

ESTTA Tracking number: **ESTTA752070**

Filing date: **06/13/2016**

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

Proceeding	91220325
Party	Plaintiff Micro Matic USA, Inc. and Micro Matic USA, LLC
Correspondence Address	RYAN M CORBETT BURR & FORMAN LLP 201 NORTH FRANKLIN STREET, SUITE 3200 TAMPA, FL 33602 UNITED STATES rcorbett@burr.com
Submission	Motion for Sanctions (Other)
Filer's Name	Ryan M. Corbett
Filer's e-mail	rcorbett@burr.com
Signature	/Ryan M. Corbett/
Date	06/13/2016
Attachments	MM_MotionforSanctions.pdf(138297 bytes) Corbett_Dec_ISO_MotionforSanctions.pdf(1243415 bytes)

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

MICRO MATIC USA, INC. and MICRO MATIC USA, LLC,)	
)	
Opposers,)	Opposition No. 91220325
)	
v.)	
)	
TAIZHOU TALOS SANITARY CO., LTD.,)	Serial No.: 79148013
)	
Applicant.		

**OPPOSERS' MOTION FOR SANCTIONS FOR APPLICANT'S FAILURE
TO SERVE INITIAL DISCLOSURES**

Pursuant to Rule 2.120(g)(1) of the Trademark Rules of Practice, Opposers, Micro Matic USA, Inc. and Micro Matic USA, LLC (“Opposers”), by counsel, request that the Board issue a sanction against Applicant, Taizhou Talos Sanitary Co., Ltd. (“Talos” or “Applicant”), in the form of entering judgment against Applicant, due to Applicant’s failure to comply with Board’s May 13, 2016 Order (Dkt. No. 8) compelling Applicant to serve its initial disclosures by June 2, 2016.

I. BACKGROUND

On January 8, 2015, Opposers filed their Notice of Opposition opposing the registration of Applicant’s applied-for mark MICRO MATIC, Serial No. 79/148,013. On January 22, 2015, the Board issued an order instituting the present Opposition and setting forth various due dates for the proceeding. According to the Board’s schedule, the parties were required to conduct the discovery conference by April 2, 2015, and exchange initial disclosures by May 2, 2015.¹

¹ Although this Motion relates specifically to Applicant’s failure to provide initial disclosures, Opposers note that Applicant failed to engage in the discovery conference by the required due date despite repeated attempts by Opposers’ counsel to contact Applicant’s counsel. To date, the

Opposers served their initial disclosures on May 4, 2015, in accordance with the Board's schedule.² See Exhibit A (Declaration of Ryan M. Corbett; "Corbett Decl.") at ¶ 5. However, Applicant never served its initial disclosures. See Ex. A (Corbett Decl.) at ¶ 6. On May 22, 2015, Opposers filed a motion to compel Applicant to provide its initial disclosures (Dkt. No. 6). Applicant did not file an opposition to Opposers' motion to compel, and the Board granted the motion on May 13, 2016 (Dkt. No. 8). In its Order, the Board required Applicant to serve its initial disclosures by June 2, 2016, or face possible sanctions. Consistent with its conduct throughout this proceeding, Applicant again failed to serve its initial disclosures by June 2, 2016, and to date still has not provided its initial disclosures. See Ex. A (Corbett Decl.) at ¶ 6. Applicant's complete disregard for its discovery obligations in this proceeding³, and its blatant indifference to the Board's May 13 Order, warrant sanctions. In view of Applicant's complete failure to participate in this proceeding, Opposers respectfully request that the Board enter judgment in favor of Opposers.

II. ARGUMENT

Pursuant to Trademark Rule 2.120(g)(1), sanctions are appropriate against a party failing to provide initial disclosures, where the "party's failure to make disclosures follows an order of the Board affirming or reiterating the party's obligation to make such disclosures." *Kairos Inst. of Sound Healing LLC v. Doolittle Gardens, LLC*, Opposition No. 91181945, 2008 WL 4639567,

discovery conference has not taken place, and Applicant's counsel continues to ignore Opposers' counsel's attempts to make contact.

² The May 2, 2015 due date for serving initial disclosures fell on a Saturday, so Opposers timely served their initial disclosures on the next business day, May 4, 2015. See 37 C.F.R. § 2.196.

³ Applicant has also failed to respond to Opposers' First Set of Interrogatories and First Set of Requests for Production, which were served on May 21, 2015. See Ex. A (Corbett Decl.) at ¶¶ 8-9.

at *2 (T.T.A.B. Oct. 17, 2008). Applicant's conduct in this proceeding falls squarely within Rule 2.120(g)(1), as the Board issued its May 13, 2016 Order (Dkt. No. 8) requiring Applicant to make its initial disclosures by June 2, 2016, and Applicant has utterly failed to do so. *See* Ex. A (Corbett Decl.) at ¶ 6. Sanctions are therefore appropriate. *See e.g., M.C.I. Foods, Inc. v. Brady Bunte*, 86 U.S.P.Q.2d 1044, 2008 WL 449834 (T.T.A.B. Feb. 19, 2008) (awarding sanctions against party for belatedly serving discovery responses and violating order that required service of responses without objections).

