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

Proceeding	91183753
Party	Plaintiff Heaven Hill Distilleries, Inc.
Correspondence Address	Matthew A. Williams Wyatt, Tarrant & Combs, LLP 500 W. Jefferson Street, Suite 2800 Louisville, KY 40202 UNITED STATES mwilliams@wyattfirm.com, mcapiro@wyattfirm.com
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Date	04/17/2009
Attachments	Reply in support.pdf (7 pages)(83939 bytes)

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/ Matthew A. Williams/
Matthew A. Williams

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

HEAVEN HILL DISTILLERIES, INC.,	)		
	)		
Opposer,	)	Opposition No.	91183753
	)		
v.	)		
	)	Serial No.	77/266,196
DIALLO YASSINN PATRICE,	)	Mark:	HYPNOTIZER
	)	Intl Class:	033
Respondent.	)		

REPLY IN SUPPORT OF OPPOSER'S
MOTION FOR EXTENSION OF TIME

Opposer Heaven Hill Distilleries, Inc. ("Heaven Hill") files this Reply in support of its Motion for Extension of Time to address the issues of diligence and bad faith raised by Applicant.

Applicant, Diallo Yassinn Patrice ("Diallo"), fails to acknowledge the effect of the Board's entry of an Order on November 13, 2008 to stay the proceedings. This order clearly provided both parties with good cause to cease or defer any activities unrelated to briefing of the motion. *See, Leeds Technologies Ltd. v. Topaz Comm. Ltd.*, 65 U.S.P.Q.2d 1303 (TTAB 2002). For Diallo to imply that Heaven Hill's actions were unreasonable or that they demonstrated a lack of diligence is to simply disregard the well established purpose of the Board's Order. Heaven Hill's suspension of efforts required to prepare the case for trial was clearly justified and does not represent a lack of diligence by Heaven Hill.

Heaven Hill has also demonstrated good cause in support of its Motion for an Extension of Time. After receiving and reviewing the Board's Order denying its Motion for Summary Judgment, Heaven Hill immediately began preparing for trial. It, however, quickly became apparent that the five (5) weeks provided by the Board's Order to the Expert Disclosure deadline did not provide Heaven Hill with sufficient time to evaluate the need to engage experts and meet the Expert Disclosure deadline. Thus, following Diallo's perfunctory denial of its request to extend the deadlines, Heaven Hill filed its Motion for an Extension of Time to allow it sufficient time to properly prepare for trial.

Finally, Diallo attempts to argue that Heaven Hill has acted in bad faith in its prosecution of this case. This assertion could not be further from the truth. Since the beginning of this action, Heaven Hill has attempted to work towards an efficient and timely resolution. From Heaven Hill's initial request for service by email to its suggestion to use the Accelerated Case Resolution procedure, Diallo has repeatedly rejected all of Heaven Hill's requests. (*See, e.g.*, June 26, 2008 Lt. from Heaven Hill's undersigned counsel to Diallo, attached hereto as Ex. A.) For Diallo to argue that Heaven Hill is acting is bad faith and is attempting to delay the matter is a blatant misstatement of the facts. As early as March 11, 2009, immediately after recognizing that it would need additional time to prepare for trial, Heaven Hill attempted to contact Diallo to request an extension. After repeated emails, letters sent via Federal Express, and unsuccessful phone calls (taking into account any time difference), Heaven Hill finally received a response from Diallo on March 20, 2009, a full nine days after Heaven Hill's first communication was delivered to Diallo via email. As justification for this delay, Diallo simply offers that the "distance between France and Kentucky is 8000 kilometers and 6 hours of jet lag," even though there is no indication Diallo was traveling from Kentucky to France at the time. His

inclusion of this information is an attempt to obfuscate the matters at issue and justify his own delay in responding to Heaven Hill's request.

From the onset of this action, Heaven Hill has been more than diligent in working towards an efficient and timely resolution to this matter. The Board's denial of Heaven Hill's Motion for Summary Judgment requires that Heaven Hill now prepare a trial plan and evaluate the need to engage one or more experts, and the scheduling order that issued following the suspension of the proceeding simply did not allow sufficient time to complete these tasks before the relevant deadlines. Accordingly, Heaven Hill requested an extension of time from Diallo. Diallo's refusal of that request has again delayed the proceedings and caused the parties and the Board to expend additional resources in the litigation of this matter.

Having shown good cause for its request, Heaven Hill respectfully requests that the Board grant its Motion for an Extension of Time so that it may properly prepare for trial.

Respectfully submitted,

/Matthew A. Williams /
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Counsel for Opposer, Heaven Hill Distilleries, Inc.

EXHIBIT A

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June 26, 2008

via EMAIL: yassin.diallo@laposte.net
Confirmation via FedEx

Diallo Yassinn Patrice
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FRANCE

RE: Discovery Conference for U.S. Opposition No. 91183753

Dear Mr. Diallo:

This letter is to confirm the conversations you and I had on June 24 and 25, 2008, and the conversation I had with your interpreter, Thomas Vongshavage, on June 25, 2008.

Based on these discussions, it is our understanding that you do not intend to respond to the draft discovery plan that we sent to you on June 9, 2008. Instead, you have informed us that you plan to contact the Trademark Trial and Appeal Board ("TTAB") to schedule a Discovery Conference. We agree that this is a reasonable step, and we look forward to participating in this conference. In fact, if you have not filed a motion with the TTAB for such a conference by Tuesday, July 1, 2008, we plan to do so.

We further understand that you will not agree to the service of papers by email. Accordingly, we will serve any papers that require service as specified in the TTAB's rules although we believe service of paper by email or facsimile would be more economical and efficient for both parties.

Finally, as stated in our letter of June 9, 2008, we believe that this case is well-suited to be heard under the TTAB's Accelerated Case Resolution ("ACR") procedure. The reason for this is that we do not believe that extensive discovery will be required in this matter and we believe that the parties will be able to stipulate to many of the facts in this matter. Under these circumstances, we believe that the ACR procedure will provide a much more economical resolution to

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the procedure. Accordingly, we plan to suggest that this case be heard under the ACR procedure during the discovery conference.

Please feel free to contact me if you would like to discuss any of these matters in further detail.

Very truly yours,

WYATT, TARRANT & COMBS, LLP

Matthew A. Williams

MAW/dkl
CC: David A. Calhoun, Esq.
Michael A. Capiro, Esq.

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a true and complete copy of the foregoing Opposer's Reply has been served upon

Diallo Yassinn Patrice
2 Square Tribord
Courcouronnes 91080
France

via United States Postal Service's First Class Mail International Service (postage prepaid), this 17**th** day of **April, 2009.**

/Matthew A. Williams/
One of Counsel for Opposer, Heaven Hill Distilleries, Inc.

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