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Filing date: **10/14/2014**

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

Proceeding	91213286
Party	Defendant SIS Resources Ltd.
Correspondence Address	ANN K FORD DLA PIPER LLP US 500 8TH STREET NW WASHINGTON, DC 20004 UNITED STATES Ann.Ford@dlapiper.com, Thomas.Zutic@dlapiper.com, John.Nading@dlapiper.com, dctrademarks@dlapiper.com
Submission	Opposition/Response to Motion
Filer's Name	John M. Nading
Filer's e-mail	Ann.Ford@dlapiper.com,Thomas.Zutic@dlapiper.com,John.Nading@dlapiper.com,dctrademarks@dlapiper.com
Signature	/John M. Nading/
Date	10/14/2014
Attachments	Applicant's Response in Opposition to Opposer's Motion to Compel Discovery Responses.pdf(1198744 bytes )

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

In the matter of Trademark  
Application Serial No. 85/846,992  
Mark: MOCHA MIST  
Filed: February 12, 2013  
Published: July 9, 2013

STARBUZZ TOBACCO, INC.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91213286
	)	
SIS RESOURCES LTD.	)	
	)	
Applicant.	)	
	)	

**APPLICANT’S RESPONSE IN OPPOSITION TO  
OPPOSER’S MOTION TO COMPEL RESPONSES TO DISCOVERY**

Applicant SIS Resources Ltd. (“Applicant”), by and through the undersigned counsel, files this Response in Opposition to Opposer Starbuzz Tobacco, Inc.’s (“Opposer”) Motion to Compel Responses to Discovery, which Opposer filed on September 29, 2014 (“Motion to Compel” or “Motion”). Opposer’s Motion to Compel seriously misrepresents the facts and seeks to mislead the U.S. Trademark Trial and Appeal Board (“Board” or “TTAB”). The Board should deny Opposer’s Motion to Compel and all the requested relief therein, not least because of Opposer’s failure to follow Board procedure, but also because Applicant has answered the interrogatories and produced documents thereby mooting the Motion. *See* TBMP §§ 408.01 and 408.01(c). Applicant does not oppose an extension of the discovery deadline and, in fact, filed its own motion seeking a ninety-day extension for both parties. That motion is unopposed and

should be granted. Applicant opposes, however, Opposer's unorthodox request for a sixty-day extension of Opposer's deadlines only.

**A. Procedural History and Background**

Applicant timely responded to Opposer's discovery requests. Applicant's former counsel timely filed a request for an extension of time to serve discovery responses to Opposer's first set of interrogatories and first requests for production of documents on March 20, 2014. Shortly thereafter, on March 31, 2014, Applicant's former counsel filed a request to withdraw as counsel and suspend proceedings pending appointment of new counsel. The undersigned counsel subsequently filed a Notice of Appearance as counsel for Applicant on April 29, 2014. Then, on June 28, 2014, the Board entered an order granting an extension of time for Applicant to respond to discovery until July 28, 2014. Applicant then timely served its discovery responses and objections.

On August 25, 2014, Applicant's counsel sent an email to Opposer's counsel Martin Jerisat to introduce themselves and to set up a time to discuss the case. *See* Decl. of Brian Glover ("Glover Decl.") at Exh. A. Prior to that email, there had been no communication from Opposer's counsel in the four (4) months since Applicant's current counsel filed its Notice of Appearance. When Opposer's counsel did not respond, Applicant's counsel sent a follow-up email on September 3, 2014. *See id.* Opposer's counsel then made a brief call to acknowledge the emails, and the parties agreed to set up a follow-up call to discuss the case generally.

Applicant's counsel followed-up by email on September 5, 2014 regarding scheduling a call (*see id.*), and on September 9, 2014 Opposer's counsel responded and a call was scheduled for September 10, 2014. *See id.* at Exh. B. The September 10 call has been the one and only substantive call between counsel to date, and was not a meet-and-confer regarding Applicant's

discovery responses as Opposer mischaracterizes it in its Motion. To the contrary, Applicant's counsel initiated the call, having never spoken to Opposer's counsel before, for the purpose of introducing themselves and discussing the parties' claims and defenses and prior settlement discussions, if any. Opposer's counsel never asked for a meet-and-confer conference on Applicant's discovery responses before the September 10 call. On that call, the parties discussed the nature and basis of the parties' claims and defenses, the possibilities for settlement, consent to service by email, discovery generally, and Opposer's counsel inquired as to the status of Applicant's document production, which Applicant's counsel said was in process and anticipated producing in the coming weeks.