In view of Applicant's repeated failures to participate in this proceeding, and its defiance of the Board's Order, an entry of judgment in favor of Opposers is appropriate. *See Benedict v. Super Bakery, Inc.*, 665 F.3d 1263, 1269 (Fed. Cir. 2011) (upholding sanction entering judgment against party that repeatedly refused to provide discovery responses and comply with Board orders). After filing its Answer to Opposers' Notice of Opposition on February 28, 2015, Applicant has refused to participate in this proceeding. More specifically, Applicant's counsel failed to respond to Opposers' counsel's emails to schedule the discovery conference required by the Board's schedule to occur by April 2, 2015. Counsel for Opposers emailed Applicant's counsel on March 27 and March 31, and left a voicemail with Applicant's counsel on April 2 attempting to schedule the discovery conference, but again never received a response to any email or voicemail. *See* Ex. A (Declaration of Ryan M. Corbett; "Corbett Decl.") at ¶¶ 2-3. On April 13, 2015, Opposers' counsel again emailed Applicant's counsel in an effort to schedule the discovery conference, but again received no response. *See* Ex. A (Corbett Decl.) at ¶ 4.

After Opposers' timely served their initial disclosures on May 4, 2015, Opposers' counsel emailed Applicant's counsel on May 5, 2015 and again on May 14, 2015 demanding that Applicant serve its initial disclosures, but Applicant's counsel never responded. *See* Ex. A

(Corbett Decl.) at ¶ 7. Applicant’s failure to provide its initial disclosures despite Opposers’ counsel’s repeated attempts to contact Applicant, necessitated Opposers’ motion to compel (Dkt. No. 6).

Moreover, on May 21, 2015, one day before Opposers filed their motion to compel, Opposers served their first set of interrogatories and first set of requests for production on Applicant. *See* Corbett Decl. at ¶ 8. To date, more than one year after Opposers served their initial set of discovery requests, Applicant still has not served responses or objections to Opposers’ discovery requests.⁴ *See* Corbett Decl. at ¶ 9.

Although an entry of judgment is a harsh sanction, “it is justified where no less drastic remedy would be effective, and there is a strong showing of willful evasion.” *Baron Philippe De Rothschild S.A.*, 55 U.S.P.Q.2d 1848 (T.T.A.B. June 23, 2000). Here, the Board has already issued one Order requiring Applicant to make initial disclosures, which was ignored by Applicant. Given Applicant’s failure to comply with that Order, and failure to respond to discovery requests and participate in the required discovery conference, there is no indication that any sanction short of entering judgment against Applicant would cause Applicant to participate in this proceeding. *See MHW Ltd. v. Simex, Aussenhandelsgesellschaft Savelsberg KG*, 59 USPQ2d 1477 (T.T.A.B. Nov. 29, 2000) (entering judgment against party for repeated failure to comply with discovery obligations); *Patagonia, Inc. v. Azzolini*, 109 U.S.P.Q.2d 1859 (T.T.A.B. Feb. 28, 2014) (finding that any sanction short of judgment would be futile and unfair to petitioner in view of respondent’s “pattern of dilatory behavior, cavalier disregard for the time

⁴ Opposers note that the Board entered an order on June 4, 2015 (Dkt. No. 7) suspending this proceeding pending disposition of Opposers’ motion to compel (Dkt. No. 6), which prohibited Opposers from filing a separate motion to compel Applicant’s responses to Opposers’ first set of discovery requests. However, the June 4, 2015 Order explicitly stated that the Order does not toll the time for Applicant to respond to discovery requests served prior to the filing of Opposers’ motion to compel.

and resources of the Board and opposing counsel, and flouting of Board rules.”); *Myspace, Inc. v. Mitchell*, 91 U.S.P.Q.2d 1060 (T.T.A.B. May 11, 2009).(entering judgment against defendant for “engag[ing] in a course of delay by failing to make initial disclosures and by failing to properly respond to discovery for well over two years, and . . . disregard[ing] the Board's orders to provide the required discovery.”).

Indeed, in its May 13, 2016 Order, the Board specifically warned Applicant that failure to provide initial disclosures by June 2, 2016 may result in sanctions. *See* Dkt. No. 8, at 1. Nevertheless, Applicant ignored the Board’s warning, indicating that judgment against Applicant is the only appropriate sanction. *See Patagonia*, 109 U.S.P.Q.2d 1859 (noting that entering judgment against respondent was appropriate in view of Board’s previous notice of intention to impose sanctions.); *Shanghai QuianGu Stationary Co. Ltd. v. EachBit Trade LLC*, Cancellation No. 92062453 (T.T.A.B. June 6, 2016) (entering judgment against Respondent for failure to participate in discovery conference after Board issued order compelling Respondent’s participation and specifically warning that failing to participate may subject Respondent to sanctions). Any sanction short of judgment against Applicant will unfairly prejudice Opposers by requiring Opposers to continue to abide by the Board’s schedule despite Applicant’s unresponsiveness, and engage in further motion practice, wasting the resources of both Opposers and the Board.

Accordingly, for the reasons set forth above, Opposers respectfully request that the Board enter judgment against Applicant.

Respectfully submitted,

/Ryan M. Corbett/

India E. Vincent
BURR & FORMAN LLP
420 North 20th Street
Suite 3400
Birmingham, Alabama 35203
(205) 458-5284

Ryan M. Corbett
BURR & FORMAN LLP
201 North Franklin Street
Suite 3200
Tampa, Florida 33602
(813) 367-5740

Attorneys for Opposers

Date: June 13, 2016

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposers' Motion for Sanctions for Applicant's Failure to Serve Initial Disclosures has been served on the following by electronic mail on this the 13th day of June, 2016:

Damon Smith
1 Yonge Street, Suite 1801
Toronto, Ontario, M5E 1W7
Email: us@globalipservice.com

/Ryan M. Corbett/
Ryan M. Corbett
BURR & FORMAN LLP
201 North Franklin Street
Suite 3200
Tampa, Florida 33602
(813) 367-5740

Attorney for Opposers

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

**MICRO MATIC USA, INC. and MICRO
MATIC USA, LLC,**

Opposers,

v.

