initial Disclosures Due	6/6/2025
Expert Disclosures Due	10/4/2025
Discovery Closes	11/3/2025
Plaintiff's Pretrial Disclosures Due	12/18/2025
Plaintiff's 30-day Trial Period Ends	2/1/2026
Defendant's Pretrial Disclosures Due	2/16/2026
Defendant's 30-day Trial Period Ends	4/2/2026
Plaintiff's Rebuttal Disclosures Due	4/17/2026
Plaintiff's 15-day Rebuttal Period Ends	5/17/2026
Plaintiff's Opening Brief Due	7/16/2026
Defendant's Brief Due	8/15/2026
Plaintiff's Reply Brief Due	8/30/2026
Request for Oral Hearing (optional) Due	9/9/2026

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony

periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Such briefs should utilize citations to the TTABVUE record created during trial, to facilitate the Board's review of the evidence at final hearing. Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

VII. INFORMATION REGARDING LEGAL REPRESENTATION

It is noted that Petitioner is representing itself in this proceeding. While Patent and Trademark Rule 11.14 permits a party domiciled in the United States to represent itself, it is strongly advisable for a party who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. *See* TBMP § 114.02.

Trademark Rules 2.119(a) and (b) require that every submission filed in a proceeding before the Board must be served upon the other party or parties, and proper proof of such service must be made before the submission will be considered

by the Board. Accordingly, all submissions filed in this proceeding must be accompanied by a statement, signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was made, the name of each party or person upon whom service was made, and the email address or address. *See* TBMP § 113.03. Service must be made by email unless otherwise stipulated, or unless the filing party has satisfied the requirements for another method of service as set forth in Trademark Rule 2.119(b). The statement will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a Certificate of Service as follows:

> I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, address, and email address of opposing counsel or party).
>
> Signature_____
>
> Date_____

Submissions in Board proceedings must be made via ESTTA, the Electronic System for Trademark Trials and Appeals, and must be in compliance with Trademark Rules 2.126(a) and (b). *See* TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are at http://estta.uspto.gov/.

It is recommended that any pro se party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Parties should also be familiar with the Trademark Trial and Appeal Board Manual of Procedure (TBMP), available at http://www.uspto.gov/trademarks-

application-process/trademark-trial-and-appeal-board-ttab, the TTABVUE system for viewing the record for all Board proceedings, available at http://ttabvue.uspto.gov/ttabvue/, and the Standard Protective Order, available at https://www.uspto.gov/sites/default/files/documents/Standard%20Protective%20Order_02052020.pdf.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006); *see also Hole In 1 Drinks, Inc. v. Lajtay*, 2020 USPQ2d 10020, at *1 (TTAB 2020) (noting that compliance with the Trademark Rules of Practice, and where applicable, the Federal Rules of Civil Procedure and the Federal Rules of Evidence, is required of all parties even those who assume the responsibility and risk of representing themselves).

Respondent's Motion for Sanctions

EXHIBIT C

From: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Sent: Monday, July 14, 2025 9:34 AM
To: Lerner, Mark
Cc: Silva, Lauren C.
Subject: Re: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories
Attachments: Initial Disclosures 7.8.2025.pdf

Mr. Lerner,

Please see attached initial disclosures.

On Fri, Jul 11, 2025 at 6:27 PM Lerner, Mark <MALerner@duanemorris.com> wrote:

> Mr. Delaney:
>
> I write to follow up on my colleague's email from earlier this week. To date, we still have not received Petitioner's responses to Respondent's discovery requests, nor have we received any response to the earlier email or any other communication or request to meet and confer. We would appreciate the courtesy of a response.
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> As you have seen, we were forced to file a motion to compel Petitioner to serve Initial Disclosures. We hope to avoid more motion practice, but we reserve Petitioner's right to make such a motion and to seek other appropriate relief should we not receive a timely reply.
>
> **Mark Lerner**
>
> Partner
>
> Duane Morris LLP
> 22 Vanderbilt
> 335 Madison Avenue, 23rd Floor
> New York, NY 10017-4669
> **P:** +1 212 404 8714
> **F:** +1 212 692 1020
>
> MALerner@duanemorris.com
> www.duanemorris.com
>
> **From:** Silva, Lauren C. <LSilva@duanemorris.com>
> **Sent:** Tuesday, July 8, 2025 5:32 PM
> **To:** adelaney@andrewdelaneylaw.com
> **Cc:** Lerner, Mark <MALerner@duanemorris.com>
> **Subject:** RE: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Mr. Delaney,

Petitioner's responses and/or objections to Respondent's discovery requests, including the Requests for Production of Documents and Things and Interrogatories served on June 6, 2025, were due yesterday, July 7, 2025. To date, no responses have been received. You did not reach out in advance to seek an extension, nor have you otherwise communicated any reason for the delay.

Petitioner's failure to timely serve responses violates its obligation under the Federal Rules of Civil Procedure and Trademark Rule of Practice 37 C.F.R. 2.120(a)(3). Please respond to this email with confirmation that you will immediately serve complete responses. Otherwise, please promptly notify us if there is a valid and compelling reason why Petitioner is unable to meet its obligations.

Respondent reserves all rights to seek appropriate relief from the Board if the issue is not promptly resolved.

Regards,

Lauren

DuaneMorris
www.duanemorris.com
Lauren C. Silva
Associate
Duane Morris LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127
P: +1 415 957 3028
F: +1 415 358 5539
C: +1 909 991 4697
E-MAIL | BIO | VCARD

From: Boisson, Patrick <PBoisson@duanemorris.com>
Sent: Friday, June 6, 2025 12:57 PM
To: adelaney@andrewdelaneylaw.com
Cc: Lerner, Mark <MALerner@duanemorris.com>; Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

DuaneMorris
www.duanemorris.com
Patrick Boisson
Paralegal
Duane Morris LLP
22 Vanderbilt
P: +1 212 818 9200
F: +1 212 692 1020
335 Madison Avenue – 23rd Floor
New York, NY 10017-4669
E-MAIL

--
Andrew DeLaney
Attorney at Law
6 South Street, Suite 203
Morristown, NJ 07960
Work. 973-606-6090
Cell. 862-812-6874

Respondent's Motion for Sanctions

EXHIBIT D

From: Silva, Lauren C.
Sent: Tuesday, July 8, 2025 2:32 PM
To: adelaney@andrewdelaneylaw.com
Cc: Lerner, Mark
Subject: RE: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Mr. Delaney,

Petitioner's responses and/or objections to Respondent's discovery requests, including the Requests for Production of Documents and Things and Interrogatories served on June 6, 2025, were due yesterday, July 7, 2025. To date, no responses have been received. You did not reach out in advance to seek an extension, nor have you otherwise communicated any reason for the delay.

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Regards,
Lauren

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E-MAIL | BIO | VCARD
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DuaneMorris

www.duanemorris.com

Patrick Boisson
Paralegal

Duane Morris LLP
22 Vanderbilt
335 Madison Avenue – 23rd Floor
New York, NY 10017-4669

P: +1 212 818 9200
F: +1 212 692 1020

E-MAIL

From: Lerner, Mark
Sent: Friday, July 11, 2025 3:28 PM
To: adelaney@andrewdelaneylaw.com
Cc: Silva, Lauren C.
Subject: RE: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Mr. Delaney:

I write to follow up on my colleague's email from earlier this week. To date, we still have not received Petitioner's responses to Respondent's discovery requests, nor have we received any response to the earlier email or any other communication or request to meet and confer. We would appreciate the courtesy of a response.

As you have seen, we were forced to file a motion to compel Petitioner to serve Initial Disclosures. We hope to avoid more motion practice, but we reserve Petitioner's right to make such a motion and to seek other appropriate relief should we not receive a timely reply.

Mark Lerner
Partner

Duane Morris LLP
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335 Madison Avenue, 23rd Floor
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F: +1 212 692 1020

MALerner@duanemorris.com
www.duanemorris.com

From: Silva, Lauren C. <LSilva@duanemorris.com>
Sent: Tuesday, July 8, 2025 5:32 PM
To: adelaney@andrewdelaneylaw.com
Cc: Lerner, Mark <MALerner@duanemorris.com>
Subject: RE: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Mr. Delaney,

Petitioner's responses and/or objections to Respondent's discovery requests, including the Requests for Production of Documents and Things and Interrogatories served on June 6, 2025, were due yesterday, July 7, 2025. To date, no responses have been received. You did not reach out in advance to seek an extension, nor have you otherwise communicated any reason for the delay.

Petitioner's failure to timely serve responses violates its obligation under the Federal Rules of Civil Procedure and Trademark Rule of Practice 37 C.F.R. 2.120(a)(3). Please respond to this email with confirmation that you will immediately serve complete responses. Otherwise, please promptly notify us if there is a valid and compelling reason why Petitioner is unable to meet its obligations.

Respondent reserves all rights to seek appropriate relief from the Board if the issue is not promptly resolved.

Regards,
Lauren

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Subject: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

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www.duanemorris.com
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Duane Morris LLP
22 Vanderbilt
335 Madison Avenue – 23rd Floor
New York, NY 10017-4669
E-MAIL
P: +1 212 818 9200
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From: Lerner, Mark
Sent: Tuesday, July 15, 2025 12:10 PM
To: Andrew DeLaney
Cc: Silva, Lauren C.
Subject: RE: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Mr. Delaney:

Thank you for providing the Initial Disclosures. We reserve our right to object to the disclosures. In the meantime, we take issue with your submission to the TTAB noting that these disclosures were "timely served." They were served over five weeks late with no explanation.

Moreover, we note that while you have forwarded these disclosures in response to our email from Friday, July 11, regarding Petitioner's overdue responses to Respondent's Requests for Production of Documents and Things and Interrogatories served on June 6, 2025, your email below does not address that delinquency at all. This email thus serves as our third outreach to you regarding Petitioner's failure to comply with Federal Rules of Civil Procedure and Trademark Rule of Practice 37 C.F.R. 2.120(a)(3). Please advise us of the status of Petitioner's responses.

We reserve Petitioner's right to make a motion and to seek other appropriate relief should we not promptly receive a substantive explanation regarding Petitioner's efforts to fulfil its obligations.

Mark Lerner
Partner

Duane Morris LLP
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
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MALerner@duanemorris.com
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From: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Sent: Monday, July 14, 2025 12:34 PM
To: Lerner, Mark <MALerner@duanemorris.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Re: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Mr. Lerner,

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Cc: Lerner, Mark <MALerner@duanemorris.com>
Subject: RE: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

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Respondent reserves all rights to seek appropriate relief from the Board if the issue is not promptly resolved.

Regards,

Lauren

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Patrick Boisson
Paralegal
Duane Morris LLP
22 Vanderbilt
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E-MAIL

--
Andrew DeLaney
Attorney at Law
6 South Street, Suite 203
Morristown, NJ 07960
Work. 973-606-6090
Cell. 862-812-6874

Respondent's Motion for Sanctions

EXHIBIT E

ESTTA Tracking number: **ESTTA1452423**
Filing date: **07/28/2025**

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

Proceeding no.	92087430
Party	Defendant Next Level Private LLC
Correspondence address	NEXT LEVEL PRIVATE LLC DUANE MORRIS LLP 230 PARK AVENUE SUITE 1130 NEW YORK, NY 10169 UNITED STATES Primary email: malerner@duanemorris.com Secondary email(s): trademarks@duanemorris.com 212-404-8714
Submission	Motion to Compel Discovery or Disclosure
Filer's name	Mark A Lerner
Filer's email	malerner@duanemorris.com, trademarks@duanemorris.com
Signature	/mark lerner/pb/
Date	07/28/2025
Attachments	Respondent Motion to Compel Discovery-Cancellation No. 92087430 (2).pdf(1392143 bytes)

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

In the Matter of Trademark Registration No. 6,829,211
Registered: August 23, 2022
For the Mark: NEXT LEVEL PRIVATE

NXT LEVEL HOLDINGS LLC,	:	
Petitioner,	:	
v.	:	**Cancellation No.:** 92087430
NEXT LEVEL PRIVATE LLC,	:	
Respondent.	:	

RESPONDENT'S MOTION TO COMPEL

In accordance with Rule 37 C.F.R. §2.120(f)(1) and TBMP § 523, Respondent, Next Level Private LLC ("Respondent"), by and through its attorneys, moves the Trademark Trial and Appeal Board (the "Board") to compel Petitioner Next Level Holdings LLC ("Petitioner"), to respond in full to Respondent's First Set of Interrogatories to Petitioner ("Interrogatories"), and to respond to and produce the documents requested in Respondent's First Request for Production of Documents and Things to Petitioner ("Request for Production").

As detailed below, Petitioner has provided no written responses or documents or things responsive to Respondent's discovery requests, completely disregarding its discovery obligations in the proceeding. Respondent has made the required good-faith effort to resolve this matter with Petitioner prior to filing this motion with no response from Petitioner. Respondent therefore requests that Petitioner be compelled to serve proper and complete responses.

FACTUAL BACKGROUND

On February 3, 2025, Petitioner filed a Petition for Cancellation (TTABVUE #1) against

Respondent's U.S. Registration No. 6,829,211 for the trademark NEXT LEVEL PRIVATE in connection with "Financial planning and investment advisory services" in International Class 36. On April 10, 2025, the Board issued an Order (TTABVUE #9), setting a revised schedule for the proceedings, which, in accordance with TBMP § 401.02 and 37 C.F.R. § 2.120(a)(3), established June 6, 2025 as both the deadline service of Initial Disclosures and the commencement of the discovery period. *See* Exhibit A to Declaration of Mark A. Lerner ("Lerner Decl.").[1]

On June 6, 2025, Respondent served its mandatory Initial Disclosures, as well as its Interrogatories and Request for Production (collectively "Discovery Requests"). *See* Lerner Decl., ¶ 3, Exhibit B. The discovery requests were served in accordance with the applicable rules, and pursuant to the Federal Rules of Civil Procedure 33(b)(2) and 34(b)(2)(A), responses were due no later than July 7, 2025, absent any stipulation or agreement between the parties to extend the deadline. *See* Lerner Decl., ¶ 4.

Petitioner failed to respond to Respondent's Discovery Requests by the July 7, 2025, deadline and did not seek an extension or otherwise explain the delay, even when expressly invited to do so in an email dated July 8, 2025. *See* Lerner Decl., ¶ 7, Exhibit C. Given the lack of response, Respondent's counsel sent further written correspondence to Petitioner's counsel on July 11, 2025 and July 15, 2025, specifically referencing the overdue discovery responses and again requesting that Petitioner comply with its obligations. *See* Lerner Decl., ¶¶ 8, 11, Exhibits D and H.

On July 14, 2025, Petitioner responded to the July 11, 2025, email noting only "Please see attached initial disclosures." *See* Lerner Decl., ¶ 11, Exhibit H. These initial disclosures were themselves over five weeks late, and were served only after Petitioner made three separate attempts to resolve the issue, then filed a motion to compel prior to the 30-day deadline due to the lack of

[1] All Exhibits incorporated herein are supported by the attached Declaration of Mark A. Lerner, counsel for Respondent.

any response. *See* Lerner Decl., ¶ 10. While the timing of service rendered Respondent's motion technically moot, Petitioner never acknowledged or explained its prior failure to comply, nor did it respond to any of Respondent's prior outreach. The July 14, 2025, email from Petitioner, which was sent in response to Respondent's outreach on the overdue Discovery Requests, contained no reference to its outstanding responses to Respondent's Discovery Requests, which were already one week overdue. *See* Lerner Decl., ¶ 11, Exhibit H. One day later, on July 15, 2025, Respondent pointed out that Petitioner still had yet to address the delinquency as to the Discovery Requests. *Id*.

As of the date of this motion, Petitioner has not served any responses to the Discovery Requests served on June 6, 2025. *See* Lerner Decl., ¶ 12. Petitioner has never sought an extension nor provided any justification for its failure to comply with its discovery obligations. *Id*.

Respondent has made multiple good faith efforts to resolve this issue directly with Petitioner and avoid burdening the Board. *See* Lerner Decl., ¶¶ 7, 8, 11, and 12. Rather, as was the case with its Initial Disclosures, Petitioner has completely failed to respond to Respondent's outreach seeking to resolve the issue. *See* Lerner Decl., ¶ 12. Respondent's Discovery Requests thus remain unanswered with no explanation for the delay. Accordingly, Respondent brings this motion to compel, as Board intervention is now necessary.

