

ESTTA Tracking number: **ESTTA693361**

Filing date: **09/02/2015**

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

Proceeding	91219335
Party	Plaintiff Braniff International Property Company
Correspondence Address	MATTHEW H SWYERS THE TRADEMARK COMPANY PLLC 344 MAPLE AVE WEST PMB 151 VIENNA, VA 22180 UNITED STATES mswyers@thetrademarkcompany.com
Submission	Motion to Compel Discovery
Filer's Name	Matthew H. Swyers
Filer's e-mail	mswyers@thetrademarkcompany.com
Signature	/Matthew H. Swyers/
Date	09/02/2015
Attachments	Motion to Compel.pdf(144853 bytes) Motion to Compel Exhibits.pdf(139038 bytes)

THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial and Appeal Board

In the matter of Serial Nos. 86/278,358 & 86/319,634,
For the marks  & BRANIFF INTERNATIONAL AIRWAYS,

Braniff International Property Company,	:	
	:	
Opposer,	:	
	:	
	:	Opposition No. 91219335
vs.	:	
	:	
Braniff Holdings, Inc.,	:	
	:	
Applicant.	:	

MOTION TO COMPEL INITIAL DISCLOSURES

COMES NOW the Opposer, Braniff International Property Company (hereinafter “Opposer”), The Trademark Company, PLLC, and pursuant to §§ 408.01(b) & 523 of the TBMP *et seq.* files the instant motion to compel initial disclosures seeking an order compelling Applicant Braniff Holdings, Inc. (hereinafter “Applicant”) to provide its Initial Disclosures as required by §401 of the TBMP *et seq.* In support of the instant motion, Applicant states as follows:

STATEMENT OF THE CASE

1. On or about November 13, 2014 Opposer filed its *Notice of Opposition* instituting the instant opposition proceeding using the correspondence address listed at that time.
2. On or about December 8, 2014 the U.S. Postal Service returned the *Notice of Opposition* previously served on Applicant.
3. On or about December 9, 2014 Opposer filed a *Notice of Ineffective Service*.
4. On December 30, 2014 the Board reset the trial dates allowing the Applicant until January 18, 2015 to file its answer in the instant proceeding.

5. On or about January 30, 2015 Applicant filed their *Answer to Notice of Opposition*.
6. On or about January 31, 2015 Applicant filed *Applicant's Memorandum of Law*.
7. On or about February 20, 2015 Opposer believed he had filed *Opposer's Opposition to Applicant's Motion to File Answer Late*.
8. On or about February 23, 2015 Opposer filed *Motion for Leave to File Opposition to Applicant's Motion to File Answer Late*.
9. On or about March 12, 2015 the U.S. Postal Service returned the *Opposer's Opposition to Applicant's Motion to File Answer Late* previously served on Applicant.
10. On or about March 18, 2015 the U.S. Postal Service returned the *Motion for Leave to File Opposition to Applicant's Motion to File Answer Late* previously served on Applicant.
11. On March 19, 2015 Opposer filed a *Notice of Ineffective Service*.
12. On or about April 13, 2015 the Board reset the trial dates with the Discovery Conference to be held no later than as May 12, 2015 and the Initial Disclosures due by June 11, 2015.
13. On May 27, 2015 Opposer called Applicant at the appointed time for the Discovery Conference and was told Applicant was not ready at this time and asked for the Discovery Conference to be rescheduled.
14. On June 11, 2015 Opposer sent Opposer's Initial Disclosures to Applicant.
15. On August 10, 2015 Opposer sent an email to Applicant requesting Applicant's Initial Disclosures for this matter. *See Exhibit 1*.
16. On August 11, 2015 Opposer left a voicemail for Applicant requesting Applicant's Initial Disclosures for this matter.

17. On August 11, 2015 Opposer filed a *Notice of Ineffective Service*.

18. On August 12, 2015 Opposer sent another email to Applicant requesting Applicant's Initial Disclosures for this matter. *See* Exhibit 2.