TAIZHOU TALOS SANITARY CO., LTD.,

Applicant.

)
)
) **Opposition No. 91220325**
)
)

) **Serial No.: 79148013**
)
)

**DECLARATION OF RYAN M. CORBETT IN SUPPORT OF
OPPOSERS' MOTION FOR SANCTIONS FOR APPLICANT'S
FAILURE TO SERVE INITIAL DISCLOSURES**

I Ryan M. Corbett, hereby declare:

1. I am an attorney in the law firm of Burr & Forman LLP, counsel for Opposers Micro Matic USA, Inc. and Micro Matic USA, LLC ("Opposers") in the above-referenced Opposition. I submit this declaration in support of Opposers' Motion for Sanctions for Applicant's Failure to Serve Initial Disclosures. I have personal knowledge of the facts set forth in this declaration, and if called upon as a witness, I could and would testify to such facts under oath.

2. Attached hereto as Exhibit 1 to this declaration is a true and correct copy of a March 27, 2015 email and a March 31, 2015 email I sent to Applicant's counsel, Mr. Damon Smith, requesting Mr. Smith's availability to conduct the discovery conference required by the Board's order instituting the above-referenced Opposition proceeding. Mr. Smith did not respond to the March 27 or March 31 email.

3. After not receiving a response to my March 27 and March 31 emails, I left Mr. Smith a voicemail on April 2, 2015 requesting his availability to conduct the discovery conference. Mr. Smith did not respond to my April 2 voicemail.

4. Attached hereto as Exhibit 2 to this declaration is a true and correct copy of an April 13, 2015 email I sent to Mr. Smith again requesting to conduct the required discovery conference. Mr. Smith did not respond to my April 13 email.

5. Attached hereto as Exhibit 3 to this declaration is a true and correct copy of Opposers' Initial Disclosures, and the email dated May 4, 2015 serving Opposers' Initial Disclosures on Applicant's counsel.

6. Opposers have not received Applicant's Initial Disclosures.

7. Attached hereto as Exhibit 4 is a true and correct copy of a May 5, 2015 email and May 14, 2015 email I sent to Mr. Smith requesting that Applicant serve its Initial Disclosures. Mr. Smith has not responded to the May 5 or May 14 email.

8. Attached hereto as Exhibit 5 is a true and correct copy of Opposers' First Set of Interrogatories and First Set of Requests for Production, and the email dated May 21, 2015 serving such discovery requests on Applicant's counsel.

9. Applicant has not responded to Opposers' First Set of Interrogatories or First Set of Requests for Production.

I declare under penalty of perjury of the laws of the United States of America that the foregoing is, to the best of my personal knowledge, true and correct.

Dated: June 13, 2016

/Ryan M. Corbett/

Ryan M. Corbett

EXHIBIT 1

Corbett, Ryan

From: Corbett, Ryan
Sent: Friday, March 27, 2015 3:27 PM
To: USA Office
Subject: RE: Answer to Opposition No.91220325

Dear Damon:

As you may know, the TTAB's scheduling order requires us to conduct a discovery conference by next Thursday, April 2. Please let me know your availability next week to conduct the discovery conference.

Regards,
Ryan



Ryan M. Corbett • *Attorney at Law*

Suite 3200 • 201 North Franklin Street • Tampa, Florida 33602

direct 813-367-5740 • fax 813-221-7335 • main 813-221-2626

rcorbett@burr.com • www.burr.com

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The information contained in this email is intended for the individual or entity above. If you are not the intended recipient, please do not read, copy, use, forward or disclose this communication to others; also, please notify the sender by replying to this message, and then delete this message from your system. Thank you.

From: USA Office [<mailto:us@globalipservice.com>]
Sent: Saturday, February 28, 2015 2:49 AM
To: Corbett, Ryan
Subject: RE: Answer to Opposition No.91220325

Dear Ryan

Please be advised that we have submitted the change of correspondence address and answer which you could find the attached documents.

Best Regards

Damon Smith

1 Yonge Street, Suite 1801,

Toronto, Ontario, M5E 1W7

Fax:1-416-352-7569 Email:us@globalipservice.com

Corbett, Ryan

From: Corbett, Ryan
Sent: Tuesday, March 31, 2015 9:52 AM
To: USA Office
Subject: RE: Answer to Opposition No.91220325

Dear Damon:

Please let me know as soon as possible when you are available to conduct the discovery conference before this Thursday's deadline.

Regards,
Ryan

From: Corbett, Ryan
Sent: Friday, March 27, 2015 3:27 PM
To: USA Office
Subject: RE: Answer to Opposition No.91220325

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Best Regards

Damon Smith

1 Yonge Street, Suite 1801,

Toronto, Ontario, M5E 1W7

Fax:1-416-352-7569 Email:us@globalipservice.com

EXHIBIT 2

Corbett, Ryan

From: Corbett, Ryan
Sent: Monday, April 13, 2015 11:38 AM
To: USA Office
Subject: RE: Answer to Opposition No.91220325

Damon:

Please let me know as soon as possible when you are able to conduct the discovery conference in connection with the above-reference Opposition. The Board's deadline for conducting the conference was April 2.