ARGUMENT

Federal Rules of Civil Procedure 26, 33, and 34 provide that a party may serve upon any party a request to produce documents and things or interrogatories relevant to any party's claim or defense. Fed. R. Civ. P. 26(b), 33(a)(2), 34(a). The party on whom requests for production are served must, within thirty days, provide a response in writing and state that inspection will be permitted or state an objection to the request, including reasons. Fed. R. Civ. P. 34(b)(2)(A);

TBMP § 406.04(a). A party on whom interrogatories are served must, within thirty days, answer each interrogatory "separately and fully in writing under oath." Fed. R. Civ. P. 33(b)(2), (3); TBMP § 405.04(a). Indeed, "[a] party answering interrogatories has an affirmative duty to furnish any and all information available to the party." *Franklin v. Smalls*, No. 09-cv-1067-MMA (RBB), 2012 WL 5077630, at *6 (S.D. Cal. Oct. 18, 2012) (citation omitted). The Board's rules make it clear that the Board expects the parties to its proceedings to comply with Fed. R. Civ. P. 33 ("Each interrogatory must, to the extent it is not objected to, be answered separately and fully in writing under oath. … The grounds for objecting to an interrogatory must be stated with specificity") and 34 ("A party must produce documents as they are kept in the usual course of business or must organize and label them to correspond to the categories in the request"). 37 C.F.R. §§ 2.120(d) - (e); Fed. R. Civ. P. 33; Fed. R. Civ. P. 34.

A party that fails to respond to a request for discovery (except for a request for admission) during the time allowed therefor, and that is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery request on its merits. *See* TBMP 527.01(c); *See No Fear Inc.,* 54 USPQ2d 1551, 1554 (TTAB 2000) (noting that when the Board grants a motion to compel in which "the non-movant cannot show that its neglect of discovery obligations was excusable, the Board generally will order discovery responses to be provided without objection"). Petitioner has failed to respond to Respondent's Discovery Requests, never sought an extension of time to respond to the requests and has not provided any reason for its failure to abide by its discovery obligations, and an order to compel responses with no objections is thus warranted.

Petitioner has also violated its obligations under TBMP § 408.01 to cooperate in the discovery process and to timely provide responses and document production. *See e.g., Emilio*

Pucci International BV v. Sachdev, 118 USPQ2d 1383, 1385 (TTAB 2016) (parties have an affirmative duty to cooperate in the discovery process); *Cadbury UK Ltd. v. Meenaxi Enter., Inc.*, 115 USPQ2d 1404, 1408 (TTAB 2015) (the Board expects parties to demonstrate good faith and cooperation during discovery). Petitioner's conduct reflects not merely a failure to respond, but a broader disregard for its discovery obligations. TBMP § 408.01 underscores that the Board "looks with extreme disfavor," on those who fail to cooperate in the discovery process. TBMP § 408.01. That principle reinforces the seriousness of Petitioner's repeated noncompliance, including its failure to serve initial disclosures, failure to respond to any discovery requests, and failure to engage with Respondent's multiple attempts to resolve these issues without involvement of the Board. *Cf. Luxottica Group S.P.A. v. Persol Holdings Co., Ltd.*, No. 91236919, 2023 WL 8433802 (TTAB 2023) (granting motion for discovery sanctions where applicant failed to timely supplement its document production or respond to discovery until after a motion to compel was filed, and provided no explanation for the delay, indicating an intent to evade discovery obligations and a lack of good faith effort to cooperate).

The Board also has the inherent authority to sanction a party based on the conduct undertaken in a proceeding. See *Carrini, Inc. v. Carla Carini S.R.L.*, 57 USPQ2d 1067 (TTAB 2000). By failing timely to respond to Respondent's Discovery Requests, and all of Respondent's subsequent outreach, Petitioner has therefore waived its rights to object to the written discovery on the merits. Petitioner's failure to provide discovery responses and produce documents has hampered Respondent's ability to obtain basic information essential to its defense, and to determine whether experts will be required or prepare for trial. As shown in the attached declaration and corresponding exhibits, and in accordance with TBMP § 523.02, Respondent has made a good faith effort to resolve the issues presented in this motion and to facilitate Petitioner's

service of its documents and responses to discovery. *See* Lerner Decl.

CONCLUSION

For the foregoing reasons, Respondent respectfully requests that the Board issue an order compelling Petitioner, within seven (7) days from the date of the Order, to serve responses to Respondent's First Set of Interrogatories and Requests for Production, without objections, along with any responsive documents.

Dated: July 28, 2025

Respectfully submitted,

DUANE MORRIS LLP

By: */Mark A. Lerner/*

Mark A. Lerner
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
MALerner@duanemorris.com
(212) 404-8714
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that, on the 28th day of July, 2025, I served a copy of the Motion to Compel Discovery and Declaration of Mark A. Lerner In Support Thereof, by email, upon the following party identified as correspondents and counsel of record for the Petitioner:

Andrew Delaney
NXT Level Holdings LLC
6 South Street, Suite 203
Morristown, NJ 07960
862-812-6874
adelaney@andrewdelaneylaw.com

Dated: July 28, 2025

By: */Patrick Boisson/*

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

In the Matter of Trademark Registration No. 6,829,211
Registered: August 23, 2022
For the Mark: NEXT LEVEL PRIVATE

NXT LEVEL HOLDINGS LLC,	:	
Petitioner,	:	
v.	:	**Cancellation No.:** 92087430
NEXT LEVEL PRIVATE LLC,	:	
Respondent.	:	

DECLARATION OF MARK A. LERNER IN SUPPORT OF MOTION TO COMPEL

I, Mark A. Lerner, declare as follows:

1. I am an attorney at Duane Morris LLP, the firm representing Respondent, Next Level Private LLC, in this matter. I have personal knowledge of the facts set forth herein and will testify competently to the truth of the same if requested.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Board's Order (TTABVUE #9) issued to both parties on April 10, 2025, designating June 6, 2025, as the deadline for Initial Disclosures.

3. On June 6, 2025, Respondent timely served its Initial Disclosures, along with its First Set of Interrogatories to Petitioner ("Interrogatories") and First Set of Requests for Production of Documents and Things to Petitioner ("Requests") (collectively "Discovery Requests"). A true and correct copy of Respondent's Discovery Requests are attached hereto as **Exhibit B.**

4. Pursuant to Federal Rules of Civil Procedure 33(b)(2) and 34(b)(2)(A), and TBMP § 405.04(a) and § 406.04(a), Petitioner's responses and/or objections to Respondent's Discovery Requests were due within thirty (30) days of service, by July 7, 2025.

5. As of July 7, 2025, Petitioner had not served any responses or objections to Respondent's Discovery Requests, requested an extension, or otherwise communicated any reason for delay.

6. Pursuant to 37 C.F.R. § 2.120(f)(1) and TBMP § 523, I acknowledge my duty to attempt in good faith to resolve the discovery dispute before seeking Board intervention. I have made such good faith efforts, as detailed below.

7. On July 8, 2025, my colleague, Lauren Silva, sent an email to counsel for Petitioner noting that Petitioner's responses were overdue and requesting immediate compliance or an explanation for the delay. A true and correct copy of that correspondence is attached hereto as **Exhibit C.**

8. After receiving no response, I followed up again with Petitioner's counsel on July 11, 2025, reiterating Petitioner's obligation to respond and noting that Respondent preferred to avoid further motion practice, but reserved it rights if no response was received. A true and correct copy of that correspondence is attached hereto as **Exhibit D.**

9. Petitioner's failure to respond to Respondent's Discovery Requests follows an earlier failure to serve Initial Disclosures by the June 6, 2025, deadline set by the Board. (TTABVUE #9). In the weeks following that deadline, I made three separate attempts on June 9, June 13, and June 27, 2025, to contact counsel for Petitioner regarding the missing disclosures. True and correct copies of those communications are attached hereto as **Exhibits E, F, and G**.

10. Respondent subsequently filed a motion to compel Initial Disclosures on July 3,

2025, just in advance of the thirty-day deadline for doing so.

11. On July 14, 2025, only after Respondent's motion to compel had been filed, but before the Board issued any ruling or suspend proceedings pending the outcome of the motion, Petitioner served its Initial Disclosures via e-mail. The disclosures were provided in an email replying to the above-referenced July 11, 2025, email reminding Petitioner of its obligations to respond to the Discovery Requests. Petitioner's July 14, 2024, email, however, made no reference to the still outstanding Discovery Requests, which were already more than a week overdue, and only stated "Please see attached initial disclosures." In response, I again reminded Petitioner that it had failed to meet its obligations to respond to the Discovery Requests. A true and correct copy of the email exchange is attached hereto as **Exhibit H.**

12. To date, Petitioner has not acknowledged its overdue discovery obligations, served any responses to Respondent's Discovery Requests, or otherwise responded to any outreach from Respondent seeking an explanation or to meet-and-confer. Respondent has attempted in good faith to resolve these issues without Board intervention, consistent with 37 C.F.R. § 2.120(e)(1) and TBMP. § 523.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED this 28th day of July 2025 at New York, New York.

/Mark A. Lerner/

EXHIBIT A

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

April 10, 2025

Cancellation No. 92087430

NXT Level Holdings LLC

v.

Next Level Private LLC

Jill M. McCormack, Interlocutory Attorney:

On April 7, 2025, the Board participated in the discovery conference. *See* TRADEMARK TRIAL AND APPEAL BOARD MANUAL OF PROCEDURE (TBMP) § 401.01 (2024). The participants included Andrew Delaney, in-house counsel for Petitioner, representing itself pro se; Mark Lerner and Lauren Silva, counsel for Respondent; and Jill McCormack, Interlocutory Attorney for the Board.

I. RELATED PROCEEDINGS

In the event that a civil action or separate Board proceeding between the parties is instituted, the parties must promptly advise the Board so it can determine if suspension or consolidation is appropriate. *See* TBMP §§ 510.02(a) and 511; *see also* Trademark Rule 2.117(a).

II. SETTLEMENT

Because its jurisdiction is limited to registrability determinations, unlike the federal courts, the Board does not take an active role in the settlement process.

However, the Board typically will grant a consented or joint motion to suspend proceedings for a reasonable period of time in order to allow the parties to engage in settlement negotiations. *See* TBMP § 510.03(a); *see also* Trademark Rule 2.117(c). Any stipulations to suspend the proceeding for settlement negotiations should be filed promptly because, absent suspension, the Board presumes the parties are preparing for trial and adhering to the disclosure, discovery, and trial deadlines set by the Board. *Atlanta-Fulton County Zoo Inc. v. De Palma*, 45 USPQ2d 1858, 1859 (TTAB 1998) ("[I]t is well established that the mere existence of settlement negotiations alone does not justify a party's inaction or delay.").

III. PLEADED CLAIMS AND DEFENSES

Respondent owns a registration for the standard-character mark NEXT LEVEL PRIVATE for "financial planning and investment advisory services," in Class 36.[1]

A. PETITION FOR CANCELLATION

On February 3, 2025, Petitioner filed a petition to cancel on the sole ground of likelihood of confusion. Petitioner pleads ownership of a registration for the mark shown below for "consulting services, namely, expert analysis and management consulting in economics and accounting; brand imagery consulting services; business consulting and information services; business consulting for enterprises; business consulting services; business consulting, inquiries or information; business management consulting; business marketing consulting services; business organization consulting; business organization and management consulting;

[1] Registration No. 6829211 was issued on August 23, 2022; "private" disclaimed.

corporate image consulting services; direct marketing consulting services; marketing consulting; personnel management consulting; professional business consulting," in Class 35:  .[2] This is sufficient to plead Petitioner's entitlement to a statutory cause of action. *See Cunningham v. Laser Golf Corp.*, 222 F.3d 943, 55 USPQ2d 1842, 1844 (Fed. Cir. 2000). Petitioner has also pleaded a legally sufficient claim of likelihood of confusion. *See Nike, Inc. v. Palm Beach Crossfit Inc.*, 116 USPQ2d 1025, 1030 (TTAB 2015).

B. ANSWER

On March 14, 2025, Respondent filed a legally sufficient answer that denies the salient allegations in the petition to cancel and asserts a number of "Affirmative Defenses." As explained during the conference,

- Respondent's First and Fourth Affirmative Defenses are **stricken without prejudice**. *See* Fed. R. Civ. P. 12(f). A legally sufficient pleading of a defense must include enough factual detail to provide fair notice of the basis for the defense. Fed. R. Civ. P. 8(b)(1). Respondent's First and Fourth Affirmative Defenses are insufficiently pleaded because Respondent has failed to plead any specific allegations of conduct that, if proven, would prevent Petitioner from prevailing on its claim of likelihood of confusion. *See Midwest Plastic Fabricators Inc. v. Underwriters Labs. Inc.*, 5 USPQ2d 1067, 1069 (TTAB 1987).[3]

[2] Registration No. 7490958 was issued on September 3, 2024.

[3] To plead acquiescence, the defendant must allege: (1) that the plaintiff actively represented that it would not assert a right or claim; (2) that the delay between the active representation and assertion of the right or claim was not excusable; and (3) that the delay caused the defendant undue prejudice. *Coach House Rest., Inc. v. Coach & Six Rests., Inc.*, 19 USPQ2d 1401, 1409 (11th Cir. 1991). Waiver is the "intentional relinquishment or abandonment of a known right or privilege." *Johnson v. Zerbst*, 304 U.S. 458, 464 (1938). To plead laches, the defendant must allege "that there was undue or unreasonable delay [by plaintiff] in asserting its rights, and prejudice to [defendant] resulting from the delay." *Bridgestone/Firestone Research, Inc. v. Auto. Club*, 58 USPQ2d 1460, 1462 (Fed. Cir. 2001). To plead unclean hands, the defendant must allege specific allegations of misconduct that, if proved, would prevent the plaintiff from prevailing on its claim. *Midwest Plastic*, 5 USPQ2d at 1069.

- Respondent's Second Affirmative Defense is **stricken**. While Fed. R. Civ. P. 12(b)(6) allows a party to assert the defense in its answer, failure to state a claim is not a true affirmative defense because it relates to an assertion of the insufficiency of the pleading of Petitioner's claims rather than a statement of a defense to a properly pleaded claim. *See Hornblower & Weeks Inc. v. Hornblower & Weeks Inc.*, 60 USPQ2d 1733, 1738 n.7 (TTAB 2001). Here, because Petitioner has sufficiently pleaded its entitlement and at least one valid statutory ground for cancellation, the defense of failure to state a claim is not applicable.

- Respondent's Third Affirmative Defense is not a true affirmative defense, but may remain in the answer as an amplification of Respondent's denials. The allegations provide fuller notice to Petitioner of how Respondent intends to defend this proceeding. *See Order of Sons of Italy in Am. v. Profumi Fratelli Nostra AG*, 36 USPQ2d 1221, 1223 (TTAB 1995).

The Board liberally grants leave to amend pleadings prior to trial when justice requires, unless entry of the proposed amended pleading would be prejudicial to the rights of the adverse party, would violate settled law, or would serve no useful purpose. Respondent is allowed **THIRTY (30) DAYS** from the date of this order to file and to serve an amended answer that repleads its First and Fourth Affirmative Defenses, failing which the defenses will remain stricken without prejudice.

IV. ARRANGEMENTS FOR DISCLOSURES, DISCOVERY, AND TRIAL

A. INITIAL DISCLOSURES

After the pleadings close, the parties next must serve each other with initial disclosures. Fed. R. Civ. P. 26(a) (1) provides "a party must, without awaiting a discovery request, provide to the other parties:

> (i) the name and, if known, the address and telephone number of each individual likely to have discoverable information—along with the subjects of that information—that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;
>
> (ii) a copy—or a description by category and location—of all documents, electronically stored information, and tangible things that the disclosing

> party has in its possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment ..."

The Board advises that initial disclosures should be promptly supplemented as the parties' trial strategy evolves, to avoid surprise at trial, and to allow discovery to be taken from prospective witnesses.[4]

B. DISCOVERY

With respect to discovery, the scope of the pleadings determines the scope of discovery. *See* Fed. R. Civ. P. 26(b) (1) ("Parties may obtain discovery regarding any nonprivileged matter that is relevant to any party's claim or defense…"). The parties were advised to consult the "Discovery Guidelines" listed in the TBMP § 414 before making or objecting to discovery requests. The Board expects parties to cooperate with one another in the discovery process. *See* TBMP § 408.01. The parties each have a duty not only to make a good faith effort to satisfy the legitimate discovery needs of their adversary, but also to make a good faith effort to seek only such discovery as is proper and relevant to the issues in the case. *See* TBMP § 408.01.