The following week, Applicant's counsel sent emails to Opposer's counsel requesting consent to a sixty-day extension of pending case deadlines. On September 18, Opposer responded with a request for a ninety-day extension, as well as an extension of the expert disclosure deadline. *See id.* at Exh. C. The deadline for expert disclosures had already closed weeks earlier on August 28, 2014, however. Applicant agreed to the ninety-day extension of pending case deadlines, but declined to seek to re-open and extend expert disclosures, not least because it would be procedurally improper to consent to extend a deadline that had already expired (*cf.* motion to re-open and extend a deadline, which is a different standard under TBMP § 509.01(b)(1)). *See Glover Decl.* at Exh. D. Opposer's counsel persisted and tried to include a new date for expert disclosures in the table of proposed new deadlines in the draft Consent Motion, stating "Let the TTAB deny the expert disclosure extension then, if you are agreeable to it." *See id.* at Exhs. C and D. After Applicant again declined Opposer's improper request to extend the expired deadline by consent, Opposer responded with the *non sequitur*, one-line quip: "I will be filing a motion to compel discovery." *See id.* at Exh. D. There was nothing further

from Opposer on this point until the filing of this Motion to Compel over a week later. At no time before filing the Motion did Opposer's counsel initiate, request, or participate in a meet-and-confer conference to discuss any specific deficiencies in Applicant's discovery responses or a date for Applicant's document production.

Given the lack of a definitive response from Opposer as to the proposed Consent Motion, Applicant followed up again on September 22, 2014. Receiving no response, Applicant filed with the Board a unilateral Motion for a Ninety-Day Extension of the Close of the Discovery Period and Re-Set All Remaining Case Deadlines later that same day. Opposer filed no opposition to that Motion for Extension, and so it should be granted as unopposed.

**B. Argument**

Before filing a motion to compel, Opposer was required to make "a good faith effort, by conference or correspondence, to resolve with the other party or the attorney therefor the issues presented in the motion" and to support its Motion with a written statement that it has done so, "but the parties were unable to resolve their differences." 37 C.F.R. § 2.120 (e). *See also* TBMP § 408.01(c). Opposer made no effort whatsoever. For this reason, Opposer cannot make the required certification that it has complied with its obligations prior to filing a motion to compel. *See* TBMP § 408.01(c) n.7 (citing *Int'l Fin. Corp. v. Bravo Co.*, 64 U.S.P.Q. 2d 1597, 1605 (T.T.A.B. 2002) (permission to file motion to compel denied where motion was devoid of good faith effort to resolve dispute prior to seeking Board intervention)). "The Board expects parties (and their attorneys or other authorized representatives) to cooperate with one another in the discovery process, [footnote omitted] and looks with extreme disfavor on those who do not." TBMP § 408.01.

Opposer's counsel made absolutely no effort to meet-and-confer with Applicant prior to filing the Motion to Compel. His claim that he did so is untrue. Opposer's counsel never initiated any discussion about discovery deficiencies in a letter or email to counsel for Applicant, nor did he request a call for this purpose or set a deadline for Applicant to produce documents. It was only after Applicant's counsel declined consent to Opposer's surreptitious plan to improperly extend the expired expert disclosure deadline that Opposer's counsel filed a reflexive motion to compel without first engaging in a substantive meet-and-confer.

Further, Applicant's counsel told Opposer's counsel on their September 10 call that Applicant was working on its document production and that it would be forthcoming in the coming weeks but that it has taken time to collect the documents. Applicant's counsel reminded Opposer's counsel on that call that Applicant is an Israeli company based in Israel,<sup>1</sup> that the client contact is in Israel, and that there was significant unrest in Israel around the time that Applicant was responding to the discovery requests this past summer and in the weeks following. Moreover, shortly after the September 10 call, major Jewish holidays were observed. Opposer's counsel never requested the documents by a date certain, nor threatened to file a motion to compel in response to our representation that we would produce documents in the coming weeks. Applicant has now produced documents, so Opposer's Motion is moot.