Regards,
Ryan

From: Corbett, Ryan
Sent: Tuesday, March 31, 2015 9:52 AM
To: USA Office
Subject: RE: Answer to Opposition No.91220325

Dear Damon:

Please let me know as soon as possible when you are available to conduct the discovery conference before this Thursday's deadline.

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Ryan

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Best Regards

Damon Smith

1 Yonge Street, Suite 1801,

Toronto, Ontario, M5E 1W7

Fax:1-416-352-7569 Email:us@globalipservice.com

EXHIBIT 3

Corbett, Ryan

From: Corbett, Ryan
Sent: Monday, May 04, 2015 4:47 PM
To: USA Office
Subject: Opposition No. 9120325 - Opposers' Initial Disclosures
Attachments: Opposers' Intial Disclosures.pdf

Dear Damon:

Please find attached Opposers' Initial Disclosures.

Regards,



Ryan M. Corbett • *Attorney at Law*

Suite 3200 • 201 North Franklin Street • Tampa, Florida 33602

direct 813-367-5740 • fax 813-221-7335 • main 813-221-2626

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

**In the matter of Application Serial No. 79/148,013
Filed on April 11, 2014**

**Published in Official Gazette on December 9, 2014
Mark: MICRO MATIC
(International Class 007)**

MICRO MATIC USA, INC.,)	
MICRO MATIC USA, LLC,)	
)	
Opposers,)	
)	Opposition No. 9120325
v.)	
)	
TAIZHOU TALOS SANITARY CO.,)	
LTD.,)	
)	
Applicant.)	

OPPOSERS' INITIAL DISCLOSURES

Micro Matic USA, Inc. and Micro Matic USA, LLC (collectively, "Micro Matic" or "Opposers"), by and through its attorneys, hereby submits their initial disclosures pursuant to Rule 26(a)(1) of the Federal Rules of Civil Procedure and 37 C.F.R. Part 2 § 2.120(a)(3).

Preliminary Statement

Opposers have made diligent efforts to identify information and documents in their possession, custody and control that are within the categories of information and documents set forth in Rule 26(a)(1). These initial disclosures represent Opposers' good faith effort, without the benefit of discovery, to comply with Rule 26(a)(1) and 37 C.F.R. Part 2 § 2.120(a)(3). They are not intended to be, and should not be construed as, Opposers' opinion or belief as to whether any witnesses identified actually have discoverable information that Opposers may use to support their claims or defenses in the case. If additional documents or witnesses are revealed

through discovery, Opposers will identify the same pursuant to the applicable provisions of the Federal Rules of Civil Procedure and U.S. Trademark Law Rules of Practice.

The production of these initial disclosures does not constitute a waiver of any objections Opposers may have, now or in the future, to any discovery in this action. Opposers expressly reserve any and all objections that it has or may have, including objections based on the following grounds: Attorney-Client Privilege; Work Product Immunity; any other applicable privilege or immunity based on federal or state law; relevance; competency; hearsay; materiality; vagueness or over breadth of discovery requests; and undue burden or harassment.

Opposers expressly reserve the right to identify or call as witnesses other individuals in addition to those identified herein, and to identify additional documents, electronically stored information, and/or tangible things, if it discovers that such individuals have or might have knowledge of matters relevant to this action or that such additional documents, electronically stored information, and/or tangible things are relevant to this action. Opposers also expressly reserve the right to identify or call expert witnesses in accordance with Federal Rule of Civil Procedure 26(a)(2) and the scheduling order entered in this action.

Disclosures

- (i) The name, and if known, the address and telephone number of each individual likely to have discoverable information – along with the subjects of that information-that the disclosing party may use to support its claims or defenses, unless the use would be solely for impeachment;**

Opposers believe that the individuals listed below may have discoverable information that Opposers may use to support their claims. The listing of an individual's name below does not in any way imply consent by Opposers to *ex parte* contact of any witness by opposing counsel whom opposing counsel would not be entitled to contact under the applicable procedural Rules and the Rules of Professional Conduct. The following individuals are employees of Micro

Matic USA, Inc., Micro Matic USA LLC, or their parents, subsidiaries, or affiliates, and may be contacted through counsel: Ryan M. Corbett, Burr & Forman LLP, One Tampa City Center, Suite 3200, 201 North Franklin Street, Tampa, FL 33602, (813) 221-2626.

Name	Subject Matter
Torben Toftegaard President Micro Matic USA	Opposers' use of Micro Matic mark; likelihood of confusion created by Applicant's use of Micro Matic mark.
Peter Muzzonigro Chairman Micro Matic USA	Opposers' use of Micro Matic mark; likelihood of confusion created by Applicant's use of Micro Matic mark.
Brian Van Holten Creative Brands Manager Micro Matic USA	Opposers' use of Micro Matic mark; likelihood of confusion created by Applicant's use of Micro Matic mark.

The following additional people may have knowledge of relevant facts. Current address and telephone number for each of these individuals may not be available to Opposers.

