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Filing date: **12/03/2014**

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

Proceeding	91212653
Party	Plaintiff Nautica Apparel, Inc.
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Date	12/03/2014
Attachments	Brief in Opposition to Applicant's Motion to Compel and to Dismiss the Opposition.pdf(106103 bytes )



Applicant, on the other hand, never properly re-served its discovery requests pursuant to *TBMP*§403, 406. Applicant's discovery requests served on July, 2014 were rejected in writing by Opposer for Applicant's failure to serve Initial Disclosures. The referenced requests were returned to Applicant pursuant to *TBMP*§403, 406. (See *Proceeding Document No. 14--Opposer's pending Motion to Compel Discovery, Ex. A, Declaration of Neil Friedman (hereinafter, "Decl. Friedman"), Ex. IV attachment of the Decl. Friedman* )

### **OPPOSER'S EFFORTS TO WORK WITH APPLICANT IN DISCOVERY**

Applicant's allegation regarding so called "Gamesmanship" is disingenuous at best. Throughout the entire proceeding, Opposer reached out to Applicant's counsel on numerous occasions via letters and emails to discuss the potential discovery issues prior to making its motion to compel discovery on October 31, 2014. (See *Opposer's letter dated May 28, 2014, June 18, 2014, July 22, 2014 and October 2, 2014 as attached in Decl. Friedman as Ex. II, III, IV and V.*) Such efforts are well-documented in the history of this proceeding. (See *Proceeding Document No. 14, Decl. Friedman, Ex. IV, V; Proceeding Document No.11, Proceeding Document No. 9*) Despite Opposer's efforts to resolve the discovery disputes after the Board's April 16 order, Applicant has never responded to Opposer or its counsel, either by letter or telephone call, regarding issues related to deficiencies of Applicant's discovery responses, as documented in Opposer's motion to compel discovery filed on October 31, 2014. Furthermore, after Opposer rejected Applicant's discovery requests for failure to serve Initial Disclosures, Applicant never contacted Opposer to discuss the same. As such, Applicant has not made any effort, let alone a good faith effort prior to making its instant motion to compel. Further,

Applicant's Motion to Compel Discovery is without any legal basis and is completely devoid of any factual basis.

Concerning Applicant's Response to Opposer's motion to compel, Applicant alleged that Opposer's pending Motion to Compel is groundless. It alleges that the information Opposer sought is considered business secrets and business practices of Applicant which is not relevant to the issue at hand, and that the information requested by Opposer pertaining the business secrets and business practices is out of the scope of the controversy in this case. There is not a case cited and there is not a single reference to any specific discovery request made by Opposer in support of Applicant's contentions. Opposer is baffled by such allegation. First, Applicant seems to have ignored the fact that the Board's standard protective order is in place. Such information has been communicated to Applicant in Opposer's previous letter correspondence. (*See Proceeding Document 14, Decl. Friedman, Ex. IV.*) Moreover, Applicant does not explain how the information Opposer requested is allegedly outside the scope, nor did Applicant attempt to explain why the information sought by Opposer is irrelevant. It should be noted that Applicant has the burden of proof in his own motion.

As regards Applicant's motion to dismiss, the sole allegation is that Opposer by filing the opposition has created a barrier to Interstate Commerce and International Trade. We are not even sure what Applicant's means. Perhaps it is a claim of restraint of trade? In any event, such theory is not a cognizable claim of defense to a Board proceeding.

In summary:

(1) Applicant failed to serve Initial Disclosures on Opposer (even after being advised so by Opposer) as required by the Board's order and accordingly its attempt to re-serve discovery requests lacks efficacy.

(2) Applicant completely neglected to make any effort to reach an accommodation regarding Opposer's discovery requests prior to filing its motion to compel. Accordingly, its motion to compel is premature at best. *See* Trademark Rule 2.120(e).

(3) Applicant's motion to compel fails to include copies of Applicant's discovery requests as required by Trademark Rule 2.120(e). Therefore, pursuant to *TBMP* §523.02, Applicant has failed to fulfill the special requirements to even make a motion to compel.

(4) Applicant's motion to dismiss is fatally flawed. Its theory for dismissal is incomprehensible and even if it were not, the Board would not have jurisdiction to hear the claim.

### CONCLUSION

WHEREFORE, Applicant's motion to compel discovery and motion to dismiss should both be denied. Applicant's response to Opposer's motion to compel is without basis. Accordingly, Opposer's motion to compel should be granted.

Dated: December 3, 2014

Respectfully submitted for Opposer,

NAUTICA APPAREL, INC.

By:



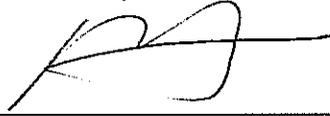
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**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing was sent to attorneys for Applicant  
this 3rd day of December 2014 via first class mail, postage prepaid, to the following:

GINO NEGRETTI LAW OFFICES  
670 PONCE DE LEON AVE.  
CARIBBEAN TOWERS, STE. 17  
SAN JUAN, PR 00907-3207

A handwritten signature in black ink, appearing to be 'PLC', written over a horizontal line.

Pei-Lun Chang