In addition, Opposer's counsel never said anything about Opposer's perceived deficiencies in Applicant's answers to interrogatories, which for all practical purposes are

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<sup>1</sup> As an important aside, Applicant's counsel finds it highly offensive that Opposer persists in referring to Applicant as "ISIS," both in its Motion here, including the Certificate of Service, and in email correspondence.

identical to the document requests.<sup>2</sup> This Motion was the very first time this request was ever made. Applicant's Answers to the Interrogatories were timely served, and given the nature of the Interrogatories, appropriately stated that Applicant would either produce non-privileged, responsive documents, which it has, or that it was unaware of responsive documents. Applicant stands by its interrogatory answers and objections.

**C. Conclusion**

For all these reasons, Opposer's Motion to Compel should be denied, including but not limited to its bizarre, unorthodox request for a unilateral sixty-day extension of case deadlines for Opposer only. Furthermore, Applicant respectfully requests that the Board grant Applicant's Motion for a Ninety-Day Extension of the Close of the Discovery Period and Re-Set All Remaining Case Deadlines, which was filed on September 22, 2014, and not opposed.

Respectfully submitted,

Dated: October 14, 2014

By: /s/ John M. Nading  
Ann K. Ford  
Thomas E. Zutic  
John M. Nading  
DLA PIPER LLP (US)  
500 8th Street, N.W.  
Washington, D.C. 20004  
Tel. 202-799-4000  
Fax 202-799-5000

*Attorneys for Applicant SIS Resources Ltd.*

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<sup>2</sup> Opposer's interrogatories are identical in substance to the correspondingly numbered document requests, with the only difference being that the interrogatories ask Applicant to "Describe in detail all Documents . . . ."

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing **APPLICANT'S RESPONSE IN OPPOSITION TO OPPOSER'S MOTION TO COMPEL RESPONSES TO DISCOVERY** was served via electronic mail, as agreed to be the Parties, to Opposer's counsel of record:

Martin E. Jerisat  
Jerisat Law Firm  
2372 Morse Avenue, Suite 322  
Irvine, California 92614  
mjerisat@jk-lawfirm.com

this 14th day of October, 2014.

/s/ John M. Nading \_\_\_\_\_  
John M. Nading  
*Attorney for Applicant*

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

In the matter of Trademark  
Application Serial No. 85/846,992  
Mark: MOCHA MIST  
Filed: February 12, 2013  
Published: July 9, 2013

STARBUZZ TOBACCO, INC.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91213286
	)	
SIS RESOURCES LTD.	)	
	)	
Applicant.	)	
	)	

**DECLARATION OF BRIAN B. GLOVER IN SUPPORT OF  
APPLICANT'S RESPONSE IN OPPOSITION TO  
OPPOSER'S MOTION TO COMPEL RESPONSES TO DISCOVERY**

I, Brian B. Glover, declare:

1. I am a Docketing Specialist with the law firm of DLA Piper LLP (US), which is counsel for SIS Resources Ltd., the Applicant in this Opposition Proceeding.
2. I have personal knowledge of the facts stated herein, and I would competently testify to such facts if called upon to do so.
3. Exhibit A attached hereto is a true and correct copy of a chain of emails from Ann Ford to Martin Jerisat, on September 5, 2014, September 3, 2014, and August 25, 2014.
4. Exhibit B attached hereto is a true and correct copy of a chain of emails between Ann Ford and Martin Jerisat on September 9, 2014.

5. Exhibit C attached hereto is a true and correct copy of a chain of emails between Martin Jerisat and John Nading on September 19, 2014, and September 18, 2014, including a draft consent motion which was attached to Mr. Jerisat's September 19, 2014 email.

6. Exhibit D attached hereto is a true and correct copy of a chain of emails between Martin Jerisat and John Nading on September 19, 2014.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is true and correct, and that I executed this declaration on October 14, 2014, at Washington, District of Columbia.



