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

Proceeding	91166542
Party	Plaintiff HEINEKEN BROUWERIJEN B.V. HEINEKEN BROUWERIJEN B.V. Tweede Weteringplantsoen 21 Amsterdam, 1017 ZD NETHERLANDS
Correspondence Address	Jonathan Hudis Oblon, Spivak, McClelland, Maier & Neustadt, P.C. 1940 Duke Street Alexandria, VA 22314 UNITED STATES tmdocket@oblon.com, jhudis@oblon.com
Submission	Reply in Support of Motion
Filer's Name	Jonathan Hudis
Filer's e-mail	tmdocket@oblon.com, jhudis@oblon.com
Signature	/Jonathan Hudis/
Date	02/09/2006
Attachments	229137-274098us-mtc-rpy.pdf (5 pages)

Attorney Docket No.: 274098US69 **BOX TTAB NO FEE**

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

HEINEKEN BROUWERIJEN B.V.,	)	
Opposer,	)	
v.	)	Opposition No.: 91/166,542
	)	Appln. Serial No. 78/336,665
THE SLEEMAN BREWING & MALTING CO. LTD.,	)	
Applicant.	)	

The Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

OPPOSER'S REPLY IN FURTHER SUPPORT OF ITS MOTION: (1) TO COMPEL DISCOVERY, (2) TO TEST THE SUFFICIENCY OF ADMISSIONS RESPONSES, (3) FOR THE ENTRY OF A PROTECTIVE ORDER, (4) TO DIRECT APPLICANT TO SUBMIT A PRIVILEGE LOG, (5) TO SUSPEND PROCEEDINGS, AND (5) TO RE-SET THE DISCOVERY AND TESTIMONY PERIODS

Opposer, HEINEKEN BROUWERIJEN B.V. ("Heineken"), submits this Reply in further support of its motion for the following relief:

1. To direct Applicant to serve supplemental answers to Heineken's Interrogatories Nos. 2, 4, through 10, 13 through 15, 19 through 21, and 23 through 26;

2. To direct Applicant to serve supplemental responses to Heineken's Requests for Production Nos. 1 through 5, 7, 8, 11 through 14, 16 through 19, and 21;

3. To direct Applicant to serve its discovery documents on Opposer's counsel, for which Applicant will be reimbursed;

4. To test the sufficiency of Applicant's Requests for Admissions Nos. 21, 24, and 66 through 69;

5. To enter a Protective Order to govern the exchange of confidential discovery in the form attached as Exhibit B;

6. To direct Applicant to serve a Privilege Log;

7. To suspend proceedings pending the disposition of this motion: and

8. To re-set the parties' discovery and testimony periods after the Board's ruling on this motion, so that Heineken has not less than 120 days to conduct follow-up discovery.

Applicant's Concessions to Heineken's Discovery Motion

In its Response filed with the Board on February 2, 2006, Applicant concedes the following points made, and/or agrees to the following relief requested, in Heineken's discovery motion:

A. Applicant agrees that the parties met their obligations to confer in good faith before Heineken brought its discovery motion. Trademark Rule 2.120(e) (App's Response, p. 2).

B. Once entered by the Board, Applicant agrees to abide by the proposed Stipulated Protective Order attached as Exhibit B to Heineken's discovery motion (App's Response, pp. 1-2).

C. Applicant agrees to a suspension of the Opposition, pending the Board's ruling on Heineken's discovery motion (App's Response, p. 2).[1]

[1] Heineken notes issuance of the Board's Order on January 26, 2006, suspending proceedings pending the Board's disposition of Heineken's discovery motion.

D. Applicant does not object to the Board re-setting the close of discovery following the Board's ruling on Heineken's discovery motion (App's Response, p. 2). Heineken requested a period of 120 days to conduct follow-up discovery.

E. Applicant agrees to supplement its interrogatory answers following the Board's entry of the Protective Order mentioned above (App's Response, pp. 2-3). Heineken requests that Applicant serve supplemental answers to Heineken's Interrogatories Nos. 2, 4, through 10, 13 through 15, 19 through 21, and 23 through 26 by a date-certain to be set by the Board.

F. Applicant agrees to supplement its document responses, and provide documents, following the Board's entry of the Protective Order mentioned above (App's Response, pp. 2-3). Heineken already has agreed to reimburse Applicant for the costs of production. Heineken requests that Applicant serve supplemental responses, and responsive documents, to Heineken's Requests for Production Nos. 1 through 5, 7, 8, 11 through 14, 16 through 19, and 21 by a date-certain to be set by the Board.

G. By its silence, Applicant did not contest Heineken's request for supplemental responses to Heineken's Requests for Admissions Nos. 21 and 24.

Heineken's Requests for Admissions Nos. 66-69

Applicant refuses to respond to Heineken's Requests for Admissions Nos. 66-69 on the grounds that Applicant's CAN Design mark is not yet in use. However, Heineken's Admissions Requests Nos. 66-69 do not inquire into Applicant's use. Rather Heineken's Admissions Requests ask Applicant to take positions regarding the drawing of its mark that Applicant submitted to the PTO in support of its application. Applicant should be directed to formally

respond to Heineken's Requests for Admissions Nos. 66-69, without objection, by a date-certain to be set by the Board.

Privilege Log

Applicant objects to providing Heineken with a log of documents withheld on the basis of privilege or for some other reason (App's Response, p. 4). However, Applicant does not state its reasons for refusing to provide such a log. For the reasons stated in Heineken's discovery motion, Applicant should be directed to provide the requested Privilege Log by a date certain.

Conclusion

For the foregoing reasons, Heineken requests that its discovery motion filed on January 13, 2006 be granted in its entirety.

Respectfully submitted,

HEINEKEN BROUWERIJEN B.V.

By: Jonathan Hudis

Jonathan Hudis
Oblon, Spivak, McClelland,
Maier & Neustadt, P.C.
1940 Duke Street
Alexandria, Virginia 22314
(703) 413-3000
fax (703) 413-2220
e-mail: *tmdocket@oblon.com*

Date: February 9, 2006
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CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing **OPPOSER'S REPLY IN FURTHER SUPPORT OF ITS MOTION: (1) TO COMPEL DISCOVERY, (2) TO TEST THE SUFFICIENCY OF ADMISSIONS RESPONSES, (3) FOR THE ENTRY OF A PROTECTIVE ORDER, (4) TO DIRECT APPLICANT TO SUBMIT A PRIVILEGE LOG, (5) TO SUSPEND PROCEEDINGS, AND (5) TO RE-SET THE DISCOVERY AND TESTIMONY PERIODS** was served on counsel for Applicant, this 9th day of February, 2006, by sending same via First Class mail, postage prepaid, to:

Jeffrey L. Van Hoosear
KNOBBE MARTENS OLSON & BEAR LLP
14th Floor
2040 Main Street
Irvine, CA 92614

Lakeshan T. Williams