

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

In the matter of

TTAB

Registration No.: 3143997
For the mark: www.east13.com
Date registered: September 19, 2006

Registration No.: 3147241
For the mark: east13
Date registered: September 26, 2006

Registration No.: 3158549
For the mark: East Thirteen
Date registered: October 17, 2006

LIVE VENTURES INC.

PETITIONER,

v.

SAROJ INTERNATIONAL, INC.

REGISTRANT.

76632663

CANCELLATION No. 92047661

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

**PETITIONER'S REPLY IN FAVOR OF
REGISTRANT'S CONCESSION OF THE CASE.**



06-23-2008

Petitioner Live Ventures Inc. ("Petitioner" or "Live Ventures") submits this reply in favor of a finding of registrant Saroj International, Inc.'s ("Registrant" or "Saroj") concession of the case. On June 18, 2008, Registrant filed a paper entitled Response ("Response") following the Boards Order to Show Cause of May 19, 2008. This Reply addresses the deficiencies in Registrant's Response.

This Reply is supported by the declaration of Norbert Stahl ("Stahl Dec"), filed herewith.

ARGUMENT

A. Registrant Failed to Show That It Is Still Interested In This Case.

On May 19, 2008, the Board ordered registrant Saroj International, Inc. (Registrant or "Saroj") to show cause why Registrant's apparent loss of interest in this case should not be treated as a concession of the case ("May Order"). The May Order followed Registrant's failure to oppose four motions by Petitioner (Motion to Compel of October 5, 2007; Motion for Sanctions of April 9, 2008; Motion for Protective Order of April 9, 2008; Motion to Extend Time of April 9, 2008). Prior to filing these motions, Petitioner contacted Registrant's counsel through letters and telephone calls but Registrant failed to respond to almost all of those meet and confer attempts and therefore forced Petitioner to file the motions. Registrant's failure to engage in the meet and confer process and its failure to oppose Petitioner's four motions, left it to the Board and to Petitioner to spend their resources to resolve the pending issues.

Registrant's Response fails to show that Saroj is still interested in this case for the reasons that follow.

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1. Registrant Was Served with the Motion for Sanctions and also Received Independent Notice of the Motion.

Registrant alleges that it was not served with Petitioner's Motion for Sanctions and therefore did not oppose the motion. Response, pp. 3-4. This is incorrect.

First, the Motion for Sanctions includes a proper Proof of Service on Registrant's counsel.

Second, in addition to serving the motion, Petitioner also notified Registrant of the Motion for Sanctions by letters, for example, faxed on April 2, 2008 (Stahl Declaration, filed with Motion for Sanctions, Exh. E) and stating: "If we do not receive copies of the alleged responses and signatures by Monday, **April 7, 2008**, we will file a Motion for Sanctions as suggested by the Board." (Emphasis in original.) *See also*, other notifications by Petitioner to Registrant of the Motion for Sanctions (Stahl Declaration, filed with Motion for Sanctions, Exhs. A, B, C).

Registrant was therefore fully aware that a Motion for Sanctions was forthcoming and Registrant was served with the Motion. Also, Registrant had multiple opportunities to obtain a copy of the Motion **if** it did not receive the mailed copy, for example, from the website of the Patent and Trademark Office or by asking Petitioner. Registrant apparently chose to do neither and Registrant's inaction on the Motion for Sanctions was therefore a deliberate choice (consistent with its inaction on other occasions) rather than lack of awareness.

Third, Registrant failed to provide any support for its allegation that it did not receive a copy of the Motion for Sanctions. Registrant's Response consists of three pages of attorney argument, but lacks any evidence, for example, the Response includes no declaration and no evidence of any other kind.

Registrant's allegation that it did not oppose the Motion for Sanctions for lack of awareness of the motion is therefore not credible.

2. Registrant Has Failed to Respond to Petitioner's Follow Up Discovery, Further Demonstrating Registrant's Lack of Interest.