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Brian B. Glover

# **EXHIBIT A**

to Declaration of Brian B. Glover in Support of Applicant's Response in Opposition to  
Opposer's Motion to Compel Responses to Discovery

Opposition Proceeding No. 91213286

*Starbuzz Tobacco, Inc. v. SIS Resources Ltd.*

## Glover, Brian

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**From:** Ford, Ann K.  
**Sent:** Friday, September 05, 2014 12:25 PM  
**To:** martin@starbuzztobacco.com  
**Cc:** Nading, John  
**Subject:** MOCHA MIST Mark Opposition Proceeding No. 91213286

Martin,

Checking in after our call on Wednesday. You mentioned you would be sending new contact information and proposed times for a follow-up call with your colleague.

Thanks.  
Ann



Ann K. Ford  
DLA Piper LLP (US)  
500 8th Street, NW  
Washington, DC 20004  
202.799.4140 T  
202.799.5140 F  
202.538.0717 M  
[ann.ford@dlapiper.com](mailto:ann.ford@dlapiper.com)  
[www.dlapiper.com](http://www.dlapiper.com)

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**From:** Ford, Ann K.  
**Sent:** Wednesday, September 03, 2014 12:44 PM  
**To:** [martin@starbuzztobacco.com](mailto:martin@starbuzztobacco.com)  
**Cc:** Nading, John  
**Subject:** MOCHA MIST Mark Opposition Proceeding No. 91213286

Martin,

Following up on my email below. Please let me know when would be a good time for a call this week.

Thanks.  
Ann



Ann K. Ford  
DLA Piper LLP (US)  
500 8th Street, NW  
Washington, DC 20004  
202.799.4140 T  
202.799.5140 F  
202.538.0717 M  
[ann.ford@dlapiper.com](mailto:ann.ford@dlapiper.com)  
[www.dlapiper.com](http://www.dlapiper.com)

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**From:** Ford, Ann K.  
**Sent:** Monday, August 25, 2014 5:16 PM  
**To:** [martin@starbuzztobacco.com](mailto:martin@starbuzztobacco.com)  
**Cc:** Nading, John  
**Subject:** MOCHA MIST Mark Opposition Proceeding No. 91213286

Dear Martin:

As you know, we represent Applicant SIS Resources Ltd. in the above-referenced Opposition Proceeding. We would like to schedule a call to discuss the case. Please let us know your availability for a call sometime this week. We are generally available.

Best regards,  
Ann



Ann K. Ford  
DLA Piper LLP (US)  
500 8th Street, NW  
Washington, DC 20004  
202.799.4140 **T**  
202.799.5140 **F**  
202.538.0717 **M**  
[ann.ford@dlapiper.com](mailto:ann.ford@dlapiper.com)  
[www.dlapiper.com](http://www.dlapiper.com)

# **EXHIBIT B**

to Declaration of Brian B. Glover in Support of Applicant's Response in Opposition to  
Opposer's Motion to Compel Responses to Discovery

Opposition Proceeding No. 91213286

*Starbuzz Tobacco, Inc. v. SIS Resources Ltd.*

## Glover, Brian

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**From:** Ford, Ann K.  
**Sent:** Tuesday, September 09, 2014 5:54 PM  
**To:** Martin Jerisat  
**Cc:** Nading, John; Abell, Suzanne  
**Subject:** RE: Starbuzz v. SIS - MOCHA MIST TTAB

Yes, that is perfect.

**From:** Martin Jerisat [<mailto:mjerisat@jk-lawfirm.com>]  
**Sent:** Tuesday, September 09, 2014 5:52 PM  
**To:** Ford, Ann K.  
**Cc:** Nading, John; Abell, Suzanne  
**Subject:** Re: Starbuzz v. SIS - MOCHA MIST TTAB

How about Tomorrow 3PDT/6EDT?

On Tue, Sep 9, 2014 at 2:49 PM, Ford, Ann K. <[Ann.Ford@dlapiper.com](mailto:Ann.Ford@dlapiper.com)> wrote:

Does 3PT/6ET work for you? We can call you at your number below.