19. On August 13, 2015 Opposer spoke with Applicant requesting Applicant's Initial Disclosures and was informed that Applicant would be walking away from the matter and letting Opposer have the mark.

20. On August 14, 2015 Opposer sent another email to Applicant with a final request for Applicant's Initial Disclosures. *See* Exhibit 3.

21. To date, no response has been received from Applicant to any request to reschedule the Discovery Conference nor has Opposer received Applicant's Initial Disclosures.

ARGUMENT

A party may appropriately file a motion to compel initial disclosures when the other party fails to make required initial disclosures. § 523 of the TBMP *et seq.* Pursuant to § 408.01(b) of the TBMP *et seq.* all parties have an obligation to make initial disclosures. Moreover pursuant to § 401.02 of the TBMP *et seq.* a party failing to make initial disclosures may be subject to a motion to compel, and ultimately, a motion for discovery sanctions. *See 37 CFR § 2.120(e); 37 CFR § 2.120(g)(1); see also Luster Products Inc. v. Van Zandt*, 104 USPQ2d 1877, 1878-79 (TTAB 2012) (motion to compel is available remedy for failure to serve, or insufficient, initial disclosures).

In the instant case Opposer has made numerous efforts to resolve this issue by trying to obtain Applicant's Initial Disclosures. Furthermore, Applicant has continuously caused delays to the proceeding by not following the rules governing the proceeding by failing to follow deadlines, namely the discovery conference and initial disclosure deadlines, and failing to keep

the Board notified of a current address despite the Board's reminder that it is the responsibility of a party to a proceeding ensure that the Board have the party's current correspondence address. Through these failures Applicant has caused considerable delays, willfully disregarded the Board's orders, and has needlessly increased the cost of litigation for Opposer.

WHEREFORE in consideration of the foregoing, pursuant §§ 408.01(b) & 523 of the TBMP *et seq.* Opposer respectfully moves the Board for an Order compelling the Applicant to cooperate and provide Applicant's Initial Disclosures.

Respectfully submitted this 2nd day of September, 2015,

THE TRADEMARK COMPANY, PLLC

/Matthew H. Swyers/
Matthew H. Swyers, Esq.
344 Maple Avenue West, PMB 151
Vienna, VA 22180
Tel. (800) 906-8626 x100
Facsimile (270) 477-4574
mswyers@TheTrademarkCompany.com
Counsel for Opposer

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
The Trademark Trial And Appeal Board**

In the matter of Serial Nos. 86/278,358 & 86/319,634,
For the marks  & BRANIFF INTERNATIONAL AIRWAYS,

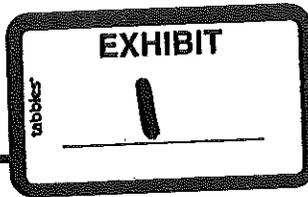
Braniff International Property Company,	:	
	:	
Opposer,	:	
	:	
	:	Opposition No. 91219335
vs.	:	
	:	
Braniff Holdings, Inc.,	:	
	:	
Applicant.	:	

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that I caused a copy of the foregoing pleading this 2nd day of
September, 2015, to be served, via first class mail, postage prepaid, upon:

Anthony J Rossi
Braniff Holdings Inc
200 Park Ave, Suite 1700
New York, NY 10166-0005

/Matthew H. Swyers
Matthew H. Swyers



Shannon Strayhorn

From: Shannon Strayhorn <sstrayhorn@thetrademarkcompany.com>
Sent: Monday, August 10, 2015 5:01 PM
To: braniffholdings@gmail.com
Subject: Braniff International Property Company vs. Braniff Holdings, Inc.

AJ,

As you are aware we represent Braniff International Property Company in regards to the above referenced matter; however, our records indicate that we have yet to receive your Initial Disclosures for this matter, which were due almost two months ago. As such, please consider this a good faith effort to obtain the same.