The parties are limited to seventy-five interrogatories, including subparts; seventy-five requests for production of documents and things, including subparts; and seventy-five requests for admission. *See* Trademark Rules 2.120(d), 2.120(e), and 2.120(i). Interrogatories, requests for production, and requests for admission must be served early enough in the discovery period, as originally set or as may have been

[4] The parties should not file their initial disclosures, discovery requests, or discovery responses with the Board, except as permitted under Trademark Rule 2.120(k)(8); in connection with a motion to compel discovery, as required by Trademark Rule 2.120(f)(1); or in connection with a motion to determine the sufficiency of an answer or objection to a request for admission, as required by Trademark Rule 2.120(i)(1).

reset by the Board, so that responses will be due no later than the close of the discovery period. Trademark Rule 2.120(a)(3). Similarly, discovery depositions must be properly noticed and taken during the discovery period. *Id.*

If either party plans to file a motion to compel discovery or a motion to test the sufficiency of a response or objection to a request for admission, the moving party must first confer with the other party in good faith to attempt to resolve or narrow the dispute, and then must demonstrate its good-faith efforts as part of its motion. *See* Trademark Rules 2.120(f)(1) and 2.120(i); *see also* TBMP § 523.02. The obligation to meet and confer in good faith is a mutual obligation. Motions to compel discovery, motions to test the sufficiency of responses or objections to a request for admission, and motions for summary judgment must be filed no later than the day before the deadline for pretrial disclosures for the first testimony period as originally set or as reset. Trademark Rules 2.120(f)(1), 2.120(i)(1), and 2.127(e)(1).

To the extent either party plans to use an expert witness, such party must make their expert witness disclosure by the set deadline, and provide the Board with notification that the party will be employing an expert. Trademark Rule 2.120(a)(2)(iii). The Board may suspend proceedings to allow the parties to take discovery of a designated expert witness or to allow a rebuttal expert witness.

C. PRETRIAL AND TRIAL PROCEDURES

Pretrial disclosures are governed by Trademark Rule 2.121(e) and Fed. R. Civ. P. 26(a)(3) with one exception: the Board does not require pretrial disclosure of each document or other exhibit that a party plans to introduce at trial as required by Fed.

R. Civ. P. 26(a)(3)(A)(iii). Additionally, if a party does not plan to take testimony from any witness in any form, it must state so in its pretrial disclosures. A party need not disclose, prior to its testimony period, any notices of reliance it intends to file during its testimony period. Trademark Rule 2.121(e). For further information regarding pretrial disclosures, the parties should consult TBMP § 702.01.

In addition to submission of evidence under notices of reliance,[5] parties may introduce evidence in the form of testimony depositions taken by a party during its assigned testimony period, or in the form of affidavit or declaration testimony submitted during its testimony period, subject to the right of the adverse party to conduct cross-examination as provided under Trademark Rule 2.123(c).[6] *See* TBMP § 703.01. The submission of evidence and testimony during the parties' assigned testimony periods corresponds to the trial in court proceedings. A party may take trial testimony only during its assigned testimony period, except by stipulation of the parties approved by the Board, or, on motion, by order of the Board. *See Fossil Inc. v. Fossil Grp.*, 49 USPQ2d 1451, 1454 n.1 (TTAB 1998); *Of Counsel Inc. v. Strictly of Counsel Chartered*, 21 USPQ2d 1555, 1556 n.2 (TTAB 1991).

D. STANDARD PROTECTIVE ORDER

The Board's Standard Protective Order is automatically imposed in this proceeding pursuant to Trademark Rule 2.116(g), unless the parties, by stipulation

[5] For information concerning submission of evidence by notice of reliance, see TBMP § 704.

[6] If an affiant or declarant witness is not within the jurisdiction of the United States, then the adverse party may elect to take and bear the expense of cross-examination of the witness by written questions. *See* Trademark Rules 2.123(a)(1) and 2.124.

approved by the Board, agree to an alternative order, or a motion by a party to use an alternative order is granted by the Board. *See* TBMP §§ 412.01–.02. Although they are not required to do so, the parties may elect to exchange executed copies of the order. Because of the automatic imposition of the protective order, parties may designate information or documents as confidential but typically cannot withhold properly discoverable information or documents on that basis. *See* TBMP § 412.01.

V. ACCELERATED CASE RESOLUTION

During the conference, the Board informed the parties of its Accelerated Case Resolution (ACR) process. ACR is an alternative to typical Board inter partes proceedings. *See Chanel Inc. v. Makarczyk*, 110 USPQ2d 2013, 2016–17 (TTAB 2013); *Chanel Inc. v. Makarczyk*, 106 USPQ2d 1774, 1775 (TTAB 2013); *see also Bond v. Taylor*, 119 USPQ2d 1049, 1051 (TTAB 2016).

The form of ACR can vary, but the process often approximates a summary bench trial, or cross-motions for summary judgment and accompanying evidentiary submissions, that the parties agree to submit in lieu of creating a traditional trial record and post-trial briefing. If the parties stipulate to ACR they could avoid a formal trial altogether. Although the Board may not decide disputed issues of material fact when considering a motion for summary judgment, the parties may stipulate to the submission of such briefs and evidence in lieu of trial and agree that the Board may resolve and decide any genuine dispute of material fact that may be found to exist.

As an alternative to the "traditional" ACR process discussed above, the parties also may explore stipulating to facts, evidence, and/or procedures at trial. *See, e.g.*,

Target Brands, Inc. v. Hughes, 85 USPQ2d 1676, 1678 (TTAB 2007). The Board allows the parties to stipulate to a variety of deviations from the Board's rules in order to streamline discovery and testimony. If the parties adopt ACR early in the proceeding, they could realize a significant savings in time and cost. More information about the Board's ACR options can be found in TBMP §§ 528.05(a)(2), 702.04, and 705, and on the Board's website.

If the parties wish to revisit the issue of ACR after they review this order, they may call the assigned Interlocutory Attorney to schedule a teleconference regarding ACR.

VI. PROCEEDING SCHEDULE

Pursuant to the Board's inherent authority to control the cases on its docket, remaining dates are reset as follows:

Initial Disclosures Due	6/6/2025
Expert Disclosures Due	10/4/2025
Discovery Closes	11/3/2025
Plaintiff's Pretrial Disclosures Due	12/18/2025
Plaintiff's 30-day Trial Period Ends	2/1/2026
Defendant's Pretrial Disclosures Due	2/16/2026
Defendant's 30-day Trial Period Ends	4/2/2026
Plaintiff's Rebuttal Disclosures Due	4/17/2026
Plaintiff's 15-day Rebuttal Period Ends	5/17/2026
Plaintiff's Opening Brief Due	7/16/2026
Defendant's Brief Due	8/15/2026
Plaintiff's Reply Brief Due	8/30/2026
Request for Oral Hearing (optional) Due	9/9/2026

Generally, the Federal Rules of Evidence apply to Board trials. Trial testimony is taken and introduced out of the presence of the Board during the assigned testimony

periods. The parties may stipulate to a wide variety of matters, and many requirements relevant to the trial phase of Board proceedings are set forth in Trademark Rules 2.121 through 2.125. These include pretrial disclosures, the manner and timing of taking testimony, matters in evidence, and the procedures for submitting and serving testimony and other evidence, including affidavits, declarations, deposition transcripts and stipulated evidence. Trial briefs shall be submitted in accordance with Trademark Rules 2.128(a) and (b). Such briefs should utilize citations to the TTABVUE record created during trial, to facilitate the Board's review of the evidence at final hearing. Oral argument at final hearing will be scheduled only upon the timely submission of a separate notice as allowed by Trademark Rule 2.129(a).

VII. INFORMATION REGARDING LEGAL REPRESENTATION

It is noted that Petitioner is representing itself in this proceeding. While Patent and Trademark Rule 11.14 permits a party domiciled in the United States to represent itself, it is strongly advisable for a party who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. *See* TBMP § 114.02.

Trademark Rules 2.119(a) and (b) require that every submission filed in a proceeding before the Board must be served upon the other party or parties, and proper proof of such service must be made before the submission will be considered

by the Board. Accordingly, all submissions filed in this proceeding must be accompanied by a statement, signed by the attorney or other authorized representative, attached to or appearing on the original submission when filed, clearly stating the date and manner in which service was made, the name of each party or person upon whom service was made, and the email address or address. *See* TBMP § 113.03. Service must be made by email unless otherwise stipulated, or unless the filing party has satisfied the requirements for another method of service as set forth in Trademark Rule 2.119(b). The statement will be accepted as prima facie proof of service, must be signed and dated, and should take the form of a Certificate of Service as follows:

> I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by forwarding said copy on (insert date of mailing), via email (or insert other appropriate method of delivery) to: (set out name, address, and email address of opposing counsel or party).
>
> Signature_____
>
> Date_____

Submissions in Board proceedings must be made via ESTTA, the Electronic System for Trademark Trials and Appeals, and must be in compliance with Trademark Rules 2.126(a) and (b). *See* TBMP § 110.01. The ESTTA user manual, ESTTA forms, and instructions for their use are at http://estta.uspto.gov/.

It is recommended that any pro se party be familiar with the latest edition of Chapter 37 of the Code of Federal Regulations, which includes the Trademark Rules of Practice. Parties should also be familiar with the Trademark Trial and Appeal Board Manual of Procedure (TBMP), available at http://www.uspto.gov/trademarks-

application-process/trademark-trial-and-appeal-board-ttab, the TTABVUE system for viewing the record for all Board proceedings, available at http://ttabvue.uspto.gov/ttabvue/, and the Standard Protective Order, available at https://www.uspto.gov/sites/default/files/documents/Standard%20Protective%20Order_02052020.pdf.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is required of all parties, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006); *see also Hole In 1 Drinks, Inc. v. Lajtay*, 2020 USPQ2d 10020, at *1 (TTAB 2020) (noting that compliance with the Trademark Rules of Practice, and where applicable, the Federal Rules of Civil Procedure and the Federal Rules of Evidence, is required of all parties even those who assume the responsibility and risk of representing themselves).

EXHIBIT B

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

In the Matter of Trademark Registration No. 6,829,211
Registered: August 23, 2022
For the Mark: NEXT LEVEL PRIVATE

NXT LEVEL HOLDINGS LLC,	:	
Petitioner,	:	
v.	:	**Cancellation No.:** 92087430
NEXT LEVEL PRIVATE LLC,	:	
Respondent.	:	

RESPONDENT NEXT LEVEL PRIVATE'S FIRST SET OF INTERROGATORIES TO NXT LEVEL HOLDINGS

Pursuant to Rules 26 and 33 of the Federal Rules of Civil Procedure, and corresponding sections of the Code of Federal Regulations, and the Trademark Board Manual of Procedure, and the Definitions and Instructions that follow, Respondent Next Level Private LLC ("Next Level Private" or "Respondent") directs the following Interrogatories to Petitioner NXT Level Holdings LLC ("NXT Level Holdings" or "Petitioner"), to be answered separately, fully, and under oath within thirty (30) days of service hereof by serving written responses on the following counsel of record: Mark A. Lerner, Esq., Duane Morris LLP, 22 Vanderbilt, 335 Madison Avenue, 23rd Floor, New York, NY 10017-4669.

DEFINITIONS

The following definitions apply to the following Interrogatories in this case:

1. "NXT Level Holdings," "Petitioner," "You," and "Your" refer to NXT Level Holdings LLC and any related or affiliated entities and individuals.

2. "Next Level Private" or "Respondent" refers to Next Level Private LLC and any related or affiliated entities and individuals.

3. "Person" or "Persons" means natural persons, all governmental entities, agencies, officers, departments, or affiliates thereof, and any corporation, foundation, partnership, proprietorship, association, organization, or group of natural persons.

4. "Date" means the exact day, month, and year, if ascertainable, or, if not, the best approximation (including relationship to other events). Where NXT Level Holdings cannot ascertain an exact date, its response(s) shall specifically indicate that the approximation has been made.

5. "Communication(s)" and/or "Correspondence" means any and every expression and/or exchange of thoughts, message, or information by and through any medium.

6. "Describe" and/or "State" means to set forth fully and unambiguously every fact relevant to the subject of the Interrogatory, of which NXT Level Holdings (including its agents and representatives) has knowledge or information.

7. "Identify" and "Identification" mean:

(a) with respect to a Person, his or her name and present (or if unknown, the last known) place of employment, Date(s) of commencement and termination of employment, job title and description of his or her duties and responsibilities;

(b) with respect to a corporation or other legal entity, the full name, address and state of incorporation, if known, and the identity of the Person(s) who acted on behalf of such entity with respect to the subject matter of the Interrogatory;

(c) with respect to an event or instance, the Date and location of the event or instance and the Persons who witnessed or have knowledge of each event or instance;

(d) with respect to a Document, the type of Document (*e.g.*, letter, telex, contract, calendar pad, report) the number of pages of which the Document consists, a general description of the Document's contents, identification of the Person(s) who prepared the Document, for whom it was prepared, who signed it, to whom it was delivered, mailed, or otherwise received, and to whom a copy was sent or otherwise received, Date of writing, creation or publication, the identifying number(s), letter(s), or combination thereof, if any, and the significance or meaning of such numbers(s), letter(s) or combination thereof, and present location and identity of the custodian of that Document. Documents to be identified shall include both Documents in Your possession, custody or control, Documents known by You to have existed but no longer existing, and other Documents of which You have knowledge or information.

8. "Relate," "relating to," "refer," "referring to," and "concerning" mean mentioning, describing, discussing, memorializing, consisting of, containing, evidencing, contradicting, comprising, analyzing, reflecting, depicting in any way, directly or indirectly, the subject matter of the Interrogatory.

9. "Document(s)" means anything defined as "writings" or "recordings" or "photographs" by Rule 1001 of the Federal Rules of Evidence or a "document" as set forth in Rule 34(a) of the Federal Rules of Civil Procedure, including, without limitation, the originals, and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise (including without limitation, correspondence, memoranda, notes, diaries, minutes, statistics, letters, telegrams, contracts, reports, studies, checks, statements, tags, labels, invoices, brochures, periodicals, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intra-office communications, e-mails, offers, notations of any sort of conversations,

working papers, applications, permits, surveys, indices, telephone calls, voice messages, meetings, printouts, telefax, invoices, work sheets, and all drafts, alterations, modifications, changes and amendments of the foregoing), graphic or oral representations of any kind (including without limitation, photographs, charts, microfiche, microfilm, videotape, readings, motion pictures, plans, drawings, surveys), and electronic, mechanical or electric records or representations of any kind (including without limitation, tapes, cassettes, discs, recordings, and e-mail).

10. "Thing(s)" means any tangible item, and shall be construed as broadly as possible under the Federal Rules of Civil Procedure, Code of Federal Regulations, and/or Trademark Board Manual of Procedure.

11. "Cancellation Proceeding" means the above-captioned *inter partes* proceeding assigned Cancellation Proceeding No. 92087430, pending before the United States Patent and Trademark Office, Trademark Trial and Appeal Board.

12. "Petition" refers to the current legally operative Petition for Cancellation (Proceeding No. 92087430 TTABVUE #1).

13. "Petitioner's Mark" and "NXT LEVEL Mark" mean the 

trademark reflected in U.S. Registration No. 7,490,958 that is owned by NXT Level Holdings.

14. "Respondent's Mark" and "NEXT LEVEL PRIVATE Mark" mean the NEXT LEVEL PRIVATE trademark reflected in U.S. Registration No. 6,829,211 that is owned by Next Level Private.

15. "USPTO" means the United States Patent and Trademark Office.

16. "Board" refers to the Trademark Trial and Appeal Board.

17. "And," "or," as well as "and/or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the Interrogatory all responses, information,

Documents, and/or Things which otherwise might be construed to be outside its scope.

18. Any word written in the singular herein shall be construed as plural or vice versa when necessary to facilitate the response to any Interrogatory.

INSTRUCTIONS

The following instructions apply to all of Next Level Private's Interrogatories in this case:

1. If NXT Level Holdings responds pursuant to Federal Rule of Civil Procedure 33(d), NXT Level Holdings shall identify specifically where in the Document(s) the response to the Interrogatory may be derived or ascertained.

2. In responding to these Interrogatories, furnish all information which is available to You, including information in the possession, custody or control of Your attorneys, agents, employees, investigators, consultants, experts and licensees, as well as any firm, company, corporation or business in which You own a controlling interest or over which You exercise control. If You cannot answer any of the following Interrogatories in full after exercising due diligence to secure the information, so state and answer to the extent possible, specifying Your inability to answer the remainder and stating whatever information or knowledge You have concerning the unanswered portions.