Thanks Martin.

Best,

Ann



Ann K. Ford  
DLA Piper LLP (US)  
500 8th Street, NW  
Washington, DC 20004

[202.799.4140](tel:202.799.4140) T  
[202.799.5140](tel:202.799.5140) F  
[202.538.0717](tel:202.538.0717) M  
[ann.ford@dlapiper.com](mailto:ann.ford@dlapiper.com)

[www.dlapiper.com](http://www.dlapiper.com)

**From:** Martin Jerisat [mailto:[mjerisat@jk-lawfirm.com](mailto:mjerisat@jk-lawfirm.com)]  
**Sent:** Tuesday, September 09, 2014 5:47 PM  
**To:** Ford, Ann K.; Nading, John  
**Subject:** Starbuzz v. ISIS - MOCHA MIST TTAB

Hi Ann,

Are you available for a conference call this week? I will make myself available.

Sincerely,

Martin Jerisat  
Jerisat Law Firm  
2372 Morse Ave., Ste. 322  
Irvine, CA 92614  
T: [714.571.5700](tel:714.571.5700)

Patent, Trademark, Life Science and Litigation

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--  
Sincerely,

Martin Jerisat

Jerisat Law Firm  
2372 Morse Ave., Ste. 322  
Irvine, CA 92614  
T: 714.571.5700

Patent, Trademark, Life Science and Litigation

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# **EXHIBIT C**

to Declaration of Brian B. Glover in Support of Applicant's Response in Opposition to  
Opposer's Motion to Compel Responses to Discovery

Opposition Proceeding No. 91213286

*Starbuzz Tobacco, Inc. v. SIS Resources Ltd.*

## Glover, Brian

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**From:** Martin Jerisat <mjerisat@jk-lawfirm.com>  
**Sent:** Friday, September 19, 2014 2:40 PM  
**To:** Nading, John  
**Cc:** Ford, Ann K.; DC Trademarks  
**Subject:** Re: MOCHA MIST Opposition  
**Attachments:** MOCHA MIST Opposition -- Consented Motion for Extension of the Close of the Discovery Period-Redlined version-SB comments.doc

John,

Since we extending all deadlines, why not extend expert disclosure date too, as in my attachment?

On Fri, Sep 19, 2014 at 11:23 AM, Nading, John <[John.Nading@dlapiper.com](mailto:John.Nading@dlapiper.com)> wrote:

Martin,

We can agree to a 90-day extension of the close of the discovery period (the next pending case deadline) and subsequent pending case deadlines. We noticed some discrepancies in the calculation of proposed dates in the revised draft of the Consented Motion provided with your email below. Therefore, we have revised our initial draft of the Consented Motion to push-out pending deadlines beginning with the close of discovery by 90 days. Please let us know if the attached draft meets with your approval, and we will file it with the Board.

Thanks. Have a good weekend.

John

**John M. Nading**

T [+1 202.799.4157](tel:+12027994157)  
F [+1 202.799.5157](tel:+12027995157)  
E [john.nading@dlapiper.com](mailto:john.nading@dlapiper.com)



**From:** Martin Jerisat [<mailto:mjerisat@jk-lawfirm.com>]  
**Sent:** Thursday, September 18, 2014 7:46 PM  
**To:** Nading, John  
**Cc:** Ford, Ann K.; DC Trademarks  
**Subject:** Re: MOCHA MIST Opposition

John,

How about 90 days extension of all deadlines?

Sincerely,

Martin Jerisat  
Jerisat Law Firm  
2372 Morse Ave., Ste. 322  
Irvine, CA 92614  
T: [714.571.5700](tel:714.571.5700)

Patent, Trademark, Life Science and Litigation

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--

Sincerely,

Martin Jerisat  
Jerisat Law Firm  
2372 Morse Ave., Ste. 322  
Irvine, CA 92614  
T: 714.571.5700

Patent, Trademark, Life Science and Litigation

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

In the matter of Trademark  
Application Serial No. 85/846,992  
Mark: MOCHA MIST  
Filed: February 12, 2013  
Published: July 9, 2013