Name	Subject Matter
Those individuals identified in the initial disclosures of Applicant	See descriptions in Applicant's initial disclosures

The aforementioned witnesses are those that are presently known to Opposers based upon a reasonable investigation. Opposers may also retain one or more expert witnesses to testify in support of their claims. Opposers reserve the right to supplement and/or amend this list pursuant to the Federal Rules of Civil Procedure and U.S. Trademark Law Rules of Practice should it become aware of additional individuals likely to have discoverable information. Opposers take no position as to whether any named individual should be deposed and expressly reserves the right to object to the depositions of such persons.

- (ii) **description by category and location of all documents, electronically stored information, and tangible things that the disclosing party has in its**

possession, custody, or control and may use to support its claims or defenses, unless the use would be solely for impeachment;

Based on the information reasonably available to Opposers at this time, Opposers describe by category and location the following documents, electronically stored information, and tangible things in their possession, custody, or control that may be used to support their claims or defenses (excluding documents that may be used solely for impeachment). Opposers do not have non-custodial data sources that contain non-duplicative information than those that would be available through counsel and/or the individuals identified above.

The categories of documents, electronically stored information, and tangible things described below are located at the office of Burr & Forman LLP, One Tampa City Center, Suite 3200, 201 North Franklin Street, Tampa, FL 33602 or the offices of Micro Matic USA Inc., 3268 Simon Ct. Brooksville, Florida 34604, and will be made available for inspection and copying at a mutually agreeable time and place.

1. Opposers' Organizational Documents;
2. Invoices and/or Purchase Orders illustrating sales of Opposers' goods and services to Opposers' customers throughout the United States,
3. Communications relating to Opposers' Website;
4. Printouts from Opposers' website showing Opposers' online use of its trademarks in conjunction with its goods and services;
5. Documents showing expenditures for marketing and advertising;
6. Marketing and advertising materials, including, but not limited to labels and boxes from Opposers' goods; and
7. Communications between Opposer and the United States Patent and Trademark Office.

- (iii) **computation of each category of damages claimed by the disclosing party—who must also make available for inspection and copying as under Rule 34 the documents or other evidentiary material, unless privileged or protected from disclosure, on which each computation is based, including materials bearing on the nature and extent of injuries suffered; and,**

Opposers are not seeking damages in this proceeding, and therefore this section is not applicable.

- (iv) **for inspection and copying as under Rule 34, any insurance agreement under which an insurance business may be liable to satisfy all or part of a possible judgment in the action or to indemnify or reimburse for payments made to satisfy the judgment**

Opposers maintain no insurance agreements applicable to this action.

Respectfully submitted,

/Ryan M. Corbett/

India E. Vincent
BURR & FORMAN LLP
420 North 20th Street
Suite 3400
Birmingham, Alabama 35203
(205) 458-5284

Ryan M. Corbett
BURR & FORMAN LLP
201 North Franklin Street
Suite 3200
Tampa, Florida 33602
(813) 367-5740

Attorneys for Opposers

Date: May 4, 2015

CERTIFICATE OF SERVICE

I hereby certify that I served the foregoing Opposers' Initial Disclosures on the attorney of record for the Applicant by delivering a copy of same via electronic mail on May 4, 2015, to the following individuals:

Damon Smith
1 Yonge Street, Suite 1801
Toronto, Ontario, M5E 1W7
us@globalipservice.com

/Ryan M. Corbett/
Ryan M. Corbett
Burr & Forman LLP
201 North Franklin Street
Suite 3200
Tampa, Florida 33602
(813) 367-5740

Attorney for Opposers

EXHIBIT 4

Corbett, Ryan

From: Corbett, Ryan
Sent: Tuesday, May 05, 2015 6:22 PM
To: USA Office
Subject: RE: Opposition No. 9120325 - Opposers' Initial Disclosures

Dear Damon:

We did not receive your initial disclosures by yesterday's due date. Please let me know when we can expect to receive them or we will be forced to seek the Board's assistance.

Regards,

Ryan

From: Corbett, Ryan
Sent: Monday, May 04, 2015 4:47 PM
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Dear Damon:

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Regards,



Ryan M. Corbett • *Attorney at Law*

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Corbett, Ryan

From: Corbett, Ryan
Sent: Thursday, May 14, 2015 1:40 PM
To: USA Office
Subject: RE: Opposition No. 9120325 - Opposers' Initial Disclosures

Damon:

I have attempted to reach you multiple times via email and phone to conduct the discovery conference, and regarding your failure to timely serve Applicant's initial disclosures, but I have not received a response. Please serve Applicant's initial disclosures immediately or we will file a motion to compel such disclosure.

Regards,

Ryan

From: Corbett, Ryan
Sent: Tuesday, May 05, 2015 6:22 PM
To: USA Office
Subject: RE: Opposition No. 9120325 - Opposers' Initial Disclosures

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Ryan

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Sent: Monday, May 04, 2015 4:47 PM
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Please find attached Opposers' Initial Disclosures.

Regards,



Ryan M. Corbett • *Attorney at Law*

Suite 3200 • 201 North Franklin Street • Tampa, Florida 33602

direct 813-367-5740 • fax 813-221-7335 • main 813-221-2626

rcorbett@burr.com • www.burr.com

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The information contained in this email is intended for the individual or entity above. If you are not the intended recipient, please do not read, copy, use, forward or disclose this communication to others; also, please notify the sender by replying to this message, and then delete this message from your system. Thank you.

