ESTTA Tracking number: **ESTTA112390**
Filing date: **11/30/2006**

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

Proceeding	91159137
Party	Defendant NATURAL SOURCE INTERNATIONAL, LTD. NATURAL SOURCE INTERNATIONAL, LTD. PMB 331 208 EAST 51st STREET NEW YORK, NY 10022
Correspondence Address	JACQUELINE LEVASSEUR PATT VENABLE LLP 575 7TH STREET, N.W. WASHINGTON, DC 20004-1601 jlpatt@venable.com, trademarkdocket@venable.com
Submission	Opposition/Response to Motion
Filer's Name	Marlene J. Williams
Filer's e-mail	mjwilliams@thelenreid.com, trademark@thelenreid.com
Signature	/Marlene J. Williams/
Date	11/30/2006
Attachments	Applicant Response to Opposers Mtn for Entry of Protective Order.pdf (5 pages)(160896 bytes)

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

THRESHOLD ENTERPRISES LTD. Opposer,	)	
	)	Opposition No. 91159137
v.	)	
	)	(Parent)
NATURAL SOURCE INTERNATIONAL, LTD. Applicant.	)	

In re Matter of U.S. Application Serial No. 76/504,365
Mark: NATURAL SOURCE and Design (now withdrawn)
Filed: April 8, 2003
Published: Official Gazette of December 2, 2003

THRESHOLD ENTERPRISES LTD. Opposer,	)	
v.	)	Opposition No. 91159361
NATURAL SOURCE INTERNATIONAL, LTD. Applicant.	)	

In re Matter of U.S. Application Serial No. 76/506,477
Mark: SOURCED FROM NATURE … PERFECTED BY SCIENCE
Filed: April 14, 2003
Published: Official Gazette of January 6, 2004

Opposer's Mark: SOURCE NATURALS (Reg. No. 1,909,705)

APPLICANT'S RESPONSE TO OPPOSER'S
MOTION FOR ENTRY OF PROTECTIVE ORDER

This memorandum demonstrates that the Trademark Trial and Appeal Board should deny Opposer's Motion for Entry of Protective Order and grant Applicant's Motion to Compel Discovery and Extend Applicant's Time to Take Discovery and for Protective Order filed on September 25, 2006. Opposer's recent Motion for Entry of Protective Order is only the most recent tactic in its effort to delay and deny Applicant the legitimate discovery it has sought – thus far unsuccessfully – from Opposer. The time has come to end Opposer's procedural obstructions to development of the merits of this action so that a reasoned decision can be reached on the merits of the controversy with the development of all the facts. We proceed now to detail why Applicant's requested relief is the just resolution of this matter.

Applicant filed its Motion to Compel only after Opposer failed to respond to Applicant's interrogatories in a responsible way and, compounding the problem, failed to produce any responsive documents. Standing on its objections and "need" for a two-tier Protective Order, Opposer still has failed to produce any responsive documents.

After Applicant filed its motion, on October 13, 2006, Opposer filed a brief in response to Applicant's Motion to Compel requesting that the Board deny Applicant's motion without any comments about Applicant's proposed Protective Order, and certainly did not mention that any Protective Order in this case should include two tiers of confidentiality. Then, on November 10, 2006, six weeks after Applicant's Motion to Compel and nearly one month after Opposer's response, Opposer filed its own Motion for Entry of Protective Order. Opposer's motion merely extends its refusal to produce documents.

Due to Opposer's lack of cooperation with the discovery process, litigation over such discovery has dwarfed the merits of the case. Yet the underlying discovery issue is quite

straightforward – Opposer has failed to produce any documents, has failed to adequately respond to interrogatories, and has shown no need for the two-tiered Protective Order it urges. Curiously, Opposer argues that certain documents are too sensitive to produce without an "attorneys eyes only" level of protection. Just what those are and why they require such high level of confidentiality is left to speculation. This is an application for a trademark registration; it is not a trade secret case. Indeed, Applicant has not sought trade secrets or any information that deserves the characterization "highly confidential." Proof of that may be found in the fact that Applicant already produced *its* documents without *any* protective order.

Nor may it be said that Applicant has demanded uncompromising acceptance of its demands. To the contrary, Applicant offered various compromises to its discovery requests, all intended to address Opposer's concerns (assuming those concerns were, in fact, genuine). See August 11, 2006 correspondence (attached to Applicant's Motion to Compel).

Nor is Applicant unwilling to enter a protective order. But there has been no showing here, much less the very substantial showing, of a compelling need for an "attorneys eyes only" provision. Where, as here, Applicant is a small company, the capacity of an adversary to designate as "highly confidential" information that then is foreclosed to the Applicant to review threatens a genuine hardship to Applicant, and thereby potentially frustrates the orderly administration of this action. It can scarcely be controversial that Applicant's counsel needs to review the discovery documents with the Applicant both to understand the significance of the produced material, render advice respecting the produced material and to aid in determining strategy going forward. Given the Opposer's scorched earth approach to even producing a minimal amount of the discovery requested by Applicant bodes ill for a discriminating and nuanced application of the restrictive category of "attorneys eyes only." The point, ultimately, is

very simple: discovery is a mechanism to advance resolution of matters through the exchange of information, not a procedural weapon to frustrate that exchange in the hope that such frustration will exhaust the Applicant's enthusiasm for registration of its proposed mark.

Accordingly, for these reasons, and for those previously advanced in its earlier memoranda, Applicant respectfully requests that the Board grant its Motion to Compel Discovery and Extend Applicant's Time to Take Discovery and for Protective Order and deny Opposer's Motion For Entry of Protective Order.

Respectfully Submitted,

THELEN REID & PRIEST, LLP

Dated: November 30, 2006

By _____

Marlene J. Williams
Attorneys for Applicant
Post Office Box 190187
San Francisco, CA 94119-1087
Telephone: (415) 369-7368
Facsimile: (415) 369-8737
E-mail: mjwilliams@thelenreid.com

Our File: 813285-6

CERTIFICATE OF SERVICE BY MAIL

Opposition Nos.: 91159137 and 91159361

I am over the age of 18 and not a party to the within action. I am employed in the County of San Francisco, State of California by Thelen Reid & Priest LLP. My business address is 101 Second Street, Suite 1800, San Francisco, California 94105-3606.

On November 30, 2006, I served the following titled document:

APPLICANT'S RESPONSE TO OPPOSER'S MOTION FOR ENTRY OF PROTECTIVE ORDER

by placing true and correct copies thereof in sealed envelopes addressed as follows:

Steve Baron, Esq.
Manell Menkes LLC
333 W. Wacker Drive, Suite 300
Chicago, IL 60606

-and-

Mary Catherine Merz, Esq.
Merz & Associates, PC
1140 Lake Street, Suite 304
Oak Park, IL 60301

I am readily familiar with the firm's business practice for collection and processing of correspondence for mailing with the United States Postal Service. On this day, I placed for collection and processing the above document to be deposited with the United States Postal Service in the ordinary course of business. And in the ordinary course of the firm's business, such correspondence is deposited with the United States Postal Service the same day that it is collected.

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

Executed on November 30, 2006, at San Francisco, California.

Michael J. Lyman

Michael J. Lyman