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

Proceeding	91177708
Party	Plaintiff Network Appliance, Inc.
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Signature	/RDA/
Date	05/05/2008
Attachments	Motion for Sanctions Against Applicant, Acronis Inc - 059055-9017.pdf ( 4 pages ) (160952 bytes )

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

In the matter of application Serial No. 78/749,922  
Filed November 8, 2005  
For the mark **SNAP RESTORE**  
Published in the OFFICIAL GAZETTE on February 13, 2007

In the matter of application Serial No. 78/894,811  
Filed May 27, 2006  
For the mark **ACRONIS SNAP RESTORE**  
Published in the OFFICIAL GAZETTE on January 30, 2007

NETWORK APPLIANCE, INC., a Delaware  
corporation,

Opposer,

v.

ACRONIS INC., a corporation of the British  
Virgin Islands,

Applicant.

Opposition No.: 91,177,708

**MOTION FOR SANCTIONS AGAINST APPLICANT ACRONIS INC. BY**  
**OPPOSER NETWORK APPLIANCE, INC.**

Opposer, Network Appliance, Inc. (“Registrant” or “Opposer”), through its undersigned counsel and pursuant to 37 C.F.R. § 2.120 and Federal Rule of Civil Procedure 37(b)(2), hereby moves for sanctions against Applicant Acronis Inc. (“Applicant”) and requests that the Board reject application Serial No. 78/749,922 for SNAP RESTORE and application Serial No. 78/894,811 for ACRONIS SNAP RESTORE, that no registrations be issued thereon to Applicant, and that this combined opposition be sustained in favor of Registrant.

**1. Registrant’s Motion for Sanctions Should Be Granted Because Applicant Has Completely Failed to Respond to the Board’s Order**

It is well-accepted that a motion for sanctions is available when a party fails to comply with an order from the Trademark Trial and Appeal Board (TTAB) relating to

discovery. 37 C.F.R. §2.120(e); TBMP §§ 411, 523.01. In ruling on a motion for sanctions, the sanctions which may be entered by the Board include judgment against the disobedient party. *See MHW Ltd. v. Simex, Aussenhandelsgesellschaft Savelsberg KG*, 59 USPQ2d 1477 (TTAB 2000) (judgment entered after failure to comply with orders and unpersuasive reasons for delay), *Caterpillar Tractor Co. v. Catfish Anglers Together, Inc.*, 194 USPQ 99 (TTAB 1976) (judgment entered where Applicant provided no reason for not complying with Board order compelling discovery).

Here, Registrant propounded and served its First Set of Interrogatories and First Set of Requests for Production of Documents to Applicant by mail on December 20, 2007.<sup>1</sup> Applicant's responses were due on January 25, 2008. After receiving no response to its discovery requests, sought to meet and confer with Applicant's counsel but received no response to such inquiries. Subsequently, on February 20, 2008, Registrant filed a motion to compel answers to its discovery. Applicant did not oppose the motion to compel. As a result, Registrant filed its reply brief in support of its motion to compel on March 21, 2008. The Board ruled on Registrant's motion on April 7, 2008, granting Applicant twenty (20) more days to respond to Opposer's first set of interrogatories and first set of document requests. It has now been twenty-five (25) days and, to date, Applicant has not responded to the discovery or in fact in any way acknowledged the Board's Order.

In light of Applicant's repeated failures to respond to the discovery propounded and even to acknowledge, let alone respond to the deadlines cited in the Board's Order, Registrant requests that the Board reject application Serial No. 78/749,922 for SNAP

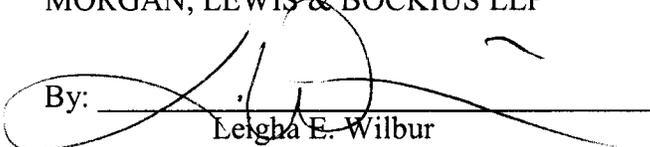
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<sup>1</sup> In addition, Registrant served Requests for Admissions to which Applicant did not respond, further underscoring the propriety of entering judgment for Registrant. Given that the key elements of the claims asserted in the Notice of Opposition have been admitted by virtue of this lack of response (F.R.Civ.P Rule 36(a)), judgment for Registrant seems particularly appropriate.

RESTORE and application Serial No. 78/894,811 for ACRONIS SNAP RESTORE, that no registrations be issued thereon to Applicant, and that this combined opposition be sustained in favor of Registrant. As alleged in its Notice of Opposition, Registrant owns an identical federally registered mark for the mark SNAPRESTORE<sup>2</sup> for what only can be characterized as directly competitive or related goods and services, which by the scope of Applicant's application would be sold to the same or overlapping purchasers. Under these circumstances where one of the registrations at issue is identical to the applied-for designation and the Applicant has failed to provide any discovery or to otherwise engage in this proceeding after it filed its Answer, judgment in Registrant's favor is entirely appropriate.

Dated: May 5, 2008

MORGAN, LEWIS & BOCKIUS LLP

By: 

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Attorney for Opposer,  
NETWORK APPLIANCE, INC.

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<sup>2</sup> Registrant attached copies from the TARR database of its relevant registrations as part of its Notice of Opposition, including its identical registration for the federally registered SNAPRESTORE mark. See Notice of Opposition ¶ 3.

**PROOF OF SERVICE**

I, Yelena Lolua, declare:

I am and was at the time of the service mentioned in this declaration, employed in the County of San Francisco, California. I am over the age of 18 years and not a party to this cause. My business address is Spear Street Tower, One Market, San Francisco, California 94105.

On **May 5, 2008**, I served a copy(ies) of the following document(s)

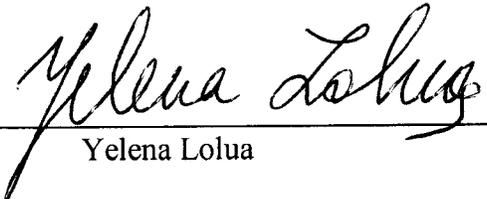
**MOTION FOR SANCTIONS AGAINST APPLICANT ACRONIS INC. BY  
OPPOSER NETWORK APPLIANCE, INC.**

by placing them in a sealed envelope(s) addressed as follows:

**George S. Bardmesser, Esq.**  
**BARDMESSER LAW GROUP**  
**910 17th Street, N.W.**  
**Washington, DC 20006**

I placed the sealed envelope(s) for collection and mailing by following the ordinary business practices of Morgan, Lewis & Bockius LLP, San Francisco, California. I am readily familiar with Morgan, Lewis & Bockius LLP's practice for collecting and processing of correspondence for mailing with the United States Postal Service, said practice being that, in the ordinary course of business, correspondence (with postage fully prepaid) is deposited with the United States Postal Service the same day as it is placed for collection.

I declare under penalty of perjury under the laws of the State of California and the United States of America that the foregoing is true and correct, and that this declaration was executed on **May 5, 2008**, at San Francisco, California.

  
\_\_\_\_\_  
Yelena Lolua