EXHIBIT 5

Corbett, Ryan

From: Corbett, Ryan <rcorbett@burr.com>
Sent: Thursday, May 21, 2015 10:37 PM
To: USA Office
Subject: Opposition No. 91220325 - Opposer's First Set of Discovery Requests
Attachments: Opposers' First Interrogatories to Applicant.pdf; Opposers' First Requests for Production.pdf

Dear Damon:

Please find attached Opposers' First Set of Interrogatories and First Set of Requests for Production.

Regards,

Ryan



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

MICRO MATIC USA, INC. and MICRO MATIC USA, LLC,)	
)	
Opposers,)	Opposition No. 91220325
)	
v.)	
)	
TAIZHOU TALOS SANITARY CO., LTD.,)	Serial No.: 79148013
)	
Applicant.		

OPPOSERS' FIRST SET OF INTERROGATORIES TO APPLICANT

Pursuant to Rule 33 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposers, Micro Matic USA, Inc. and Micro Matic USA, LLC (“Opposers”), request that Applicant, Taizhou Talos Sanitary Co., Ltd. (“Talos” or “Applicant”), answer separately and fully in writing under oath by an officer or agent of Applicant the interrogatories set forth below within thirty (30) day after the service hereof. Each separately numbered or lettered sub-part of each interrogatory requires a separate answer thereto. Furthermore, these interrogatories shall be deemed to be continuing to the fullest extent permitted by the Rules and Applicant shall provide Opposer with any supplemental answers and additional information that are requested herein which shall become available to Applicant at a later date.

For the convenience of the Board and the parties, Opposers request that each interrogatory be quoted in full immediately preceding the response.

DEFINITIONS AND INSTRUCTIONS

A. The term "**Applicant**" shall mean Taizhou Talos Sanitary Co., Ltd., its predecessors in interest, related companies, licensors, licensees, subsidiaries and divisions, employees, agents and representatives.

B. The term "**Applicant's Mark**" refers to the mark "MICRO MATIC," which is the subject of U.S. Serial No. 79148013.

C. The term "**Covered Goods and Services**" shall mean any goods or services relating to the dispensing, processing, and storage of liquids, including without limitation, machines for dispensing beer and other liquids, beer brewing machines, bottle washing machines, machines for making aerated beverages, beer pumps, and/or valves, including pressure regulating valves.

D. The term "**document**" shall be construed in its broadest permissible sense under Rule 34, Fed. R. Civ. P., and shall include, but is not limited to, the original and any non-identical copy (whether different from the original because of notes made on said copy or otherwise) of any agreement; bank record or statement; book of account (including any ledger, sub-ledger, journal or sub-journal); brochure; calendar; chart, check; circular; communication (intra- or intercompany); contract; copy; correspondence; job requisition; letter; license; log or logbook; manual; memorandum; minutes; newspaper or other print; receipt; record; recording; report; opinions or reports of consultants; statement; study; summary (including any memorandum, personal conversation or interview, or meeting or conference); telegram; telephone log; travel or expense record; voucher; worksheet or working paper; writing; any other compiled, handwritten, printed, reproduced, recorded, typewritten, or otherwise produced or stored material from which the information inquired of may be obtained, or any other

documentary material or physical thing of any nature, in the possession, custody or control of Applicant.

E. The term "**Opposers**" shall mean Micro Matic USA, Inc., Micro Matic USA, LLC, their predecessors in interest, related companies, licensors, licensees, subsidiaries and divisions, employees, agents and representatives.

F. The term "**person**" shall include, but is not limited to, any natural person; business or corporation, whether for profit or not; firm; partnership, or other non-corporate business organization; charitable, educational, governmental, or other non-profit institution, foundation, body, or other organization; or employee, agent, or representative of any of the foregoing.

G. The term "**Identify**" when used with reference to a natural person, means to state the person's full name and present or last-known address, his/her present and prior employment positions and affiliations, and the date of each. "**Identify**" when used with reference to any other types of person means to state that person's full name, present or last-known address and relationship to Applicant, if any.

H. The term "**Identify**" when used with reference to a document, means to state the date and author (and, if different, the signer or signers), the address, type of document (e.g., letter, memorandum, telegram, chart, magnetic tape, computer printout, etc.), its present or last known location and custodian, its general subject matter(s) content, and all other means of identifying it with sufficient particularity to satisfy the requirements for its inclusion in a request for its production pursuant to Rule 34, Fed. R. Civ. P., or a subpoena duces tecum. In the alternative, Applicant may produce the document(s) for inspection and copying at a time and place mutually convenient to the parties. For each document that Applicant contends is

privileged or otherwise excludable from discovery, the basis for such claim of privilege or other grounds for exclusion.

I. "State" and "state all facts" means to state all facts discoverable under Rule 26(b), Fed. R. Civ. P., that are known to Applicant. When used in reference to a contention, "state," "state all facts," "identify," "identify all documents," and "identify all communications," shall include all facts, documents, and communications negating as well as supporting, the contention. When used in reference to a contention, "identify each person" shall include persons having knowledge of facts negating, as well as supporting, the contention.

J. The connectives "and" and "or" shall be construed either disjunctively or conjunctively as necessary to bring within the scope of the discovery request all responses that might otherwise be construed to be outside of its scope.

K. The use of the singular form of any word includes the plural and vice versa.

INTERROGATORIES

INTERROGATORY NO.1

With respect to Applicant:

a) state the address and telephone number of each location at which Applicant has maintained or now maintains an office or other place of business and describe the functions carried out at each such place or other place of business; and

b) briefly state the nature of Applicant's principal business and the period in which it has conducted such business.