3. If, after exercising due diligence, NXT Level Holdings is unable to determine the existence of any Documents, Persons, or Things falling within an Interrogatory requesting identification or production of Documents, Persons, or Things, NXT Level Holdings shall so state in its written response.

4. If You object to furnishing information requested in response to any Interrogatory, or any part or portion thereof, You shall state with particularity each objection, the reasons for the objection, and the categories of information to which the objection applies. You shall then answer

to the extent the Interrogatory is not objectionable. If You assert a claim of privilege in objecting to any Interrogatory, or part or portion thereof, and information is withheld on the basis of such assertion:

a. the attorney asserting the privilege shall, as a part of the objection to the Interrogatory, or part or portion thereof, Identify the nature of the privilege which is being claimed and if the privilege is being asserted in connection with a claim or a defense governed by state law, indicate the state rule of privilege being invoked; and

b. the following information shall be provided in the objection unless divulgence of such information would cause disclosure of the allegedly privileged information: (1) the type of information; (2) the general subject matter of the information; and (3) such other information as is sufficient to Identify the information for a motion to compel.

5. These Interrogatories are to be regarded as continuing, and NXT Level Holdings is requested to provide, by way of supplementary responses, any additional information, most notably that specified under Rule 26(e) of the Federal Rules of Civil Procedure, that may be obtained by NXT Level Holdings, or any Person acting on NXT Level Holdings' behalf, which will augment or otherwise modify NXT Level Holdings' responses.

6. For the convenience of the Board and the parties, each Interrogatory should be quoted in full immediately preceding the response.

7. Unless stated otherwise, the geographic scope of all Interrogatories is the United States.

INTERROGATORIES

Interrogatory No. 1. For each person identified in your Initial Disclosures, state in detail the relevant knowledge or information possessed by each person.

Interrogatory No. 2. Describe the facts and circumstances concerning your conception, creation, selection, and adoption of the NXT LEVEL Mark.

Interrogatory No. 3. State whether you were aware of any other marks comprised of or incorporating "NEXT" or "NXT" and "LEVEL" or "LVL" or any other similar formatives at the time You adopted the NXT LEVEL Mark, and if so, identify any such trademarks.

Interrogatory No. 4. Describe in detail each service offered and sold by NXT Level Holdings under the NXT LEVEL Mark.

Interrogatory No. 5. Describe, in detail, the channels of trade through which NXT Level Holdings offers each of the services offered under the NXT LEVEL Mark.

Interrogatory No. 6. Identify the geographic region(s), by state and county where NXT Level Holdings' services are marketed and sold.

Interrogatory No. 7. Describe in detail the demographic market to which NXT Level Holdings' services are targeted.

Interrogatory No. 8. Describe in detail the demographic market to which NXT Level Holdings' services are actually sold.

Interrogatory No. 9. State whether NXT Level Holdings targets or provides services to individual consumers, business entities, or both.

Interrogatory No. 10. Describe in detail the manner in which consumers engage NXT Level Holdings to obtain services offered under the NXT LEVEL Mark, including whether engagement requires direct contact with a representative.

Interrogatory No. 11. Describe in detail the process a prospective client must follow before engaging NXT Level Holdings for services offered under the NXT LEVEL Mark, including whether any written proposals, contracts, or intake assessments are provided or required.

Interrogatory No. 12. Describe in detail whether consumers may engage NXT Level Holdings' services without speaking to or otherwise communicating with a company representative, and if so, explain how such services may be accessed.

Interrogatory No. 13. Describe in detail the methods by which consumers pay for services offered by NXT Level Holdings under the NXT LEVEL Mark, including whether payments are made in advance, on a recurring basis, or upon completion of services.

Interrogatory No. 14. Describe in detail the pricing structure for the services offered under the NXT LEVEL Mark, including any standard rates, fee schedules, or pricing tiers applicable to NXT Level Holdings' clients.

Interrogatory No. 15. If the pricing for Your services is customized, set forth the price charged to each customer who has engaged You to provide services that You have offered, sold, or provided under or in connection with the NXT LEVEL Mark.

Interrogatory No. 16. Set forth the annual volume or sales (in dollars and units) of all services sold, directly or indirectly, by You under or in connection with the NXT LEVEL Mark since its inception.

Interrogatory No. 17. State whether NXT Level Holdings is, or has ever been, a registered investment advisor with the U.S. Securities and Exchange Commission or any state securities authority.

Interrogatory No. 18. If your response to Interrogatory No. 17 is anything other than an unqualified "No," Identify the date(s) of registration, the registering authority or authorities, and the applicable registration number(s) relating to NXT Level Holdings' registration as a registered investment advisor.

Interrogatory No. 19. If your response to Interrogatory No. 17 is anything other than an unqualified "No," describe in detail any steps NXT Level Holdings has taken to comply with the regulatory requirements applicable to registered investment advisors, including but not limited to the filing of Form ADV, the adoption of compliance procedures, and adherence to fiduciary duties.

Interrogatory No. 20. Identify any trademark searches, clearances, or other inquiries of any kind (*e.g.* on-line, full search, or manual search of records of the U.S. Patent and Trademark Office or any other registrar of trademarks, or any common law, business name or other databases) conducted by NXT Level Holdings relating to the NXT LEVEL Mark.

Interrogatory No. 21. Describe all market research conducted by or on behalf of NXT Level Holdings concerning the NXT LEVEL Mark or any services marketed or proposed to be marketed under the NXT LEVEL Mark, including the results of such research.

Interrogatory No. 22. Identify each website owned or operated by NXT Level Holdings that promote services offered under the NXT LEVEL Mark.

Interrogatory No. 23. Identify each social media account owned or operated by NXT Level Holdings that promote services offered under the NXT LEVEL Mark.

Interrogatory No. 24. Identify materials on which the NXT LEVEL Mark has been displayed in the United States in connection with the services offered under the NXT LEVEL Mark.

Interrogatory No. 25. Describe, in detail, the methods NXT Level Holdings uses to promote each of the services offered under the NXT LEVEL Mark.

Interrogatory No. 26. State the total annual amount spent by NXT Level Holdings in connection with promotion and advertising NXT Level Holdings' services in each state in the United States, from the date of first use of the NXT LEVEL Mark through the present.

Interrogatory No. 27. Describe the categories of advertisements, promotional materials, and marketing materials (for example, newspaper advertisements, magazine advertisements, internet websites, television commercials, brochures) employed by You to promote the NXT LEVEL Mark.

Interrogatory No. 28. Identify the specific media (for example, The New York Times, Time magazine, Google.com, CBS Network television, Facebook) in which NXT Level Holdings is using, has used, advertised or promoted, or plans to use, advertise or promote the NXT LEVEL Mark.

Interrogatory No. 29. Describe in detail the steps NXT Level Holdings has taken to monitor, police, or enforce its rights in the NXT LEVEL Mark, including efforts to identify third-party uses or similar marks.

Interrogatory No. 30. Identify the date and describe the circumstances of NXT Level Holdings first becoming aware of Respondent's a) use and b) registration of the NEXT LEVEL PRIVATE Mark.

Interrogatory No. 31. Identify any third-party use of any trademark comprised of or incorporating "NEXT" or "NXT" and "LEVEL" or "LVL" or any other similar formatives of which NXT Level Holdings is aware and for each such use, set forth the owner and the goods and/or services in connection with which the mark is used.

Interrogatory No. 32. Identify any third-party trademark comprised of or incorporating "NEXT" or "NXT" and "LEVEL" or "LVL" or any other similar formatives that NXT Level Holdings is aware is the subject of a registration or application in the USPTO.

Interrogatory No. 33. For each trademark set forth in Exhibit A to Respondent's Answer, annexed hereto, identify whether and when You first became aware of the trademark.

Interrogatory No. 34. For each trademark set forth in Exhibit C to Respondent's Answer, annexed hereto, identify whether and when You first became aware of the trademark.

Interrogatory No. 35. Identify all instances in which You have objected to a third party's use of the NXT LEVEL Mark or any other trademark or designation comprised of or incorporating "NEXT" or "NXT" and "LEVEL" or "LVL" or any other similar formatives.

Interrogatory No. 36. For each instance identified in the response to Interrogatory No. 35, describe in detail the action taken by NXT Level Holdings with regard to each such mark, including any communications, objections, cease and desist letters, or legal proceedings initiated.

Interrogatory No. 37. For each instance identified in response to Interrogatory No. 35, describe in detail the outcome of the challenge or inquiry.

Interrogatory No. 38. Identify all agreements relating to the promotion of services under the NXT LEVEL Mark.

Interrogatory No. 39. Identify all license agreements between NXT Level Holdings and any other party of the NXT Level Mark or any other designation incorporating or referring to any trademark comprised of or incorporating "NEXT" or "NXT" and "LEVEL" or "LVL" or any other similar formatives.

Interrogatory No. 40. Identify all settlement agreements relating to any disputes between NXT Level Holdings and any third party involving any trademark, trade name, or other designation incorporating or referring to any trademark comprised of or incorporating "NEXT" or "NXT" and "LEVEL" or "LVL" or any other similar formatives

Interrogatory No. 41. Identify any Person who has changed their use of any trademark, trade name, or other designation incorporating or referring to any trademark comprised of or incorporating "NEXT" or "NXT" and "LEVEL" or "LVL" or any other similar formatives, as a

result of any claim, objection, complaint, challenge or inquiry of any kind made by NXT Level Holdings.

Interrogatory No. 42. Describe in detail the factual basis for your contention in the Petition that the NXT LEVEL Mark and NEXT LEVEL PRIVATE Mark are likely to be confused.

Interrogatory No. 43. Describe in detail the factual basis for your contention that Respondent markets their services to businesses seeking financial and consulting services as alleged in the Petition.

Interrogatory No. 44. Describe in detail the factual basis for your contention in the Petition that the alleged similarity of Petitioner's Mark and Respondent's Mark will lead to "reputational harm," and "dilution of Petitioner's brand identity."

Interrogatory No. 45. Describe in detail the factual basis for any damages You claim to have suffered as a result of the use of NEXT LEVEL PRIVATE.

Interrogatory No. 46. Describe in detail the factual basis for the $480,000 claimed as unauthorized use damages in Your Invoice #24-721, dated November 6, 2024.

Interrogatory No. 47. Describe in detail the factual basis for Your contention in the Petition that "financial and business consulting services" "overlap."

Interrogatory No. 48. Describe in detail the factual basis for Your contention in the Petition that the "financial planning and investment advisory services" provided by Respondent constitute the type of financial consulting services that purportedly "overlap" with business consulting services as referenced in Paragraph numbered 2 of the Petition.

Interrogatory No. 49. Identify all instances in which NXT Level Holdings received any communication from any Person relating to any observations, perceptions, impressions, or inquiries as to whether the services sold or intended to be sold, directly or indirectly, by

Respondent under Respondent's Mark are produced by, sponsored, or endorsed by, or in any manner associated or affiliated with You or any services offered under the NXT LEVEL Mark.

Interrogatory No. 50. Identify all legal proceedings to which NXT Level Holdings has been a party, including but not limited to, all federal actions, *inter partes* proceedings, cease and desist/demand letters, and class action suits that involve the NXT LEVEL Mark or brand.

Interrogatory No. 51. Identify any NXT Level Holdings customers located within 20 miles of Harrison, New York.

Interrogatory No. 52. For each of the foregoing Interrogatories, Identify all persons consulted in connection with investigating or collecting responsive Documents or information and/or drafting or preparing answers.

Dated: June 6, 2025

Respectfully submitted,

DUANE MORRIS LLP

By: */Mark Lerner/*

Mark A. Lerner
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
MALerner@duanemorris.com
(212) 404-8714
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that, on the 6th day of June, 2025, I served a copy of the foregoing First Set of Interrogatories, by email, upon the following party identified as correspondents and counsel of record for the Petitioner:

Andrew Delaney
NXT Level Holdings LLC
6 South Street, Suite 203
Morristown, NJ 07960
862-812-6874
adelaney@andrewdelaneylaw.com

Dated: June 6, 2025

By: */Patrick Boisson/*
Patrick Boisson

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

In the Matter of Trademark Registration No. 6,829,211
Registered: August 23, 2022
For the Mark: NEXT LEVEL PRIVATE

NXT LEVEL HOLDINGS LLC,	:	
Petitioner,	:	
v.	:	**Cancellation No.:** 92087430
NEXT LEVEL PRIVATE LLC,	:	
Respondent.	:	

RESPONDENT NEXT LEVEL PRIVATE'S FIRST REQUEST FOR PRODUCTION TO NXT LEVEL HOLDINGS

Pursuant to Rules 26 and 34 of the Federal Rules of Civil Procedure, and corresponding sections of the Code of Federal Regulations, and the Trademark Board Manual of Procedure, and the Definitions and Instructions that follow, Respondent Next Level Private LLC ("Next Level Private" or "Respondent") directs the following Requests for Production to Petitioner NXT Level Holdings LLC ("NXT Level Holdings" or "Petitioner"), to produce all of the documents and things sought below that are in its possession, custody, or control, to the offices of Duane Morris, LLP, 22 Vanderbilt, 335 Madison Avenue, 23rd Floor, New York, NY 10017-4669, or at such other time and place as may be mutually agreed upon by counsel for the parties, within thirty (30) days of service hereof.

DEFINITIONS

The following definitions apply to the following Requests in this case:

1. “NXT Level Holdings,” “Petitioner,” “You,” and “Your” refer to NXT Level Holdings LLC and any related or affiliated entities and individuals.

2. “Next Level Private” or “Respondent” refers to Next Level Private LLC and any related or affiliated entities and individuals.

3. “Person” or “Persons” means natural persons, all governmental entities, agencies, officers, departments, or affiliates thereof, and any corporation, foundation, partnership, proprietorship, association, organization, or group of natural persons.

4. “Date” means the exact day, month, and year, if ascertainable, or, if not, the best approximation (including relationship to other events).

5. “Communication(s)” and/or “Correspondence” means any and every expression and/or exchange of thoughts, message, or information by and through any medium.

6. “Describe” and/or “State” means to set forth fully and unambiguously every fact relevant to the subject of the Request, of which NXT Level Holdings (including its agents and representatives) has knowledge or information.

7. “Relate,” “relating to,” “refer,” “referring to,” and “concerning” mean mentioning, describing, discussing, memorializing, consisting of, containing, evidencing, contradicting, comprising, analyzing, reflecting, depicting in any way, directly or indirectly, the subject matter of the Request.

8. “Document(s)” means anything defined as “writings” or “recordings” or “photographs” by Rule 1001 of the Federal Rules of Evidence or a “document” as set forth in Rule 34(a) of the Federal Rules of Civil Procedure, including, without limitation, the originals, and all non-identical copies, whether different from the original by reason of any notation made on such copies or otherwise (including without limitation, correspondence, memoranda, notes, diaries,

minutes, statistics, letters, telegrams, contracts, reports, studies, checks, statements, tags, labels, invoices, brochures, periodicals, receipts, returns, summaries, pamphlets, books, prospectuses, interoffice and intra-office communications, e-mails, offers, notations of any sort of conversations, working papers, applications, permits, surveys, indices, telephone calls, voice messages, meetings, printouts, telefax, invoices, work sheets, and all drafts, alterations, modifications, changes and amendments of the foregoing), graphic or oral representations of any kind (including without limitation, photographs, charts, microfiche, microfilm, videotape, readings, motion pictures, plans, drawings, surveys), and electronic, mechanical or electric records or representations of any kind (including without limitation, tapes, cassettes, discs, recordings, and e-mail).

9. "Thing(s)" means any tangible item, and shall be construed as broadly as possible under the Federal Rules of Civil Procedure, Code of Federal Regulations, and/or Trademark Board Manual of Procedure.

10. "Cancellation Proceeding" means the above-captioned *inter partes* proceeding assigned Cancellation Proceeding No. 92087430, pending before the United States Patent and Trademark Office, Trademark Trial and Appeal Board.

11. "Petition" refers to the current legally operative Petition for Cancellation (Proceeding No. 92087430 TTABVUE #1).

12. "Petitioner's Mark" and "NXT LEVEL Mark" mean the 

or "NXT LEVEL" trademark reflected in U.S. Registration No. 7,490,958 that is owned by NXT Level Holdings.

13. "Respondent's Mark" and "NEXT LEVEL PRIVATE Mark" mean the NEXT LEVEL PRIVATE trademark reflected in U.S. Registration No. 6,829,211 that is owned by Next Level Private.

14. "Board" refers to the Trademark Trial and Appeal Board.

