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

Proceeding	91213286
Party	Plaintiff Starbuzz Tobacco, Inc.
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Submission	Motion to Compel Discovery
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Date	09/29/2014
Attachments	Opposer's Motion To Compel.pdf(98177 bytes )

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

STARBUZZ TOBACCO, INC.,

Opposer,

vs.

SIS Resources, Ltd.,

Applicant.

Opposition No. 91213286

App. Serial No. 85846992

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**OPPOSER’S MOTION TO COMPEL RESPONSES TO DISCOVERY**

Pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer, Starbuzz Tobacco, Inc., (“Opposer”) respectfully moves the Board for an order compelling Applicant, ISIS Resources, Ltd., (“Applicant”) to respond to Opposer’s First Set of Interrogatories and Opposer’s First Requests for Production of Documents without objections.

In addition, Opposer requests an extension of the discovery period for the limited purpose of allowing Opposer (and not Applicant) time to review Applicant’s discovery responses as ordered by the Board if the Board granted Opposer’s motion to compel, and to pursue follow up discovery if necessary. Opposer also requests that the testimony period be re-set to follow close of discovery. Such an order is appropriate because Applicant has failed to respond to Opposer’s Interrogatories and Document Requests. Counsel for Opposer had a discovery conference with Applicant’s counsel on September 10, 2014, in an attempt to discuss discovery outstanding issues. During the conference, Opposer raised the issues of Applicant’s non-responsive answers to Opposer’s discovery, to no avail. Despite the passage of more than seven months since

Opposer served Applicant with discovery, Applicant has yet to produce a single document or provide a single answer to any interrogatory.

I. MOTION TO COMPEL

A. Opposer Has Made a Good Faith Effort to Work With Applicant

In accordance with Trademark Rule 2.120(e), Opposer submits that it has made a good faith effort to resolve with Applicant the issues presented in the motion. Specifically, Opposer and the Board have provided Applicant ample extensions of time to respond to the Requests. Opposer has served Applicant with first set of interrogatories on February 13, 2014 (Exh. A). On July 28, 2014, Applicant responded to Opposer's interrogatories (Exh. B). Applicant's responses contain boilerplate objections with no substantive response. Also, Opposer served Applicant with requests for production of documents on February 13, 2014 (Exh. C). Applicant responded on July 28, 2014 (Exh. D). Aside from the boilerplate objections, Applicant produced no documents. And, Applicant made no representations that Applicant would produce or respond to Opposer's discovery any time in the future despite the passage of more than seven months since Applicant was served with discovery.

B. Applicant Forfeited its Right to Object

The Trademark Trial and Appeal Board Manual of Procedure ("TBMP") provides that a party which fails to respond to discovery interrogatories or document requests during the time allowed therefor, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to discovery on the merits. See TBMP §§ 403.03 and 407.01, citing *Bison Corp. v. Perfecta Chemie B.V.*, 4 U.S.P.Q.2d 1718 (TTAB 1987); *Luehrmann v. Kwik Kopy Corp.*, 2 U.S.P.Q.2d 1303 (TTAB 1987).

Because Applicant's has failed to respond to Opposer's requests for production of documents and interrogatories and failed to request any extension from Opposer or the Board, Opposer respectfully requests that the Board order Applicant to fully respond to Opposer's First Set of Interrogatories and First Requests for the Production of Documents without objections within twenty days from the mailing date of the Board's order on this motion.

## II. MOTION TO EXTEND

Pursuant to Fed. R. Civ. P. 6(b), Opposer hereby moves the Board for a sixty (60) day extension of the discovery period for the limited purpose of allowing Opposer (and not Applicant) time to review Applicant's discovery responses as ordered by the Board, and to pursue follow-up discovery if necessary. Opposer also requests an extension of the testimony periods. Opposer does not seek an extension of time for purposes of delay. It is requested that the limited sixty (60) day extension run from the date of service of Applicant's discovery responses as ordered by the Board. Opposer also requests an extension of the testimony period to follow the re-set discovery period.

## III. CONCLUSION

For the reasons stated above, Opposer respectfully requests that the Board grant Opposer's motion to compel and order Applicant to respond to Opposer's First Set of Interrogatories and Opposer's First Requests for Production of Documents without objections within twenty days from the mailing date of the Board's ruling on the motion. Opposer also respectfully requests that the Board grant Opposer's motion for an extension of the discovery period for the limited purpose of allowing Opposer (and not Applicant) time to review Applicant's discovery responses as ordered by the Board, and to pursue follow up discovery if necessary. Opposer requests that the extension run from the date of service of Applicant's

discovery responses as ordered by the Board. Opposer requests that all deadlines be re-set by sixty days from the date the Board ordered Applicant to respond to Opposer's discovery.

Date: September 29, 2014

/Martin E. Jerisat/  
Martin E. Jerisat

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing document, OPPOSER'S MOTION TO COMPEL DISCOVERY AND FOR EXTENSION OF TIME, was served on counsel for Applicant on September 29, 2014 via email to Counsels for Applicant ISIS, Ann Ford and John Nading @ [Ann.Ford@dlapiper.com](mailto:Ann.Ford@dlapiper.com) and [John.Nading@dlapiper.com](mailto:John.Nading@dlapiper.com).

/Martin Jerisat/