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

Proceeding	91190654
Party	Plaintiff OMS Investments, Inc.
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Submission	Other Motions/Papers
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Date	06/24/2010
Attachments	6-24-2010 Opposer's Notice to Board.pdf (3 pages)(61245 bytes)

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

In the matter of Application Serial No. 77/520,947
Published in the *Official Gazette* on December 16, 2008
Mark: SHAKE-N-GROW

OMS Investments, Inc.	)	
	)	
Opposer,	)	Opposition No. 91190654
	)	
v.	)	
	)	
Hidden Creations,	)	
	)	
Applicant.	)	
	)	

NOTICE TO BOARD RE APPLICANT'S MOTION TO COMPEL FILED JUNE 9, 2010

On June 9, 2010, applicant Hidden Creations ("Applicant") filed a Motion to [Compel] Opposer's Answers to Applicant's First Set of Interrogatories, First Set of Requests for Production of Documents, and Requests for Admissions ("Motion to Compel"). Although dated June 8, 2010, Applicant's Motion to Compel was actually filed and served on Opposer on June 9, 2010. *See* Trademark Trial and Appeal Board Inquiry System ("TTABVUE") Opposition No. 91190654, Entry No. 26.

Opposer OMS Investments, Inc. ("Opposer") files this Notice to refer the Board to the following facts:

- Pursuant to the Board's Order issued July 30, 2009 setting the trial dates for this proceeding, Opposer's testimony period commenced on June 1, 2010. *See* TTABVUE Opposition No. 91190654, Entry No. 7 and 37 C.F.R. § 2.121.

- Pursuant to 37 C.F.R. § 2.120(e)(1), a motion to compel discovery must be filed prior to the commencement of the first testimony period, as originally set or reset. *See also Chesebrough-Pond's Inc. v. Soulful Days, Inc.*, 228 U.S.P.Q. 954 (TTAB 1985).
- Pursuant to 37 C.F.R. § 2.120(h), if a propounding party is dissatisfied with a responding party's answer or objection to a request for admission, the propounding party may file a motion with the Board to determine the sufficiency of the answer or objection. *See also* Trademark Trial and Appeal Board Manual of Procedure § 411.02.
- Pursuant to 37 C.F.R. § 2.120(h), a motion to determine the sufficiency of the answer or objection to a request for admission must also be filed prior to the commencement of the first testimony period, as originally set or as reset.

Because Applicant filed its Motion to Compel after the commencement of Opposer's testimony period and did not file a motion to determine the sufficiency of Opposer's objections to Applicant's Requests for Admission, Opposer considers Applicant's Motion to Compel to be moot.

If the Board considers Applicant's Motion to Compel to be an active motion despite the above, Opposer respectfully requests an opportunity to respond in substance accordingly.

Dated: June 24, 2010

Respectfully submitted,

By: _____

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Attorneys for Opposer OMS Investments, Inc.

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Opposer's Notice To Board Re Applicant's Motion To Compel Filed June 9, 2010, has been properly served, via email addressed to gailhiddencreations@comcast.net and hiddencreations@comcast.net on this 24th day of June, 2010.

Shannon S. King

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