15. "Protective Order" refers to the Board's Standard Protective Order automatically imposed in this proceeding pursuant to Trademark Rule 2.116(g), and outlined in the April 10, 2025 order of Interlocutory Attorney, Jill M. McCormack. (TTABUVE #9).

16. "And," "or," as well as "and/or" shall be construed disjunctively or conjunctively as necessary in order to bring within the scope of the Request all responses, information, Documents, and/or Things which otherwise might be construed to be outside its scope.

17. Any word written in the singular herein shall be construed as plural or vice versa when necessary to facilitate the response to any Request.

INSTRUCTIONS

The following instructions apply to all of Next Level Private's Requests for Production in this case:

1. In responding to these Requests for Production, furnish all information which is available to You, including information in the possession, custody or control of Your attorneys, agents, employees, investigators, consultants, experts and licensees, as well as any Person, firm, company, corporation or business in which You own a controlling interest or over which You exercise control.

2. If, after exercising due diligence, NXT Level Holdings is unable to determine the existence of any Documents, Persons, or Things falling within a Request for Production

requesting identification or production of Documents, Persons, or Things, NXT Level Holdings shall so state in its written response.

3. All documents, including hard copy documents and electronically stored information ("ESI"), produced by NXT Level Holdings shall be produced in electronic format.

4. Documents that originate in hard copy format shall be scanned and produced electronically as (a) single page TIFF images utilizing Group 4 compression with a minimum resolution of 300 dpi, (b) JPEG images utilizing high quality JPEG compression with a minimum resolution of 300 dpi, including when necessary to retain color content, or (c) PDF images utilizing either Group 4 compression with a minimum resolution of 300 dpi for black and white images or JPEG compression with a minimum resolution of 300 dpi, including when necessary to retain color content. Documents that originate in hard copy format that include information to be redacted shall also have any redacted material clearly labeled as having been redacted.

5. All ESI shall be produced in native format, with two exceptions. The first exception is that electronically stored email messages may be produced in native format or in HTM/HTML format. Attachments for those email messages will be produced in their native format, unless the attachment itself is another email message which may be produced in native format or in HTM/HTML format. The second exception is for ESI requiring redactions. If the ESI includes information to be redacted, the ESI shall be produced as (a) single page TIFF images utilizing Group 4 compression with a minimum resolution of 300 dpi, (b) JPEG images utilizing high quality JPEG compression with a minimum resolution of 300 dpi, including when necessary to retain color content, or (c) PDF images utilizing either Group 4 compression with a minimum resolution of 300 dpi for black and white images or JPEG compression with a minimum

resolution of 300 dpi, including when necessary to retain color content. Any redacted material must be clearly labeled as having been redacted.

6. All documents, including hard copy documents and ESI, shall be produced with accompanying delimited data/metadata load files in default Concordance/Relativity format, and, if TIFF or JPEG image format production files are included in the production volume, NXT Level Holdings shall also provide an accompanying Opticon image load file that identifies document boundaries.

7. Each electronic production file shall be named after the document production number assigned to the corresponding document/ESI image or native file. For native files or emails produced in HTM/HTML format, the production file name shall include the unique production number assigned to the file (e.g., NXTLevelHoldings1234567) and the confidentiality designation (if any) (e.g., NXT1234567_CONF.doc or NXT1234567_AEO.xls). All native files produced, other than emails produced in HTM/HTML format, shall retain their original file extensions, unless NXT Level Holdings determines that a native file has the wrong extension or no extension, in which case NXT Level Holdings must correct the extension or add the appropriate extension. Native files or emails produced in HTM/HTML format shall be grouped into separate folders, with each folder containing a maximum of 1000 native files or HTM/HTML emails produced, and separate folders for each native file or HTM/HTML email file shall not be created. A placeholder image shall not be provided in tandem with a natively produced file or HTM/HTML email file, except when a placeholder image may be needed to indicate that a native or HTM/HTML email document was withheld. For documents produced as TIFF, JPEG, or PDF images, the production image file name shall be the unique production number assigned to each TIFF or JPEG image file, while the PDF image file will be named after the production number

for the first page of the PDF image document. The production number shall be a contiguous bates value assigned to each page and also appear in the lower right hand corner in a manner that does not obscure any existing content present in the image. The confidentiality designation (if any) shall appear in the lower left hand corner of each page of the TIFF, JPEG, or PDF image in a manner that does not obscure anything present in the image. Image files shall be grouped into separate folders, with each folder containing a maximum of 1000 TIFF, JPEG, or PDF images produced, and separate folders for each document shall not be created.

8. For all Documents, including hard copy documents and ESI, NXT Level Holdings shall provide the following universal fields as part of the load file: (a) BegDoc – the beginning production number of a document; (b) EndDoc – the ending production number of a document (can be left blank for native files); (c) PgCount – the number of pages comprising a document (can be left blank or populated with a 1 for native files); (d) TextLink – a relative link to produced OCR/Extracted Full Text file; (e) NativeLink – a relative link to produced native files (blank if image format only); and (f) Confidentiality – the confidentiality, if any, of the Document under the Protective Order. For all ESI, regardless of whether it is produced in TIFF, JPEG, or PDF image format or as a native file, NXT Level Holdings shall provide the following fields as part of the load file, populated to the extent reasonably available: (a) Date Sent – the date an email, or attachment to an email, was sent; (b) Date Received – the date an email, or attachment to an email, was received; (c) Date Last Modified – the date a non-email ESI document or an attachment to an email was last modified; and (d) Date Created – the date a non-email ESI document or an attachment to an email was created. For all ESI that is part of an attachment family (i.e. parents and attachments), regardless of whether it is produced in image format or as a native file, in addition to the universal fields listed above, NXT Level Holdings shall provide

the following fields as part of the load file: (a) BegAttach – first page number of the parent document of the family; and (b) EndAttach – the last page number of the last child attachment of the family. The BegAttach and EndAttach fields dictate that individual members of a family of documents must be produced in their natural contiguous order (i.e., a parent document followed directly by its children documents). Additionally, NXT Level Holdings shall maintain family relationships in the production. If an attachment or parent file is withheld, but other family members are produced, NXT Level Holdings shall provide a slipsheet or placeholder image with the unique production number assigned to that family member in place of the withheld family member.

9. If You object to furnishing information requested in response to any Request for Production, or any part or portion thereof, You shall serve a response in accordance with Fed. R. Civ. P. 34(b) stating with particularity the reasons for the objection, and shall produce the requested documents to the extent that the request is not objectionable.

10. If You assert a claim of privilege in objecting to any Request for Production, or part or portion thereof, and information is withheld on the basis of such assertion:

a. the attorney asserting the privilege shall, as a part of the objection to the Request for Production, or part or portion thereof, identify the nature of the privilege which is being claimed and if the privilege is being asserted in connection with a claim or a defense governed by state law, indicate the state rule of privilege being invoked; and

b. the following information shall be provided in the objection unless divulgence of such information would cause disclosure of the allegedly privileged information: (1) the nature of the document, *e.g.* letter, memorandum, e-mail, etc.; (2) the general subject matter of

the document; and (3) such other information as is sufficient to identify the document for a motion to compel.

11. Where NXT Level Holdings cannot ascertain an exact date, its response(s) shall specifically indicate that the approximation has been made.

12. These Requests for Production are to be regarded as continuing, and NXT Level Holdings is requested to provide, by way of supplementary responses, any additional information, most notably that specified under Rule 26(e) of the Federal Rules of Civil Procedure, that may be obtained by NXT Level Holdings, or any Person acting on NXT Level Holdings' behalf, which will augment or otherwise modify NXT Level Holdings' responses.

13. For the convenience of the Board and the parties, each Request for Production should be quoted in full immediately preceding the response.

14. Unless otherwise specified, all references to NXT Level Holdings' business activities, services, marketing, clients, communications, or trademark use in any Request for Production refer solely to such activities conducted within the United States.

REQUESTS FOR PRODUCTION

REQUEST NO. 1: All documents identified in Your Initial Disclosures.

REQUEST NO. 2: Documents identified in or relied upon in Your responses to Next Level Private's Interrogatories.

REQUEST NO. 3: Documents sufficient to show when NXT Level Holdings first became aware of Next Level Private's business.

REQUEST NO. 4: Documents sufficient to show when NXT Level Holdings first became aware of the NEXT LEVEL PRIVATE Mark.

REQUEST NO. 5: Communications between Next Level Private or anyone acting on Next Level Private's behalf, on the one hand, and NXT Level Holdings or anyone acting on NXT Level Holdings' behalf, on the other hand.

REQUEST NO. 6: All Documents concerning Your consideration, selection, conception, creation, or adoption of the NXT LEVEL Mark for use on or in connection with any services.

REQUEST NO. 7: Documents sufficient to identify each product and service offered and sold by NXT Level Holdings under the NXT LEVEL Mark.

REQUEST NO. 8: Documents sufficient to identify the channels of trade through which NXT Level Holdings offers each of the services offered under the NXT LEVEL Mark.

REQUEST NO. 9: Documents sufficient to show the types of clients to whom NXT Level Holdings offers, has offered, or provides services under or in connection with the NXT LEVEL Mark, including whether such clients are individuals, business entities, or both.

REQUEST NO. 10: Documents sufficient to show the manner in which consumers engage NXT Level Holdings to obtain services offered under the NXT LEVEL Mark.

REQUEST NO. 11: Documents sufficient to show the process a prospective client must follow before engaging NXT Level Holdings for services offered under the NXT LEVEL Mark.

REQUEST NO. 12: Documents sufficient to show the methods by which clients or consumers pay for services offered by NXT Level Holdings under the NXT LEVEL Mark, including billing procedures, payment schedules, or policies.

REQUEST NO. 13: Documents sufficient to show the pricing for any services offered under the NXT LEVEL Mark, since inception.

REQUEST NO. 14: Documents sufficient to show the annual volume of sales (in dollars and units) of all services sold, directly or indirectly, by You under or in connection with the NXT LEVEL Mark since its inception.

REQUEST NO. 15: Documents sufficient to show whether NXT Level Holdings is or has ever been registered as an investment advisor with the U.S. Securities and Exchange Commission or any state securities authority, including but limited to any Form ADV filings or correspondence with such authorities.

REQUEST NO. 16: Documents sufficient to show any efforts by NXT Level Holdings to register as an investment advisor with the U.S. Securities and Exchange Commission or any state securities authority.

REQUEST NO. 17: All Documents concerning any regulatory obligations NXT Level Holdings has undertaken in connection with its services under the NXT LEVEL Mark, addressing fiduciary duties or compliance procedures typically applicable to registered investment advisors.

REQUEST NO. 18: Copies of all trademark searches, clearances, or other inquiries of any kind (*e.g.* on-line, full search, or manual search of records of the U.S. Patent and Trademark Office or any other registrar of trademarks, or any common law, business name or other databases) conducted by NXT Level Holdings relating to the NXT LEVEL Mark, and other Documents relating thereto.

REQUEST NO. 19: All Documents concerning any trademark or domain name watch or surveillance notices received by You.

REQUEST NO. 20: Documents concerning any market research NXT Level Holdings, or anyone acting on NXT Level Holdings' behalf, performed concerning the offering of services under the NXT LEVEL Mark.

REQUEST NO. 21: Documents sufficient to identify websites owned or operated by NXT Level Holdings that promote services offered under the NXT LEVEL Mark.

REQUEST NO. 22: Documents sufficient to identify social media accounts owned or operated by NXT Level Holdings that promote services offered under the NXT LEVEL Mark.

REQUEST NO. 23: Representative samples of each type of advertisement and promotional material (e.g., print, radio, television, brochures, catalogues, flyers, press releases, website pages, website banners, social media posts, in-store displays, point-of-sale promotional items) that has displayed or that will display the NXT LEVEL Mark, including documents sufficient to show every manner of presentation of the NXT LEVEL Mark in each type of advertisement or promotional material.

REQUEST NO. 24: Documents sufficient to show NXT Level Holdings' use of the NXT LEVEL Mark in U.S. interstate commerce as of the April 20, 2020, date of first use claimed in the Petition and the registration of the NXT LEVEL Mark.

REQUEST NO. 25: Documents sufficient to show NXT Level Holdings' use of the NXT LEVEL Mark in U.S. interstate commerce in connection with each of the services offered under the NXT LEVEL Mark, including without limitation, documents sufficient to show that NXT Level Holdings offers "consulting services in economics, accounting, and business management," as set forth in the Petition.

REQUEST NO. 26: Documents sufficient to show annual promotional and advertising expenditures for the NXT LEVEL Mark.

REQUEST NO. 27: All newspaper, magazine, newsletter, trade journal, website, and other media coverage concerning the NXT LEVEL Mark or any good or services offered in connection with the NXT LEVEL Mark.

REQUEST NO. 28: Documents concerning any plans or strategies for the marketing and promotion of services offered under the NXT LEVEL Mark.

REQUEST NO. 29: Business plans prepared by NXT Level Holdings or anyone acting on NXT Level Holdings' behalf concerning the NXT LEVEL Mark or any services You offer or intend to offer under the NXT LEVEL Mark in the United States.

REQUEST NO. 30: All documents submitted to or received from the United States Patent and Trademark Office in connection with the registration of the NXT LEVEL Mark.

REQUEST NO. 31: All documents concerning any objection by You to any third party concerning the third party's use of the NXT LEVEL Mark or any mark that You have alleged to be similar to the NXT LEVEL Mark.

REQUEST NO. 32: All documents concerning NXT Level Holdings' knowledge of the use, application to register or registration by any third party of the NXT LEVEL Mark or any other trademark comprised of or incorporating "NEXT" or "NXT" and "LEVEL" or "LVL" or any other similar formatives.

REQUEST NO. 33: All agreements relating to the promotion of services under the NXT LEVEL Mark.

REQUEST NO. 34: All license agreements between NXT Level Holdings and any other party of the NXT Level Mark or any other designation incorporating or referring to any trademark comprised of or incorporating "NEXT" or "NXT" and "LEVEL" or "LVL" or any other similar formatives.

REQUEST NO. 35: Documents sufficient to show any efforts by NXT Level Holdings to monitor, police, or enforce its rights in the NXT LEVEL Mark.

REQUEST NO. 36: Documents sufficient to show NXT Level Holdings' awareness of any third-party trademark or designation comprised of or incorporating "NEXT" or "NXT" and "LEVEL" or "LVL" or any other similar formatives.

REQUEST NO. 37: Documents sufficient to identify any claim, objection, complaint, challenge or inquiry of any kind by NXT Level Holdings, concerning a third-party's use of any trademark comprised of or incorporating "NEXT" or "NXT" and "LEVEL" or "LVL" or any other similar formatives.

REQUEST NO. 38: All documents relating to settlement of any disputes between NXT Level Holdings and any third party involving any trademark, trade name, or other designation incorporating or referring to any trademark comprised of or incorporating "NEXT" or "NXT" and "LEVEL" or "LVL" or any other similar formatives.

REQUEST NO. 39: All documents relating to any changes in the use of any trademark, trade name, or other designation incorporating or referring to any trademark comprised of or incorporating "NEXT" or "NXT" and "LEVEL" or "LVL" or any other similar formatives, made by any third party as a result of any claim, objection, complaint, challenge or inquiry of any kind made by NXT Level Holdings.

REQUEST NO. 40: All Documents you claim support the factual basis for your contention that the NXT LEVEL Mark and NEXT LEVEL PRIVATE Mark are likely to be confused as set forth in the Petition.

REQUEST NO. 41: All Documents relied upon by You in drafting the Petition.

REQUEST NO. 42: All Documents concerning any observations, perceptions, impressions, or inquiries as to whether the services sold or intended to be sold, directly or indirectly, by

Respondent under Respondent's Mark are produced by, sponsored, or endorsed by, or in any manner associated or affiliated with You or any services offered under the NXT LEVEL Mark.

REQUEST NO. 43: Documents sufficient to identify all legal proceedings to which NXT Level Holdings has been a party, including but not limited to, all federal actions, *inter partes* proceedings, cease and desist/demand letters, and class action suits that involve the NXT LEVEL Mark or brand.

REQUEST NO. 44: Documents sufficient to identify the geographic region(s) in the United States where NXT Level Holdings' services are marketed and sold.

REQUEST NO. 45: Documents sufficient to show the "overlap" alleged in the Petition between the "financial planning and investment advisory services" provided by Respondent and "business consulting services."

REQUEST NO. 46: Documents sufficient to show that the alleged similarity of Petitioner's Mark and Respondent's Mark will lead to "reputational harm," and "dilution of Petitioner's brand identity" as alleged in the Petition.