STARBUZZ TOBACCO, INC.	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91213286
	)	
SIS RESOURCES LTD.	)	
	)	
Applicant.	)	
	)	

**CONSENTED MOTION FOR A NINETY-DAY EXTENSION OF THE CLOSE OF THE  
DISCOVERY PERIOD AND RE-SET ALL REMAINING CASE DEADLINES**

Commissioner for Trademarks  
Post Office Box 1451  
Alexandria, Virginia 22313-1451

Applicant SIS Resources Ltd. (hereinafter “Applicant”), by and through undersigned counsel, together with Opposer Starbuzz Tobacco, Inc. (hereinafter “Opposer”), submit this Consented Motion for a Ninety-Day Extension of the Close of the Discovery Period and Re-Set All Remaining Case Deadlines with the Trademark Trial and Appeal Board (“Board”), respectfully requesting that the Board grant an extension of time through and including December 26, 2014 for the Close of the Discovery Period, and that all subsequent case deadlines be re-set by ninety days.

The new remaining case deadlines would be as follows:

Expert Disclosures Due:	<del>CLOSED</del> <a href="#">November 12, 2014</a>
Discovery Period to Close:	December 26, 2014
Plaintiff Pretrial Disclosures:	February 9, 2015
Plaintiff's 30-Day Trial Period Ends:	March 26, 2015
Defendant's Pretrial Disclosures:	April 10, 2015
Defendant's 30-Day Trial Period Ends:	May 25, 2015
Plaintiff's Rebuttal Disclosures:	June 9, 2015
Plaintiff's 15-Day Rebuttal Period Ends:	July 9, 2015

The deadline for the Close of the Discovery Period is currently September 27, 2014. The Parties have engaged in written discovery, and additional time is needed for the Parties to complete discovery. On September ~~19~~, 2014, Applicant secured the express consent of Opposer, as confirmed by its attorney Martin E. Jerisat, to this Consented Motion and for the extension requested herein.

The Parties respectfully submit that this Consented Motion is not made for the purpose of unduly delaying proceedings before the Board.

WHEREFORE, in light of the foregoing, the Parties have shown good cause as to why the instant Consented Motion should be granted. As such, the Parties request that further appropriate action be taken in these proceedings, including the granting of an extension of the deadline for the Close of the Discovery Period through and including December 26, 2014, and that all subsequent case deadlines be re-set by ninety days accordingly.

Respectfully submitted,

Dated: September \_\_, 2014 By: \_\_\_\_\_

Ann K. Ford  
Thomas E. Zutic  
John M. Nading  
DLA PIPER LLP (US)  
500 8th Street, N.W.  
Washington, D.C. 20004  
Tel. 202-799-4000  
Fax 202-799-5000

*Attorneys for Applicant SIS Resources Ltd.*

**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing **CONSENTED MOTION FOR A NINETY-DAY EXTENSION OF THE CLOSE OF THE DISCOVERY PERIOD AND RE-SET ALL REMAINING CASE DEADLINES** was served via electronic mail, as agreed to be the Parties, to Opposer's counsel of record:

Martin E. Jerisat  
Jerisat Law Firm  
2372 Morse Avenue, Suite 322  
Irvine, California 92614  
mjerisat@jk-lawfirm.com

~~Martin E. Jerisat  
Starbuzz Tobacco, Inc.  
10871 Forbes Avenue  
Garden Grove, California 92843  
martin@starbuzztobacco.com~~

this \_\_\_\_ day of September, 2014.

\_\_\_\_\_  
John M. Nading  
*Attorney for Applicant*

# **EXHIBIT D**

to Declaration of Brian B. Glover in Support of Applicant's Response in Opposition to  
Opposer's Motion to Compel Responses to Discovery

Opposition Proceeding No. 91213286

*Starbuzz Tobacco, Inc. v. SIS Resources Ltd.*

## Glover, Brian

---

**From:** Martin Jerisat <mjerisat@jk-lawfirm.com>  
**Sent:** Friday, September 19, 2014 5:04 PM  
**To:** Nading, John  
**Cc:** Ford, Ann K.; DC Trademarks  
**Subject:** Re: MOCHA MIST Opposition

I will be filing a motion to compel discovery.