INTERROGATORY NO.2

Identify by common commercial descriptive name each type of product and/or service provided by Applicant, separately listing each product produced and/or service rendered, offered for sale, advertised and/or promoted by Applicant in the United States which bears the Applicant's Mark and for each type of product/service:

- a) state the date of first use in the United States in conjunction with the type of product and/or service and describe the circumstances surrounding such first use;
- b) identify all documents relating to or evidencing each such first use mentioned in response to subpart (a);
- c) state the annual dollar volume of sales for each particular category of products and/or services rendered under the Applicant's Mark from the date of first use to the present; and
- d) state the annual dollar volume expended by Applicant in the United States in advertising or promotion for each particular category of products produced and/or services rendered under Applicant's Mark from the date of first use to the present.

INTERROGATORY NO.3

Identify representative copies of all tags, labels, packaging, posters, flyers, advertisements, catalogs, brochures and any other advertising or promotional materials which have ever been used by Applicant in connection with its products and/or services offered under the Applicant's Mark.

INTERROGATORY NO.4

State whether a trademark search or any other type of search was conducted by Applicant in connection with its adoption or use of Applicant's Mark. If so, identify all documents referring or relating to such search(es) and identify the person(s) most knowledgeable thereof.

INTERROGATORY NO.5

State whether Applicant considered the issue of, and/or received any opinions concerning a likelihood of confusion between Applicant's Mark and any other trademark, service mark, or trade name; and identify all documents referring or relating to Applicant's consideration of this issue; and/or opinion(s) received by Applicant with respect to this issue.

INTERROGATORY NO.6

Identify by publication, title, issue date and page number, all publications in which Applicant advertised or otherwise referred to products produced or services rendered in association with the Applicant's Mark.

INTERROGATORY NO.7

Identify by name, date and location every trade show or fair in the United States where Applicant displayed, promoted, advertised, offered for sale or sold its products and/or services in connection with Applicant's Mark.

INTERROGATORY NO.8

State whether Applicant is aware of any instance in which any person, firm, corporation, association, or other entity has been confused or has indicated by correspondence, oral statement, telephone call or otherwise that he, she or it has been confused, deceived, or mistaken as to the source of origin of Opposer's or Applicant's products, services or other activities as a result of said parties' respective, concurrent uses of Opposer's Mark and Applicant's Mark, and

a) describe the circumstances surrounding each such instance, including all persons present;

b) state whether a record was made of any such instance and, if so, identify the records or any other documents relating to each such instances and the persons having knowledge and custody thereof.

INTERROGATORY NO.9

Identify all surveys conducted by Applicant, and by any and all other entities affiliated with, related to or sponsored by Applicant, concerning Applicant's Mark and for each survey, identify all documents embodying the results of each such survey and all other documents relating to each such survey.

INTERROGATORY NO.10

Identify all agreements, including but not limited to, licenses, permissions or consents entered into by Applicant and any other entities relating to the Applicant's Mark and relating to or referring to each such agreement.

INTERROGATORY NO.11

Identify the person(s) most knowledgeable regarding the adoption and use including the continuous use of Applicant's Mark in connection with the Covered Goods and Services.

INTERROGATORY NO.12

Identify the person(s) most knowledgeable regarding the promotion, sale, and providing of the Covered Goods and Services under Applicant's Mark.

INTERROGATORY NO.13

Identify each and every person known by Applicant to have supplied information for or participated in responding to these interrogatories and Opposers' First Request for Production of Documents to Applicant.

INTERROGATORY NO.14

Identify all media through which Applicant has advertised products and/or services under Applicant's Mark.

INTERROGATORY NO.15

Identify the persons responsible for marketing products and/or services under Applicant's Mark.

INTERROGATORY NO.16

Identify the cities in the United States in which Applicant sells products or renders services under Applicant's Mark.

INTERROGATORY NO.17

Identify each person whom Applicant expects to call as an expert witness and state with respect to each:

- a) the subject matter on which the expert is expected to testify;
- b) the substance of the facts and opinions to which the expert is expected to testify;

and

- c) a summary of the grounds for each opinion.

INTERROGATORY NO.18

Identify each third party use known to Applicant of marks containing or comprising the designations "MICRO MATIC" or "MICROMATIC."

INTERROGATORY NO.19

Identify each third party use known to Applicant of "MICRO MATIC" or "MICROMATIC" for any products or services identified in Applicant's registration.

INTERROGATORY NO.20

Identify the retail price of each product sold under Applicant's Mark and, for each such product, state what Applicant contends is the average price for a product of that type.

INTERROGATORY NO.21

Identify the purchasers, at all levels of distribution, of products sold under Applicant's Mark. To the extent the foregoing purchasers are different from the intended end-users of products sold under Applicant's Mark, identify each intended end-user.

INTERROGATORY NO.22

Identify the earliest date by which Applicant learned of Opposers' use of Applicant's Mark.

INTERROGATORY NO.23

Describe any marketing research and the decision making process for Applicant's decision to attempt to register Applicant's Mark and use Applicant's Mark in commerce, including without limitation, why Applicant chose to use a mark identical to Opposers' mark.