REQUEST NO. 47: All documents that support Your accounting of damages You claim to have suffered as a result of the use of NEXT LEVEL PRIVATE.

REQUEST NO. 48: All documents that support Your claim for $480,000 as "unauthorized use" damages in Your Invoice #24-721, dated November 6, 2024.

REQUEST NO. 49: Copies of all customer complaints You have received.

REQUEST NO. 50: All Documents concerning Respondent or any services offered by Respondent under or in connection with Respondent's Mark that are not responsive to any other request contained herein.

REMAINDER OF PAGE INTENTIONALLY LEFT BLANK

Dated: June 6, 2025

Respectfully submitted,

DUANE MORRIS LLP

By: */Mark Lerner/*

Mark A. Lerner
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
MALerner@duanemorris.com
(212) 404-8714
Attorney for Respondent

CERTIFICATE OF SERVICE

I hereby certify that, on the 6th day of June, 2025, I served a copy of the foregoing First Set of Requests for Production, by email, upon the following party identified as correspondents and counsel of record for the Petitioner:

Andrew Delaney
NXT Level Holdings LLC
6 South Street, Suite 203
Morristown, NJ 07960
862-812-6874
adelaney@andrewdelaneylaw.com

Dated: June 6, 2025

By: */Patrick Boisson/*
Patrick Boisson

EXHIBIT C

Silva, Lauren C.

From: Silva, Lauren C.
Sent: Tuesday, July 8, 2025 2:32 PM
To: adelaney@andrewdelaneylaw.com
Cc: Lerner, Mark
Subject: RE: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Mr. Delaney,

Petitioner's responses and/or objections to Respondent's discovery requests, including the Requests for Production of Documents and Things and Interrogatories served on June 6, 2025, were due yesterday, July 7, 2025. To date, no responses have been received. You did not reach out in advance to seek an extension, nor have you otherwise communicated any reason for the delay.

Petitioner's failure to timely serve responses violates its obligation under the Federal Rules of Civil Procedure and Trademark Rule of Practice 37 C.F.R. 2.120(a)(3). Please respond to this email with confirmation that you will immediately serve complete responses. Otherwise, please promptly notify us if there is a valid and compelling reason why Petitioner is unable to meet its obligations.

Respondent reserves all rights to seek appropriate relief from the Board if the issue is not promptly resolved.

Regards,
Lauren

DuaneMorris
www.duanemorris.com
Lauren C. Silva
Associate
Duane Morris LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127
E-MAIL | BIO | VCARD
P: +1 415 957 3028
F: +1 415 358 5539
C: +1 909 991 4697

From: Boisson, Patrick <PBoisson@duanemorris.com>
Sent: Friday, June 6, 2025 12:57 PM
To: adelaney@andrewdelaneylaw.com
Cc: Lerner, Mark <MALerner@duanemorris.com>; Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

DuaneMorris

www.duanemorris.com

Patrick Boisson
Paralegal

Duane Morris LLP
22 Vanderbilt
335 Madison Avenue – 23rd Floor
New York, NY 10017-4669

P: +1 212 818 9200
F: +1 212 692 1020

E-MAIL

EXHIBIT D

Silva, Lauren C.

From: Lerner, Mark
Sent: Friday, July 11, 2025 3:28 PM
To: adelaney@andrewdelaneylaw.com
Cc: Silva, Lauren C.
Subject: RE: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Mr. Delaney:

I write to follow up on my colleague's email from earlier this week. To date, we still have not received Petitioner's responses to Respondent's discovery requests, nor have we received any response to the earlier email or any other communication or request to meet and confer. We would appreciate the courtesy of a response.

As you have seen, we were forced to file a motion to compel Petitioner to serve Initial Disclosures. We hope to avoid more motion practice, but we reserve Petitioner's right to make such a motion and to seek other appropriate relief should we not receive a timely reply.

Mark Lerner
Partner

Duane Morris LLP
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
P: +1 212 404 8714
F: +1 212 692 1020

MALerner@duanemorris.com
www.duanemorris.com

From: Silva, Lauren C. <LSilva@duanemorris.com>
Sent: Tuesday, July 8, 2025 5:32 PM
To: adelaney@andrewdelaneylaw.com
Cc: Lerner, Mark <MALerner@duanemorris.com>
Subject: RE: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Mr. Delaney,

Petitioner's responses and/or objections to Respondent's discovery requests, including the Requests for Production of Documents and Things and Interrogatories served on June 6, 2025, were due yesterday, July 7, 2025. To date, no responses have been received. You did not reach out in advance to seek an extension, nor have you otherwise communicated any reason for the delay.

Petitioner's failure to timely serve responses violates its obligation under the Federal Rules of Civil Procedure and Trademark Rule of Practice 37 C.F.R. 2.120(a)(3). Please respond to this email with confirmation that you will immediately serve complete responses. Otherwise, please promptly notify us if there is a valid and compelling reason why Petitioner is unable to meet its obligations.

Respondent reserves all rights to seek appropriate relief from the Board if the issue is not promptly resolved.

Regards,
Lauren

DuaneMorris
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Lauren C. Silva
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Duane Morris LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127
E-MAIL | BIO | VCARD
P: +1 415 957 3028
F: +1 415 358 5539
C: +1 909 991 4697

From: Boisson, Patrick <PBoisson@duanemorris.com>
Sent: Friday, June 6, 2025 12:57 PM
To: adelaney@andrewdelaneylaw.com
Cc: Lerner, Mark <MALerner@duanemorris.com>; Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

DuaneMorris
www.duanemorris.com
Patrick Boisson
Paralegal
Duane Morris LLP
22 Vanderbilt
335 Madison Avenue – 23rd Floor
New York, NY 10017-4669
E-MAIL
P: +1 212 818 9200
F: +1 212 692 1020

EXHIBIT E

From: Lerner, Mark
To: Andrew DeLaney
Cc: Silva, Lauren C.
Subject: RE: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430
Date: Monday, June 9, 2025 10:22:13 AM
Attachments: image002.png

Mr. Delaney,

Thank you for your message. We have reviewed your request and the assertions made therein. Your suggestion that our client, as a registered investment adviser, is required to notify its shareholders, investors, or business partners of this TTAB proceeding is entirely unfounded, as is the suggestion that it is obligated to confirm such notification to you and your client. There is no such requirement, and my client will not do so. We also decline to produce any "stakeholder information" in response to your email request.

Separately, we note that Petitioner failed to serve its required initial disclosures by the June 6, 2025, deadline set forth in the Board's scheduling order. The list of NXT Level Holdings managing partners you provided does not satisfy its obligations in this regard. Please produce the required disclosures immediately. Continued failure to comply with the Board's procedural requirements may necessitate further action.

Regards,

Mark Lerner
Partner

Duane Morris LLP
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
P: +1 212 404 8714
F: +1 212 692 1020

MALerner@duanemorris.com
www.duanemorris.com

From: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Sent: Friday, June 6, 2025 9:41 PM
To: Lerner, Mark <MALerner@duanemorris.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Re: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430

On Fri, Jun 6, 2025 at 9:40 PM Andrew DeLaney <adelaney@andrewdelaneylaw.com> wrote:

Mr. Lerner,

Please see information regarding NXT Level Holdings' Managing Partners.

Additionally, please confirm whether you have taken appropriate action to notify all relevant stakeholders including but not limited to shareholders, investors, directors, and key business partners of the pending legal proceeding (Cancellation No. 92087430). As with standard disclosure protocols, any material developments or communications concerning this matter must be transparently shared with such parties.

Please send stakeholder information for NEXT LEVEL PRIVATE. Our 75 interrogatories will be sent next week.

Thank you.

On Thu, Jun 5, 2025 at 4:05 PM Lerner, Mark <MALerner@duanemorris.com> wrote:

> Mr. Delaney:
>
> You did not miss anything. We did not resubmit any affirmative defenses, though we continue to reserve the right to do so depending what we learn in discovery.
>
> **Mark Lerner**
> Partner
>
> Duane Morris LLP
> 22 Vanderbilt
> 335 Madison Avenue, 23rd Floor
> New York, NY 10017-4669
> **P:** +1 212 404 8714
> **F:** +1 212 692 1020
>
> MALerner@duanemorris.com
> www.duanemorris.com
>
> ---
>
> **From:** Andrew DeLaney <adelaney@andrewdelaneylaw.com>
> **Sent:** Thursday, June 5, 2025 4:02 PM
> **To:** Lerner, Mark <MALerner@duanemorris.com>
> **Cc:** Silva, Lauren C. <LSilva@duanemorris.com>
> **Subject:** Re: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430
>
> Mr. Lerner,
>
> Did you resubmit any affirmative defenses? I did not see anything, and wanted to make sure I did not miss it. Thank you
>
> On Wed, Apr 30, 2025 at 10:02 AM Andrew DeLaney

<adelaney@andrewdelaneylaw.com> wrote:

> Mr. Lerner,
>
> [redacted]
>
> On Wed, Apr 23, 2025 at 3:33 PM Lerner, Mark <MALerner@duanemorris.com> wrote:
>
> > **CONFIDENTIAL**
> > **FOR SETTLEMENT PURPOSES ONLY**
> > **SUBJECT TO FRE 408**
> >
> > Mr. Delaney:
> >
> > [redacted]

[redacted]

[redacted]

DuaneMorris

www.duanemorris.com

Mark Lerner
Partner

Duane Morris LLP
230 Park Avenue, Suite 1130
New York, NY 10169-0079

P: +1 212 404 8714
F: +1 212 818 9606

E-MAIL | BIO | VCARD

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Andrew DeLaney
Attorney at Law
6 South Street, Suite 203
Morristown, NJ 07960
Work. 973-606-6090
Cell. 862-812-6874

--
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Attorney at Law
6 South Street, Suite 203
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Cell. 862-812-6874

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Attorney at Law
6 South Street, Suite 203
Morristown, NJ 07960
Work. 973-606-6090
Cell. 862-812-6874

--
Andrew DeLaney
Attorney at Law
6 South Street, Suite 203
Morristown, NJ 07960
Work. 973-606-6090
Cell. 862-812-6874

EXHIBIT F

From: Lerner, Mark
To: Andrew DeLaney
Cc: Silva, Lauren C.
Subject: RE: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430
Date: Friday, June 13, 2025 1:37:42 PM
Attachments: image002.png

Mr. Delaney:

Let this email serve as a reminder that we have yet to receive the required initial disclosures under Trademark Rule 2.120(a) (37 C.F.R. §2.120(a)) and Fed. R. Civ. P. Rule 26(a)(1) from NXT Level Holdings. They are now one week late.

Mark Lerner
Partner

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22 Vanderbilt
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New York, NY 10017-4669
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F: +1 212 692 1020

MALerner@duanemorris.com
www.duanemorris.com

From: Lerner, Mark
Sent: Monday, June 9, 2025 1:22 PM
To: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: RE: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430

Mr. Delaney,

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Separately, we note that Petitioner failed to serve its required initial disclosures by the June 6, 2025, deadline set forth in the Board's scheduling order. The list of NXT Level Holdings managing partners you provided does not satisfy its obligations in this regard. Please produce the required disclosures immediately. Continued failure to comply with the Board's procedural requirements may necessitate further action.

Regards,

Mark Lerner
Partner

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F: +1 212 692 1020

MALerner@duanemorris.com
www.duanemorris.com

From: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Sent: Friday, June 6, 2025 9:41 PM
To: Lerner, Mark <MALerner@duanemorris.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Re: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430

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>
> Additionally, please confirm whether you have taken appropriate action to notify all relevant stakeholders including but not limited to shareholders, investors, directors, and key business partners of the pending legal proceeding (Cancellation No. 92087430). As with standard disclosure protocols, any material developments or communications concerning this matter must be transparently shared with such parties.
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> Please send stakeholder information for NEXT LEVEL PRIVATE. Our 75 interrogatories will be sent next week.
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>
> > Mr. Delaney:
> >
> > You did not miss anything. We did not resubmit any affirmative defenses, though we continue to reserve the right to do so depending what we learn in discovery.
> >
> > **Mark Lerner**
> > Partner
> >
> > Duane Morris LLP
> > 22 Vanderbilt

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From: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Sent: Thursday, June 5, 2025 4:02 PM
To: Lerner, Mark <MALerner@duanemorris.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Re: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430

Mr. Lerner,

Did you resubmit any affirmative defenses? I did not see anything, and wanted to make sure I did not miss it. Thank you

On Wed, Apr 30, 2025 at 10:02 AM Andrew DeLaney <adelaney@andrewdelaneylaw.com> wrote:

> Mr. Lerner,
>
> [redacted]

[redacted]

On Wed, Apr 23, 2025 at 3:33 PM Lerner, Mark <MALerner@duanemorris.com> wrote:

> **CONFIDENTIAL**
> **FOR SETTLEMENT PURPOSES ONLY**
> **SUBJECT TO FRE 408**
>
> Mr. Delaney:
>
> [redacted]

[redacted]

[redacted]

[redacted]

DuaneMorris

www.duanemorris.com

Mark Lerner
Partner

Duane Morris LLP
230 Park Avenue, Suite 1130
New York, NY 10169-0079

P: +1 212 404 8714
F: +1 212 818 9606

E-MAIL | BIO | VCARD

--

Andrew DeLaney
Attorney at Law
6 South Street, Suite 203
Morristown, NJ 07960
Work. 973-606-6090
Cell. 862-812-6874

--
Andrew DeLaney
Attorney at Law
6 South Street, Suite 203
Morristown, NJ 07960
Work. 973-606-6090
Cell. 862-812-6874

--
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6 South Street, Suite 203
Morristown, NJ 07960
Work. 973-606-6090
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--
Andrew DeLaney
Attorney at Law
6 South Street, Suite 203
Morristown, NJ 07960
Work. 973-606-6090
Cell. 862-812-6874

EXHIBIT G

From: Lerner, Mark
To: Andrew DeLaney
Cc: Silva, Lauren C.
Subject: RE: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430
Date: Friday, June 27, 2025 1:01:20 PM
Attachments: image002.png

Mr. Delaney:

The required disclosures from NXT Level Holdings, LLC are now three weeks overdue. Please promptly provide them.

Mark Lerner
Partner

Duane Morris LLP
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
P: +1 212 404 8714
F: +1 212 692 1020

MALerner@duanemorris.com
www.duanemorris.com

From: Lerner, Mark
Sent: Friday, June 13, 2025 4:38 PM
To: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: RE: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430

Mr. Delaney:

Let this email serve as a reminder that we have yet to receive the required initial disclosures under Trademark Rule 2.120(a) (37 C.F.R. §2.120(a)) and Fed. R. Civ. P. Rule 26(a)(1) from NXT Level Holdings. They are now one week late.

Mark Lerner
Partner

Duane Morris LLP
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
P: +1 212 404 8714
F: +1 212 692 1020

MALerner@duanemorris.com
www.duanemorris.com

From: Lerner, Mark
Sent: Monday, June 9, 2025 1:22 PM
To: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>

Subject: RE: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430

Mr. Delaney,

Thank you for your message. We have reviewed your request and the assertions made therein. Your suggestion that our client, as a registered investment adviser, is required to notify its shareholders, investors, or business partners of this TTAB proceeding is entirely unfounded, as is the suggestion that it is obligated to confirm such notification to you and your client. There is no such requirement, and my client will not do so. We also decline to produce any "stakeholder information" in response to your email request.

Separately, we note that Petitioner failed to serve its required initial disclosures by the June 6, 2025, deadline set forth in the Board's scheduling order. The list of NXT Level Holdings managing partners you provided does not satisfy its obligations in this regard. Please produce the required disclosures immediately. Continued failure to comply with the Board's procedural requirements may necessitate further action.

Regards,

Mark Lerner
Partner

Duane Morris LLP
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
P: +1 212 404 8714
F: +1 212 692 1020

MALerner@duanemorris.com
www.duanemorris.com

From: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Sent: Friday, June 6, 2025 9:41 PM
To: Lerner, Mark <MALerner@duanemorris.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Re: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430

On Fri, Jun 6, 2025 at 9:40 PM Andrew DeLaney <adelaney@andrewdelaneylaw.com> wrote:

> Mr. Lerner,
>
> Please see information regarding NXT Level Holdings' Managing Partners.

Additionally, please confirm whether you have taken appropriate action to notify all relevant stakeholders including but not limited to shareholders, investors, directors, and key business partners of the pending legal proceeding (Cancellation No. 92087430). As with standard disclosure protocols, any material developments or communications concerning this matter must be transparently shared with such parties.

Please send stakeholder information for NEXT LEVEL PRIVATE. Our 75 interrogatories will be sent next week.