On Fri, Sep 19, 2014 at 1:52 PM, Nading, John <[John.Nading@dlapiper.com](mailto:John.Nading@dlapiper.com)> wrote:

We are not agreeable to moving to re-open the expert disclosure deadline.

**From:** Martin Jerisat [mailto:[mjerisat@jk-lawfirm.com](mailto:mjerisat@jk-lawfirm.com)]  
**Sent:** Friday, September 19, 2014 4:36 PM

**To:** Nading, John  
**Cc:** Ford, Ann K.; DC Trademarks  
**Subject:** Re: MOCHA MIST Opposition

Let the TTAB deny the expert disclosure extension, if you are agreeable to it.

On Fri, Sep 19, 2014 at 1:32 PM, Nading, John <[John.Nading@dlapiper.com](mailto:John.Nading@dlapiper.com)> wrote:

The parties cannot simply consent to extend a deadline which has already expired. This extension is reciprocal – we proposed a 60-day extension of pending case deadlines, and then agreed to your request for a 90-day extension as set out in our Consented Motion this morning.

**John M. Nading**

T [+1 202.799.4157](tel:+12027994157)  
F [+1 202.799.5157](tel:+12027995157)  
E [john.nading@dlapiper.com](mailto:john.nading@dlapiper.com)



**From:** Martin Jerisat [mailto:[mjerisat@jk-lawfirm.com](mailto:mjerisat@jk-lawfirm.com)]  
**Sent:** Friday, September 19, 2014 2:51 PM

**To:** Nading, John  
**Cc:** Ford, Ann K.; DC Trademarks  
**Subject:** Re: MOCHA MIST Opposition

Unless consented by both parties. If I am giving you an extension to allow you to locate your foreign witness, I would expect some reciprocity.

On Fri, Sep 19, 2014 at 11:41 AM, Nading, John <[John.Nading@dlapiper.com](mailto:John.Nading@dlapiper.com)> wrote:

Expert disclosures already closed on August 28, 2014, and thus cannot be extended.

**John M. Nading**

T [+1 202.799.4157](tel:+12027994157)  
F [+1 202.799.5157](tel:+12027995157)  
E [john.nading@dlapiper.com](mailto:john.nading@dlapiper.com)



**From:** Martin Jerisat [mailto:[mjerisat@jk-lawfirm.com](mailto:mjerisat@jk-lawfirm.com)]  
**Sent:** Friday, September 19, 2014 2:40 PM

**To:** Nading, John  
**Cc:** Ford, Ann K.; DC Trademarks  
**Subject:** Re: MOCHA MIST Opposition

John,

Since we extending all deadlines, why not extend expert disclosure date too, as in my attachment?

On Fri, Sep 19, 2014 at 11:23 AM, Nading, John <[John.Nading@dlapiper.com](mailto:John.Nading@dlapiper.com)> wrote:

Martin,

We can agree to a 90-day extension of the close of the discovery period (the next pending case deadline) and subsequent pending case deadlines. We noticed some discrepancies in the calculation of proposed dates in the revised draft of the Consented Motion provided with your email below. Therefore, we have revised our initial draft of the Consented Motion to push-out pending deadlines beginning with the close of discovery by 90 days. Please let us know if the attached draft meets with your approval, and we will file it with the Board.

Thanks. Have a good weekend.

John

**John M. Nading**

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E [john.nading@dlapiper.com](mailto:john.nading@dlapiper.com)



**From:** Martin Jerisat [<mailto:mjerisat@jk-lawfirm.com>]

**Sent:** Thursday, September 18, 2014 7:46 PM

**To:** Nading, John

**Cc:** Ford, Ann K.; DC Trademarks

**Subject:** Re: MOCHA MIST Opposition

| John,

How about 90 days extension of all deadlines?

Sincerely,

Martin Jerisat  
Jerisat Law Firm  
2372 Morse Ave., Ste. 322  
Irvine, CA 92614  
T: [714.571.5700](tel:714.571.5700)

Patent, Trademark, Life Science and Litigation

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