Respectfully submitted,

/Ryan M. Corbett/

India E. Vincent
BURR & FORMAN LLP
420 North 20th Street
Suite 3400
Birmingham, Alabama 35203
(205) 458-5284

Ryan M. Corbett
BURR & FORMAN LLP
201 North Franklin Street
Suite 3200
Tampa, Florida 33602

(813) 367-5740

Attorneys for Opposers

Date: May 21, 2015

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposers' First Set of Interrogatories to Applicant has been served on the following by electronic mail on this the 21st day of May, 2015:

Damon Smith
1 Yonge Street, Suite 1801
Toronto, Ontario, M5E 1W7
Email: us@globalipservice.com

/Ryan M. Corbett/
Ryan M. Corbett
BURR & FORMAN LLP
201 North Franklin Street
Suite 3200
Tampa, Florida 33602
(813) 367-5740

Attorney for Opposers

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

MICRO MATIC USA, INC. and MICRO MATIC USA, LLC,)	
)	
Opposers,)	Opposition No. 91220325
)	
v.)	
)	
TAIZHOU TALOS SANITARY CO., LTD.,)	Serial No.: 79148013
)	
Applicant.		

**OPPOSERS' FIRST REQUEST TO APPLICANT FOR
PRODUCTION OF DOCUMENTS AND THINGS**

Pursuant to Rule 34 of the Federal Rules of Civil Procedure and Rule 2.120(d) of the Trademark Rules of Practice, Opposers, Micro Matic USA, Inc. and Micro Matic USA, LLC (“Opposers”), by counsel, request that Applicant, Taizhou Talos Sanitary Co., Ltd. (“Talos” or “Applicant”), produce for inspection and copying at the offices of Burr & Forman LLP, 420 North 20th Street, Suite 3100, Birmingham, Alabama 35203, or at such other mutually agreeable time and location, all of the following documents and things within the possession, custody, or control of Applicant.

DEFINITIONS AND INSTRUCTIONS

- A. These requests are continuing in nature so as to require production of additional documents up to and including the time for taking testimony.
- B. The Definitions and Instructions accompanying Opposers' First Set of Interrogatories to Applicant also apply to this Request for Production of Documents and Things.
- C. If Applicant objects to producing any document (in whole or in part) based on any privilege, it should state the nature of the privilege claimed and the basis thereof; identify and

describe the document and the reason for which it was created; identify the creator of the documents and all persons named on it, to whom the document was sent, for whose use it was prepared, and state the date of the document. This information should be set forth separately in a privilege list.

D. If any responsive document is no longer in existence, cannot be located or is not in your possession, custody or control, identify it, describe its subject matter and describe its disposition (including without limitation identifying the person or persons having knowledge of the contents of the document and its disposition).

REQUESTS

1. All documents and things identified in response to or for which identification is sought in Opposers' First Set of Interrogatories to Applicant.

2. All documents which concern any trademark application or registration filed by Applicant in the U.S. Patent and Trademark Office or in any other jurisdiction in connection with Applicant's Mark.

3. All documents concerning Applicant's adoption of Applicant's Mark.

4. All documents concerning any searches, surveys, pre-tests, polls, investigations, or other evaluations which relate in any way to the adoption or use of Applicant's Mark or the products and/or services offered in association with Applicant's Mark.

5. All documents concerning any assignment, license or authorization to use Applicant's Mark.

6. All documents concerning any advertising, solicitation, promotion or other publication bearing or including Applicant's Mark.

7. All documents which memorialize or concern in any way any confusion, deception or mistake on behalf of any member of the public in referring to the source of a product and/or service bearing Applicant's Mark, in connection with Applicant and Opposer.

8. All documents which memorialize or concern in any way any confusion, deception or mistake on behalf of any member of the public in referring to the source of a product and/or service bearing Applicant's Mark, in connection with Applicant and any third party.

9. All documents which memorialize or concern in any way Applicant's claimed date of first use or first use in interstate commerce of Applicant's Mark.

10. All documents which memorialize or concern in any way Applicant's claimed date of first use of each product and/or service used in connection with Applicant's Mark.

11. All documents that relate to, refer to, contain information about or discuss Applicant's use of Applicant's Mark.

12. All documents that relate to, refer to, or contain information about or discuss Opposers' use of Applicant's Mark, including all documents evidencing Applicant's knowledge of Opposers' use of Applicant's Mark.

13. All documents that relate to, refer to, or contain information about or discuss any complaint, objection, opposition, cancellation, administrative proceeding, legal opinion or civil action (either by Applicant or by a third party) involving or based upon Applicant's use of, claimed rights in, or application to register Applicant's Mark, or any mark incorporating any component of Applicant's Mark.

14. Documents sufficient to show the channels of trade of products sold under Applicant's Mark.

15. All documents referring or relating to the classes or types of purchasers to whom Applicant markets and has marketed products under Applicant's Mark.

16. All press releases, articles, and clippings relating to or commenting upon goods marketed or sold under Applicant's Mark.

Respectfully submitted,

/Ryan M. Corbett/

India E. Vincent
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Birmingham, Alabama 35203
(205) 458-5284

Ryan M. Corbett
BURR & FORMAN LLP
201 North Franklin Street
Suite 3200
Tampa, Florida 33602
(813) 367-5740

Attorneys for Opposers

Date: May 21, 2015

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Opposers' First Request to Applicant for Production of Documents and Things has been served on the following by electronic mail on this the 21st day of May, 2015:

Damon Smith
1 Yonge Street, Suite 1801
Toronto, Ontario, M5E 1W7
Email: us@globalipservice.com

/Ryan M. Corbett/
Ryan M. Corbett
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Attorney for Opposers