Thank you,

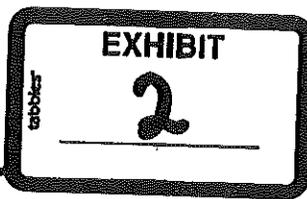
Shannon Strayhorn

Trademark Specialist
The Trademark Company, PLLC
2703 Jones Franklin Road, Suite 206
Cary, NC 27518
Phone (800) 906-8626 x111
Fax (919) 861-5278
www.TheTrademarkCompany.com

Click Here to subscribe to our monthly Newsletters! Make sure to follow us for important tips and information relevant to the protection of your trademarks as well as for promotions and contests involving our services.

NOTICE: This electronic mail message and all attachments transmitted with it are intended solely for the use of the addressee and may contain legally privileged and confidential information. If the reader of this message is not the intended recipient, or if an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by replying to this message and please delete it from your computer.

The Trademark Company PLLC is a Virginia Professional Limited Liability Company, Matthew H. Swyers, Esq. principal. Principal admitted to practice law in the Commonwealth of Virginia and the District of Columbia. Practice limited to the federal protection of trademarks and copyrights.



Shannon Strayhorn

From: Shannon Strayhorn <sstrayhorn@thetrademarkcompany.com>
Sent: Wednesday, August 12, 2015 5:00 PM
To: braniffholdings@gmail.com
Subject: Braniff International Property Company vs. Braniff Holdings, Inc.

AJ,

We are once again writing in a good faith effort to obtain your Initial Disclosures for this matter. Please send the same by the end of this week.

Thank you,

Shannon Strayhorn

Trademark Specialist
The Trademark Company, PLLC
2703 Jones Franklin Road, Suite 206
Cary, NC 27518
Phone (800) 906-8626 x111
Fax (919) 861-5278
www.TheTrademarkCompany.com

Click Here to subscribe to our monthly Newsletters! Make sure to follow us for important tips and information relevant to the protection of your trademarks as well as for promotions and contests involving our services.

NOTICE: This electronic mail message and all attachments transmitted with it are intended solely for the use of the addressee and may contain legally privileged and confidential information. If the reader of this message is not the intended recipient, or if an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by replying to this message and please delete it from your computer.

The Trademark Company PLLC is a Virginia Professional Limited Liability Company, Matthew H. Swyers, Esq. principal. Principal admitted to practice law in the Commonwealth of Virginia and the District of Columbia. Practice limited to the federal protection of trademarks and copyrights.



Shannon Strayhorn

From: Shannon Strayhorn <sstrayhorn@thetrademarkcompany.com>
Sent: Friday, August 14, 2015 5:01 PM
To: braniffholdings@gmail.com
Subject: Braniff International Property Company vs. Braniff Holdings, Inc. - FRE 408

AJ,

Pursuant to our conversation yesterday, please send us a receipt of your Express Abandonment at your earliest convenience. However, if you have changed your mind on the same, please consider this our final good faith effort to obtain your Initial Disclosures for this matter.

Thank you,

Shannon Strayhorn

Trademark Specialist
The Trademark Company, PLLC
2703 Jones Franklin Road, Suite 206
Cary, NC 27518
Phone (800) 906-8626 x111
Fax (919) 861-5278
www.TheTrademarkCompany.com

Click Here to subscribe to our monthly Newsletters! Make sure to follow us for important tips and information relevant to the protection of your trademarks as well as for promotions and contests involving our services.

NOTICE: This electronic mail message and all attachments transmitted with it are intended solely for the use of the addressee and may contain legally privileged and confidential information. If the reader of this message is not the intended recipient, or if an employee or agent responsible for delivering this message to the intended recipient, you are hereby notified that any dissemination, distribution, copying, or other use of this message or its attachments is strictly prohibited. If you have received this message in error, please notify the sender immediately by replying to this message and please delete it from your computer.

The Trademark Company PLLC is a Virginia Professional Limited Liability Company, Matthew H. Swyers, Esq. principal. Principal admitted to practice law in the Commonwealth of Virginia and the District of Columbia. Practice limited to the federal protection of trademarks and copyrights.