Thank you.

On Thu, Jun 5, 2025 at 4:05 PM Lerner, Mark <MALerner@duanemorris.com> wrote:

> Mr. Delaney:
>
> You did not miss anything. We did not resubmit any affirmative defenses, though we continue to reserve the right to do so depending what we learn in discovery.
>
> **Mark Lerner**
> Partner
>
> Duane Morris LLP
> 22 Vanderbilt
> 335 Madison Avenue, 23rd Floor
> New York, NY 10017-4669
> **P:** +1 212 404 8714
> **F:** +1 212 692 1020
>
> MALerner@duanemorris.com
> www.duanemorris.com
>
> ---
>
> **From:** Andrew DeLaney <adelaney@andrewdelaneylaw.com>
> **Sent:** Thursday, June 5, 2025 4:02 PM
> **To:** Lerner, Mark <MALerner@duanemorris.com>
> **Cc:** Silva, Lauren C. <LSilva@duanemorris.com>
> **Subject:** Re: NXT Level Holdings, LLC v. Next Level Private LLC - Opposition No. 92087430
>
> Mr. Lerner,
>
> Did you resubmit any affirmative defenses? I did not see anything, and wanted to make sure I did not miss it. Thank you
>
> On Wed, Apr 30, 2025 at 10:02 AM Andrew DeLaney <adelaney@andrewdelaneylaw.com> wrote:
>
> > Mr. Lerner,
> >
> > [redacted]

[redacted]

[redacted]

[redacted]

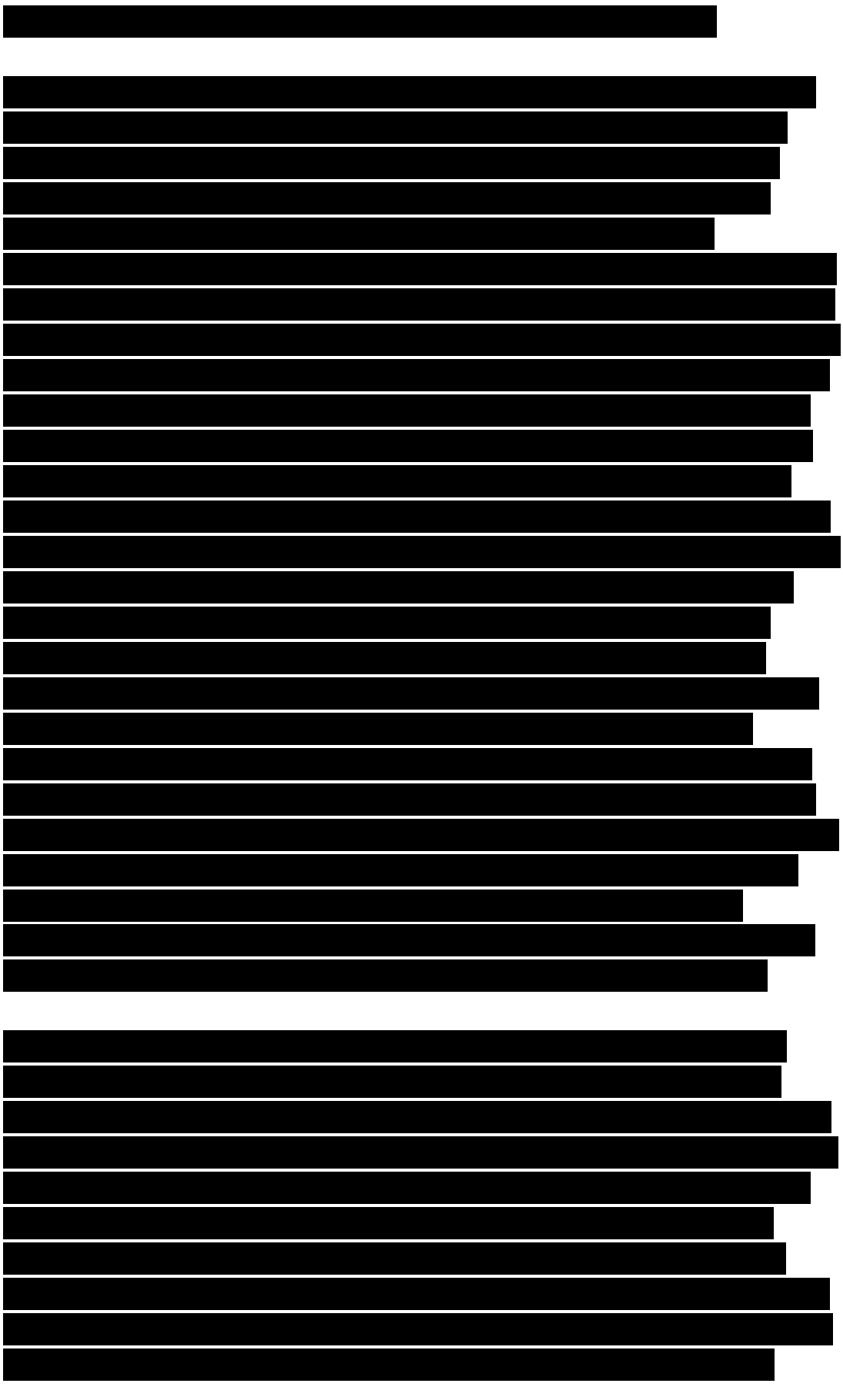
[redacted]

[redacted]

[redacted]

On Wed, Apr 23, 2025 at 3:33 PM Lerner, Mark <MALerner@duanemorris.com> wrote:

> **CONFIDENTIAL**
> **FOR SETTLEMENT PURPOSES ONLY**
> **SUBJECT TO FRE 408**
>
> Mr. Delaney:
>
> [redacted]
>
> [redacted]



[redacted]

DuaneMorris

www.duanemorris.com

Mark Lerner
Partner

Duane Morris LLP
230 Park Avenue, Suite 1130
New York, NY 10169-0079

P: +1 212 404 8714
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E-MAIL | BIO | VCARD

--
Andrew DeLaney
Attorney at Law
6 South Street, Suite 203
Morristown, NJ 07960
Work. 973-606-6090
Cell. 862-812-6874

--
Andrew DeLaney
Attorney at Law
6 South Street, Suite 203
Morristown, NJ 07960
Work. 973-606-6090
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--
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Attorney at Law
6 South Street, Suite 203
Morristown, NJ 07960
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--
Andrew DeLaney
Attorney at Law
6 South Street, Suite 203

Morristown, NJ 07960
Work. 973-606-6090
Cell. 862-812-6874

EXHIBIT H

Silva, Lauren C.

From: Lerner, Mark
Sent: Tuesday, July 15, 2025 12:10 PM
To: Andrew DeLaney
Cc: Silva, Lauren C.
Subject: RE: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Mr. Delaney:

Thank you for providing the Initial Disclosures. We reserve our right to object to the disclosures. In the meantime, we take issue with your submission to the TTAB noting that these disclosures were "timely served." They were served over five weeks late with no explanation.

Moreover, we note that while you have forwarded these disclosures in response to our email from Friday, July 11, regarding Petitioner's overdue responses to Respondent's Requests for Production of Documents and Things and Interrogatories served on June 6, 2025, your email below does not address that delinquency at all. This email thus serves as our third outreach to you regarding Petitioner's failure to comply with Federal Rules of Civil Procedure and Trademark Rule of Practice 37 C.F.R. 2.120(a)(3). Please advise us of the status of Petitioner's responses.

We reserve Petitioner's right to make a motion and to seek other appropriate relief should we not promptly receive a substantive explanation regarding Petitioner's efforts to fulfil its obligations.

Mark Lerner
Partner

Duane Morris LLP
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
P: +1 212 404 8714
F: +1 212 692 1020

MALerner@duanemorris.com
www.duanemorris.com

From: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Sent: Monday, July 14, 2025 12:34 PM
To: Lerner, Mark <MALerner@duanemorris.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Re: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Mr. Lerner,

Please see attached initial disclosures.

On Fri, Jul 11, 2025 at 6:27 PM Lerner, Mark <MALerner@duanemorris.com> wrote:

Mr. Delaney:

I write to follow up on my colleague's email from earlier this week. To date, we still have not received Petitioner's responses to Respondent's discovery requests, nor have we received any response to the earlier email or any other communication or request to meet and confer. We would appreciate the courtesy of a response.

As you have seen, we were forced to file a motion to compel Petitioner to serve Initial Disclosures. We hope to avoid more motion practice, but we reserve Petitioner's right to make such a motion and to seek other appropriate relief should we not receive a timely reply.

Mark Lerner

Partner

Duane Morris LLP
22 Vanderbilt
335 Madison Avenue, 23rd Floor
New York, NY 10017-4669
P: +1 212 404 8714
F: +1 212 692 1020

MALerner@duanemorris.com
www.duanemorris.com

From: Silva, Lauren C. <LSilva@duanemorris.com>
Sent: Tuesday, July 8, 2025 5:32 PM
To: adelaney@andrewdelaneylaw.com
Cc: Lerner, Mark <MALerner@duanemorris.com>
Subject: RE: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Mr. Delaney,

Petitioner's responses and/or objections to Respondent's discovery requests, including the Requests for Production of Documents and Things and Interrogatories served on June 6, 2025, were due yesterday, July 7, 2025. To date, no responses have been received. You did not reach out in advance to seek an extension, nor have you otherwise communicated any reason for the delay.

Petitioner's failure to timely serve responses violates its obligation under the Federal Rules of Civil Procedure and Trademark Rule of Practice 37 C.F.R. 2.120(a)(3). Please respond to this email with confirmation that you will immediately serve complete responses. Otherwise, please promptly notify us if there is a valid and compelling reason why Petitioner is unable to meet its obligations.

Respondent reserves all rights to seek appropriate relief from the Board if the issue is not promptly resolved.

Regards,

Lauren

From: Boisson, Patrick <PBoisson@duanemorris.com>
Sent: Friday, June 6, 2025 12:57 PM
To: adelaney@andrewdelaneylaw.com
Cc: Lerner, Mark <MALerner@duanemorris.com>; Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

DuaneMorris
www.duanemorris.com
Patrick Boisson
Paralegal
Duane Morris LLP
22 Vanderbilt
335 Madison Avenue – 23rd Floor
New York, NY 10017-4669
P: +1 212 818 9200
F: +1 212 692 1020
E-MAIL

--
Andrew DeLaney
Attorney at Law
6 South Street, Suite 203
Morristown, NJ 07960
Work. 973-606-6090
Cell. 862-812-6874

Respondent's Motion for Sanctions

EXHIBIT F

From: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Sent: Wednesday, August 6, 2025 1:28 PM
To: Lerner, Mark
Cc: Silva, Lauren C.
Subject: Re: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Please see attached responses to interrogatories, and production, contained within this google drive link.

https://drive.google.com/drive/folders/1On_Lcp4dZg2S4y4OLDOwDSre5zQNajw_?usp=sharing

Please advise if you have any questions. Thank you, and we'll talk

On Tue, Jul 15, 2025 at 3:10 PM Lerner, Mark <MALerner@duanemorris.com> wrote:

> Mr. Delaney:
>
> Thank you for providing the Initial Disclosures. We reserve our right to object to the disclosures. In the meantime, we take issue with your submission to the TTAB noting that these disclosures were "timely served." They were served over five weeks late with no explanation.
>
> Moreover, we note that while you have forwarded these disclosures in response to our email from Friday, July 11, regarding Petitioner's overdue responses to Respondent's Requests for Production of Documents and Things and Interrogatories served on June 6, 2025, your email below does not address that delinquency at all. This email thus serves as our third outreach to you regarding Petitioner's failure to comply with Federal Rules of Civil Procedure and Trademark Rule of Practice 37 C.F.R. 2.120(a)(3). Please advise us of the status of Petitioner's responses.
>
> We reserve Petitioner's right to make a motion and to seek other appropriate relief should we not promptly receive a substantive explanation regarding Petitioner's efforts to fulfil its obligations.
>
> **Mark Lerner**
>
> Partner
>
> Duane Morris LLP
> 22 Vanderbilt
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> New York, NY 10017-4669
> **P:** +1 212 404 8714
> **F:** +1 212 692 1020

MALerner@duanemorris.com
www.duanemorris.com

From: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Sent: Monday, July 14, 2025 12:34 PM
To: Lerner, Mark <MALerner@duanemorris.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Re: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Mr. Lerner,

Please see attached initial disclosures.

On Fri, Jul 11, 2025 at 6:27 PM Lerner, Mark <MALerner@duanemorris.com> wrote:

> Mr. Delaney:
>
> I write to follow up on my colleague's email from earlier this week. To date, we still have not received Petitioner's responses to Respondent's discovery requests, nor have we received any response to the earlier email or any other communication or request to meet and confer. We would appreciate the courtesy of a response.
>
> As you have seen, we were forced to file a motion to compel Petitioner to serve Initial Disclosures. We hope to avoid more motion practice, but we reserve Petitioner's right to make such a motion and to seek other appropriate relief should we not receive a timely reply.
>
> **Mark Lerner**
>
> Partner
>
> Duane Morris LLP
> 22 Vanderbilt
> 335 Madison Avenue, 23rd Floor
> New York, NY 10017-4669
> **P:** +1 212 404 8714
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>
> MALerner@duanemorris.com
> www.duanemorris.com

From: Silva, Lauren C. <LSilva@duanemorris.com>
Sent: Tuesday, July 8, 2025 5:32 PM
To: adelaney@andrewdelaneylaw.com
Cc: Lerner, Mark <MALerner@duanemorris.com>
Subject: RE: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Mr. Delaney,

Petitioner's responses and/or objections to Respondent's discovery requests, including the Requests for Production of Documents and Things and Interrogatories served on June 6, 2025, were due yesterday, July 7, 2025. To date, no responses have been received. You did not reach out in advance to seek an extension, nor have you otherwise communicated any reason for the delay.

Petitioner's failure to timely serve responses violates its obligation under the Federal Rules of Civil Procedure and Trademark Rule of Practice 37 C.F.R. 2.120(a)(3). Please respond to this email with confirmation that you will immediately serve complete responses. Otherwise, please promptly notify us if there is a valid and compelling reason why Petitioner is unable to meet its obligations.

Respondent reserves all rights to seek appropriate relief from the Board if the issue is not promptly resolved.

Regards,

Lauren

DuaneMorris
www.duanemorris.com
Lauren C. Silva
Associate
Duane Morris LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127
P: +1 415 957 3028
F: +1 415 358 5539
C: +1 909 991 4697
E-MAIL | BIO | VCARD

From: Boisson, Patrick <PBoisson@duanemorris.com>
Sent: Friday, June 6, 2025 12:57 PM
To: adelaney@andrewdelaneylaw.com
Cc: Lerner, Mark <MALerner@duanemorris.com>; Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

DuaneMorris
www.duanemorris.com
Patrick Boisson
Paralegal
Duane Morris LLP
22 Vanderbilt
335 Madison Avenue – 23rd Floor
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E-MAIL

--

Andrew DeLaney

Attorney at Law

6 South Street, Suite 203

Morristown, NJ 07960

Work. 973-606-6090

Cell. 862-812-6874

--
Andrew DeLaney
Attorney at Law
6 South Street, Suite 203
Morristown, NJ 07960
Work. 973-606-6090
Cell. 862-812-6874

Respondent's Motion for Sanctions

EXHIBIT G

Drive

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Response to Discovery...

Download all

Name	Owner	Date modified	File size
Response to Request 31	Owner hidden	Jul 30	—
Response to Request Number 5	Owner hidden	Jul 30	—
Response to Request Number 1.pdf	Owner hidden	Jul 29	82 KB
Response to Request Number 2.pdf	Owner hidden	Jul 29	85 KB
Response to Request Number 3.pdf	Owner hidden	Jul 29	84 KB
Response to Request Number 4.pdf	Owner hidden	Jul 29	88 KB
Response to Request Number 6.pdf	Owner hidden	Jul 29	92 KB
Response to Request Number 7.pdf	Owner hidden	Jul 30	137 KB
Response to Request Number 8.pdf	Owner hidden	Jul 30	86 KB
Response to Request Number 9.pdf	Owner hidden	Jul 30	82 KB
Response to Request Number 10.pdf	Owner hidden	Jul 30	82 KB
Response to Request Number 11.pdf	Owner hidden	Jul 30	85 KB
Response to Request Number 12.pdf	Owner hidden	Jul 30	82 KB
Response to Request Number 13.pdf	Owner hidden	Jul 30	80 KB
Response to Request Number 14.pdf	Owner hidden	Jul 30	88 KB
Response to Request Number 15.pdf	Owner hidden	Jul 30	93 KB
Response to Request Number 16.pdf	Owner hidden	Jul 30	87 KB
Response to Request Number 17.pdf	Owner hidden	Jul 30	85 KB
Response to Request Number 18.pdf	Owner hidden	Jul 30	90 KB
Response to Request Number 19.pdf	Owner hidden	Jul 30	85 KB
Response to Request Number 20.pdf	Owner hidden	Jul 30	85 KB
Response to Request Number 21.pdf	Owner hidden	Jul 30	88 KB
Response to Request Number 22.pdf	Owner hidden	Jul 30	123 KB
Response to Request Number 23.pdf	Owner hidden	Jul 30	113 KB

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Response to Discovery...

