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

Proceeding	91165519
Party	Plaintiff Corporacion Habanos, S.A. Corporacion Habanos, S.A. Corporacion Habanos, S.A. Avenida 3ra, #2006, e/20 y 22Miramar Havana, CUBA
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEALS BOARD**

CORPORACION HABANOS, S.A.,)	
)	
Opposer,)	Opposition No. 91165519
)	
v.)	
)	
ANNCAS, INC.,)	
)	
Applicant.)	
)	

**JOINT MOTION AND STIPULATION TO RESET TRIAL TESTIMONY
PERIODS FOLLOWING OPPOSER’S FILING NOTICES OF DEPOSITIONS UPON
WRITTEN QUESTIONS**

Pursuant to 37 CFR § 2.124(d)(2) and TBMP § 703.02(c), Opposer Corporacion Habanos, S.A. (“Opposer”) and Applicant, Anncas, Inc. (“Applicant”), hereby jointly move for, and stipulate and agree to, the suspension and resetting of the parties’ trial testimony periods to allow for the orderly completion of Depositions Upon Written Questions, scheduled for May 15, 2007, in Mexico City, in the above-referenced matter, and state as follows:

1. In early December, counsel for the parties discussed the fact that Opposer would be noticing the depositions of two foreign witnesses, to be taken on written questions, pursuant to the Board’s rules, which provide that the notice of such depositions “shall” suspend or result in rescheduling of further proceedings until completed:

Upon receipt of written notice that one or more testimonial depositions are to be taken upon written questions, the Trademark Trial and Appeal Board **shall** suspend or reschedule other proceedings in the matter to allow for the **orderly completion** of the depositions upon written questions.

37 CFR § 2.124(d)(2); *see* TBMP § 703.02(c) (emphasis added).

2. Because the bulk of Opposer's trial testimony period occurred during the Christmas/New Year's period, and during Opposer's counsel call to jury duty, as well as other scheduling issues, the parties stipulated to the service and filing of the Notices of Written Depositions on February 6, 2007, which stipulation was filed with the Board on January 9, 2007.

3. The Stipulation reflected the understanding of the parties that the filing of the Notices of Depositions on Written Questions "shall" suspend the Trial Testimony periods of the parties: "Counsel further discussed that, under the Board's rules, such depositions would suspend further proceedings until completed." January 9, 2007 Stipulation, ¶ 1.

4. The parties further relied on the Board's mandatory rule that upon the filing of the Notices of Depositions on Written Questions, the Board "shall suspend or reschedule other proceedings." Thus, Opposer did not take oral trial testimony of a domestic witness that it had identified to Applicant, nor did it file its Notice of Reliance. Applicant did not take any testimony or file any Notice of Reliance during its scheduled testimony period, which expired on March 16, 2007.

5. On March 30, 2007, the Board issued an Order approving the Stipulation. However, the Order also stated, in contravention of 37 CFR § 2.124(d)(2) and TBMP § 703.02(c), and the understanding of the parties, as stated in the Stipulation and as reflected in their actions, "Trial dates remain as reset in the Board's order of November 29, 2006." At the time this Order was issued, the Opposer's and the Applicant's Trial Testimony periods, as set in the November 29, 2006 Order, had already passed, with only Opposer's Rebuttal period remaining.

6. Fairness to both parties, as well as a recognition that this matter should be decided on the merits, and not on a misunderstanding of the application of a rule that is mandatory on its

face, compels rescheduling of the parties' testimonial periods upon completion of the depositions upon written questions, particularly in light of: 1) the mandatory language of 37 CFR § 2.124(d)(2) and TBMP § 703.02(c); 2) the parties' statement in the January 9 Stipulation that they understood that the proceedings were to be suspended; and 3) the parties' clear reliance on the mandatory Board rule that proceedings would be suspended by not taking additional testimony or filing documents.

7. The rationale of the mandatory rule, that the suspension or rescheduling is "to allow for the orderly completion of the depositions upon written questions," also compels rescheduling the testimonial periods. Here, Opposer and Applicant have both submitted questions and exhibits to the witnesses, and the witnesses' responses to these written questions are likely to affect other documents and testimony that both parties' seek to elicit and to introduce in this proceeding.

8. Counsel for Opposer will notify the Board upon completion of the depositions upon written questions and receipt of the transcripts, so that the trial testimony periods of both parties can be reset expeditiously. No party will suffer any prejudice as a result of resetting the trial testimony periods in accordance with 37 CFR § 2.124(d)(2) and TBMP § 703.02(c).

9. Counsel for Applicant, Jesus Sanchelima, Sanchelima & Associates, P.A., has reviewed the terms of this JOINT MOTION AND STIPULATION TO RESET TRIAL TESTIMONY PERIODS FOLLOWING OPPOSER'S FILING NOTICES OF DEPOSITIONS UPON WRITTEN QUESTIONS, and hereby agrees to and accepts these terms on behalf of Applicant.

WHEREFORE, the parties jointly move that the Board reset the trial testimony periods of the parties upon completion of the Depositions Upon Written Questions, and hereby so stipulate and agree to such resetting.

Dated: New York, New York
April 10, 2007

Respectfully submitted,

/David B. Goldstein/
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CERTIFICATE OF SERVICE

The undersigned certifies that a true and correct copy of the foregoing document was emailed to and was served on Applicant by mailing, postage prepaid, said copy on April 10, 2007 via U.S. Mail to:

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