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Name	Owner	Date modified	File size
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Response to Request Number 25.pdf	Owner hidden	Jul 30	83 KB
Response to Request Number 26.pdf	Owner hidden	Jul 30	82 KB
Response to Request Number 27.pdf	Owner hidden	Jul 30	146 KB
Response to Request Number 28.pdf	Owner hidden	Jul 30	82 KB
Response to Request Number 29.pdf	Owner hidden	Jul 30	82 KB
Response to Request Number 30.pdf	Owner hidden	Jul 30	85 KB
Response to Request Number 32.pdf	Owner hidden	Jul 30	81 KB
Response to Request Number 33.pdf	Owner hidden	Jul 30	81 KB
Response to Request Number 34.pdf	Owner hidden	Jul 30	80 KB
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Response to Request Number 36.pdf	Owner hidden	Jul 30	88 KB
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Response to Request Number 42.pdf	Owner hidden	Jul 30	90 KB
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Response to Request Number 44.pdf	Owner hidden	Jul 30	86 KB
Response to Request Number 45.pdf	Owner hidden	Jul 30	83 KB
Response to Request Number 46.pdf	Owner hidden	Jul 30	115 KB
Response to Request Number 47.pdf	Owner hidden	Jul 30	82 KB
Response to Request Number 48.pdf	Owner hidden	Jul 30	89 KB

Drive

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Response to Discovery...

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Name	Owner	Date modified	File size
Response to Request Number 25.pdf	Owner hidden	Jul 30	83 KB
Response to Request Number 26.pdf	Owner hidden	Jul 30	82 KB
Response to Request Number 27.pdf	Owner hidden	Jul 30	146 KB
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Response to Request Number 46.pdf	Owner hidden	Jul 30	115 KB
Response to Request Number 47.pdf	Owner hidden	Jul 30	82 KB
Response to Request Number 48.pdf	Owner hidden	Jul 30	89 KB
Response to Request Number 50.pdf	Owner hidden	Jul 30	79 KB

Respondent's Motion for Sanctions

EXHIBIT H

Response to Request Number 2.

Petitioner states that all responsive, non-privileged, and presently known information will be provided in Petitioner's written responses to Respondent's interrogatories, which shall be served in accordance with the Board's established schedule and applicable discovery rules under 37 C.F.R. § 2.120.

To the extent Respondent seeks information already disclosed, Petitioner refers Respondent to Petitioner's Initial Disclosures and any accompanying Exhibits submitted therewith, which include information and documentation responsive to issues raised in this proceeding. Petitioner further states that it is undertaking a diligent and good faith effort to collect, review, and disclose responsive information through formal discovery channels, and reserves the right to supplement its responses pursuant to Rule 26(e) of the Federal Rules of Civil Procedure.

Should Respondent believe that specific additional information is required beyond what will be provided through Petitioner's forthcoming interrogatory responses, Petitioner respectfully requests that Respondent identify with reasonable particularity the nature and scope of the additional information sought so that Petitioner may respond appropriately and without undue burden or ambiguity.

This response is made without prejudice to Petitioner's right to assert additional objections, raise applicable privileges or protections, or supplement its responses as discovery continues and additional facts become known.

Respondent's Motion for Sanctions

EXHIBIT I

ESTTA Tracking number: **ESTTA1455040**
Filing date: **08/07/2025**

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

Proceeding no.	92087430
Party	Plaintiff NXT Level Holdings LLC
Correspondence address	ANDREW DELANEY NXT LEVEL HOLDINGS LLC 6 SOUTH ST SUITE 203 MORRISTOWN, NJ 07960 UNITED STATES Primary email: adelaney@andrewdelaneylaw.com 862-812-6874
Submission	Opposition/Response to Motion
Filer's name	Andrew DeLaney
Filer's email	adelaney@andrewdelaneylaw.com, adaddario@nxtlevelholdings.com
Signature	/2107/
Date	08/07/2025
Attachments	Objection Rev to Compel Discovery 8.6.2025.pdf(137109 bytes)

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

NXT Level Holdings LLC,
Petitioner,

v.

NEXT Level Private LLC,
Respondent.

Cancellation No. 92087430

PETITIONER'S OBJECTION TO RESPONDENTS' MOTION TO COMPEL DISCLOSURES

NXT Level Holdings LLC, by and through its undersigned counsel, respectfully submits this Objection to Respondent's Motion to Compel, filed on **July 28, 2025**, and states as follows:

1. Petitioner has served its Requested Disclosures, along with Responses to First Request for Production of Documents and Things, and Interrogatories. As such, Respondent's Motion to Compel is moot.
2. Petitioner has acted in good faith to comply with its disclosure obligations and has not engaged in any undue delay.
3. Respondent has not demonstrated any prejudice as a result of the timing of the disclosures.
4. Because the disclosures have now been served, the relief sought in Respondent's Motion is no longer necessary, and Board intervention is unwarranted.

CONCLUSION

For the foregoing reasons, Petitioner respectfully requests that the Board deny Respondent's Motion to Compel Requested Disclosures as moot and grant such other relief as the Board deems just and proper.

Dated: July 31, 2025

Respectfully submitted,

Andrew DeLaney
NXT Level Holdings LLC
101 W. Hanover Avenue
Morris Plains, NJ 07950
862.812.6874
adelaney@andrewdelaneylaw.com
General Counsel
NXT Level Holdings LLC

Respondent's Motion for Sanctions

EXHIBIT J

From: Lerner, Mark
Sent: Tuesday, November 4, 2025 6:55 AM
To: Andrew DeLaney
Cc: Silva, Lauren C.
Subject: RE: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Andrew:

Following our brief call on October 17, 2025, I had understood that you were going to contact me on Monday, October 20, 2025, with thoughts on a settlement proposal. More than two weeks have passed, and I have not heard from you. Is your client open to simply withdrawing the petition?

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Please also be advised that we have also not received Petitioner's responses to Respondent's First Set of Requests for Admission, which were due yesterday, and which are thus now deemed admitted. Respondent will make all appropriate use of such admissions.

We look forward to your prompt response.

Mark Lerner
Partner
Duane Morris LLP
P: +1 212 404 8714
MALerner@duanemorris.com

From: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Sent: Friday, September 19, 2025 4:46 PM
To: Lerner, Mark <MALerner@duanemorris.com>
Cc: Silva, Lauren C. <LSilva@duanemorris.com>
Subject: Re: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

We will have a formal response back to you Monday. Enjoy your weekend. Thank you, and we'll talk

On Wed, Sep 10, 2025 at 6:54 PM Lerner, Mark <MALerner@duanemorris.com> wrote:

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> We reserve Petitioner's right to make a motion and to seek other appropriate relief should we not promptly receive a substantive explanation regarding Petitioner's efforts to fulfil its obligations.

Mark Lerner

Partner

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Petitioner's failure to timely serve responses violates its obligation under the Federal Rules of Civil Procedure and Trademark Rule of Practice 37 C.F.R. 2.120(a)(3). Please respond to this email with confirmation that you will immediately serve complete responses. Otherwise, please promptly notify us if there is a valid and compelling reason why Petitioner is unable to meet its obligations.

Respondent reserves all rights to seek appropriate relief from the Board if the issue is not promptly resolved.

Regards,

Lauren

DuaneMorris
www.duanemorris.com
Lauren C. Silva
Associate
Duane Morris LLP
Spear Tower
One Market Plaza, Suite 2200
San Francisco, CA 94105-1127
P: +1 415 957 3028
F: +1 415 358 5539
C: +1 909 991 4697
E-MAIL | BIO | VCARD

From: Boisson, Patrick <PBoisson@duanemorris.com>
Sent: Friday, June 6, 2025 12:57 PM
To: adelaney@andrewdelaneylaw.com
Cc: Lerner, Mark <MALerner@duanemorris.com>; Silva, Lauren C. <LSilva@duanemorris.com>
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DuaneMorris
www.duanemorris.com
Patrick Boisson
Paralegal
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Andrew DeLaney

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Respondent's Motion for Sanctions

EXHIBIT K

From: Andrew DeLaney <adelaney@andrewdelaneylaw.com>
Sent: Tuesday, November 4, 2025 8:51 AM
To: Lerner, Mark
Cc: Silva, Lauren C.
Subject: Re: Certificate of Service: Next Level vs. Nxt Level: Document Requests and Interrogatories

Mark,

Apologies, I have a settlement draft/agreement I will send over that would accompany a withdrawal of the petition. I am out of the office today as I am running for local office and we have our election today, so I will have it to you tomorrow, so that we can hopefully have it signed off on, and concluded. Thank you, and we'll talk

On Tue, Nov 4, 2025 at 9:54 AM Lerner, Mark <MALerner@duanemorris.com> wrote:

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E-MAIL

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Andrew DeLaney

Attorney at Law

6 South Street, Suite 203

Morristown, NJ 07960

Work. 973-606-6090

Cell. 862-812-6874

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

In the Matter of Trademark Registration No. 6,829,211
Registered: August 23, 2022
For the Mark: NEXT LEVEL PRIVATE

NXT LEVEL HOLDINGS LLC,	:	
Petitioner,	:	
v.	:	**Cancellation No.:** 92087430
NEXT LEVEL PRIVATE LLC,	:	
Respondent.	:	

DECLARATION OF MARK A. LERNER
IN SUPPORT OF RESPONDENT'S MOTION FOR SANCTIONS

I, Mark A. Lerner, declare as follows:

1. I am an attorney at Duane Morris LLP, the firm representing Respondent, Next Level Private LLC, in this matter. I have personal knowledge of the facts set forth herein and will testify competently to the truth of the same if requested.

2. Attached hereto as **Exhibit A** is a true and correct copy of the Board's Order (TTABVUE #20) issued on September 23, 2025 (the "Board's Order"), granting Respondent's Motion to Compel Discovery, and ordering Petitioner to "serve written responses, without objection on the merits, to Respondent's first set of interrogatories and requests for production," and to produce responsive documents within thirty (30) days of the date of the order. *See* **Exhibit A**, Page 5.

3. Pursuant to the Board's Order, Petitioner's responses to Respondent's First Set of Interrogatories ("Interrogatories") and amended responses to Respondent's First Set of Requests

for Production of Documents and Things ("Requests for Production") (collectively "Discovery Requests") were due on October 23, 2025.

4. As of the date of this declaration, Petitioner has neither complied with the Board's Order, nor communicated with Respondent regarding its outstanding discovery requests.

5. Petitioner's noncompliance with the Board's Order follows a months-long pattern of similar conduct throughout this proceeding. Petitioner repeatedly missed discovery deadlines, disregarded procedural requirements, and ignored communications from Respondent seeking to resolve outstanding issues without Board intervention.

Petitioner's Pattern of Noncompliance:

6. Under the Board's April 10, 2025, Scheduling Order, Initial Disclosures were due on June 6, 2025. Attached hereto as **Exhibit B** is a true and correct copy of the Board's April 10, 2025, Scheduling Order (TTABVUE #9). Petitioner failed timely to serve its disclosures, request an extension, or otherwise respond to Respondent's repeated attempts to confer, prompting Respondent to file a motion to compel on July 3, 2025. *See* TTABVUE # 10.

7. Petitioner did not provide its Initial Disclosures until July 14, 2025, five weeks late and only after Respondent's motion to compel Initial Disclosures had been filed. A true and correct copy of Petitioner's email of July 14, 2025, serving Initial Disclosures is attached hereto as **Exhibit C**.

8. On June 6, 2025, Respondent also served its Discovery Requests, with responses due by July 7, 2025, under Fed. R. Civ. P. 33(b)(2) and 34(b)(2)(A). Petitioner again missed the deadline, did not request additional time, and did not respond to Respondent's attempts to confer by email sent July 8, July 11, and July 15. Attached hereto as **Exhibits D** are true and correct copies the of emails to Counsel for Petitioner dated July 8, 2025, July 11, 2025, and July 15, 2025. Respondent filed a motion to compel Petitioner's discovery responses on July 28, 2025. *See*

TTABVUE #12, attached hereto as **Exhibit E**.

9. On August 6, 2025, while Respondent's motion to compel discovery was pending, Petitioner provided a Google Drive link purporting to include its responses to Respondent's Requests for Production. A true and correct copy of Petitioner's email of August 6, 2025, is attached hereto as **Exhibit F**. A true and correct copy of the Google Drive Directory is attached hereto as **Exhibit G.** The Google Drive contained only unsigned and unverified written responses to Respondent's Requests for Production (other than Request No. 49, which went unanswered). Petitioner's responses objected to certain requests on the grounds of confidentiality, despite the automatically imposed Standard Protective Order. Beyond pointing to the handful of documents produced with its Initial Disclosures, Petitioner produced a limited set of documents. Petitioner's responses stated that additional information would be produced with "forthcoming" responses to Respondent's Interrogatories, which were not included on the Google Drive. Petitioner's Response No. 2 to Respondent's Request for Production attached hereto as **Exhibit H.**

10. Despite its clearly incomplete production, on August 7, 2025, Petitioner filed an opposition to Respondent's motion to compel discovery, falsely asserting that the motion was moot because Petitioner had served "Responses to First Request for Production of Documents and Things, and Interrogatories." *See* TTABVUE #13, attached hereto as **Exhibit I**.

11. Petitioner continued to misrepresent its discovery compliance in subsequent filings to the Board, falsely asserting that it had served "complete, signed, and verified responses" to Respondent's Discovery Requests. *See* TTABVUE #16.

12. On August 22, 2025, Petitioner filed a motion to compel discovery from Respondent, despite never having served any discovery requests of its own. *See* TTABVUE #17. Petitioner did not confer with Respondent in good faith before filing that motion, and Respondent was never served with a copy of the motion, as required under TBMP § 113.01 and 37 C.F.R. §

2.119(a).

13. On November 4, 2025, having not received any discovery responses or document production as required by the Board's September 23, 2025, Order, I contacted Petitioner's counsel by email. In addition to noting Petitioner's failure to comply by the deadline of October 23, 2025, my email further addressed Petitioner's failure respond to Respondent's Requests for Admissions, to which responses were due by November 3, 2025. Attached hereto as **Exhibit J** is a true and correct copy the of email to Counsel for Petitioner dated November 4, 2025.

14. After weeks without communication, Petitioner's counsel replied to my November 4, 2025, email. That reply did not address Petitioner's outstanding discovery defaults or its noncompliance with the Board's Order, and it did not state that any discovery would be forthcoming. Instead, the response proposed that the parties engage in discussions aimed at resolving the proceeding. A true and correct copy of Petitioner's email of November 4, 2025, is attached hereto as **Exhibit K.** Although the parties thereafter engaged in settlement discussions and a proposed draft agreement has been exchanged, as of today, no settlement has been completed and Petitioner has not produced the outstanding discovery.

Prejudice to Respondent

15. As a result of Petitioner's failure properly to engage in discovery, Respondent has been forced to expend significant time and resources to secure basic discovery, which has still not been provided. Petitioner's continued non-compliance has delayed the proceedings. Despite numerous efforts to confer with Petitioner and motion practice, Respondent has been unable to obtain documents or information necessary to defend its valid registration.

16. Petitioner has not provided verified information in the form of interrogatory responses or documents regarding its purported priority of use, its full range of services, the manner and mode of any advertising, its channels of trade, its pricing, or its knowledge of third-

party uses, among other categories of inquiry. Respondent has thus been unable to prepare for depositions or a possible dispositive motion.

17. Given the Petitioner's pattern of misconduct, including noncompliance with Board orders and submission of clearly false statements to the Board, a lesser sanction will not suffice. A further order compelling production or precluding use of documents will likely only further delay the matter and will not enable Respondent properly to prepare for trial.

I declare under penalty of perjury under the laws of the United States that the foregoing is true and correct.

DATED this 11th day of December 2025 at New York, New York.

/Mark A. Lerner/