Registrant's lack of interest in this case is also evidenced in its failure to respond to Petitioner's follow up discovery. Following the Board's Order of February 21, 2008 on Petitioner's Motion to Compel ("February Order"), Petitioner served Registrant the following:

On March 19, 2008, Petitioner served its Second Set of Requests for Admissions to Registrant Saroj International. Registrant has not responded to or objected to these requests in any way. Stahl Dec., ¶2. Petitioner also notified Registrant of these requests by letter (Stahl Declaration, filed with Motion for Sanctions, Exh. E).

On April 2, 2008, Petitioner served its Second Set of Requests for Production of Documents and Things to Registrant Saroj International. Registrant has not responded to or objected to these requests in any way. Stahl Dec., ¶3. Petitioner also notified Registrant of these requests by letter (Stahl Declaration, filed with Motion for Sanctions, Exh. E).

On April 23, 2008, Petitioner served its Second Set of Interrogatories to Registrant Saroj International. Registrant has not responded to or objected to these interrogatories in any way. Stahl Dec., ¶4.

Therefore, Registrant has continued its pattern of evasion by failing to abide by its obligation to cooperate in the discovery process. A finding that Registrant has lost interest in this case is therefore strongly supported by the record.

3. Registrant Has Failed To Provide Any Evidence of Papers It Allegedly Served on Petitioner.

In its Response, Registrant represents having served various documents on Petitioner. Yet, Registrant provides no copy, no proof, no declaration – nothing that could in any way substantiate these representations (which are all unsupported attorney argument). Registrant's representations are incorrect and its failure to provide any evidence in support warrants that these representations not be credited.

Specifically, Registrant represents that it served on Petitioner the discovery ordered by the Board in the February Order. Response, pp. 2, 3. This is incorrect because Registrant still has not provided any supplementation ordered. Stahl Dec., ¶15. Registrant also represents that it served discovery requests on Petitioner. Response, pp. 2, 3. This is also incorrect. Stahl Dec., ¶16. (Petitioner notified Registrant by letters that it has not received any discovery requests from Registrant (Stahl Declaration, filed with Motion for Sanctions, Exhs. E, F, G).)

Finally, Registrant's allegation that it requested a "mailing address in a non-residential area" (Response, p. 3) is also unsupported and incorrect. Stahl Dec., ¶17. Also, the mailing address for Stahl Law Firm is used extensively by many entities. For example, the United States Patent and Trademark Office has mailed papers on multiple cases to Stahl Law Firm and not a single paper has ever not been delivered to Stahl Law Firm. The only mailings that have ever not been delivered to Stahl Law Firm are select mailings that were allegedly sent by the offices of Registrant's counsel. Stahl Dec., ¶17.

Moreover, even if a mailing is not delivered, it is improper for Registrant to not provide a copy when notified of the failed delivery and instead to continue to evade its

obligation to cooperate in these proceedings.

In conclusion, Petitioner submits that Registrant failed to show cause why its apparent lack of interest should not be treated as a concession of the case.

Respectfully submitted,

Stahl Law Firm



Norbert Stahl, Esq.
Registration No. 44,350

Attorney for Petitioner
LIVE VENTURES INC.

Date: June 23, 2008

Correspondence Address:

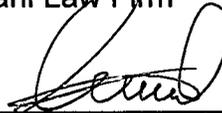
Stahl Law Firm
2 Meadowsweet Lane
San Carlos, CA 94070
(650) 802-8800 (phone)
(650) 802-8484 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing PETITIONER'S REPLY IN FAVOR OF REGISTRANT'S CONCESSION OF THE CASE has been served on Gary L. Eastman, Esq., Attorney for Registrant Saroj International, Inc., by mailing said copy on June 23, 2008, via First Class Mail, postage prepaid, to: Gary L. Eastman, APLC, 707 Broadway Street, Suite 1800, San Diego, California 92101.

Date: June 23, 2008

Stahl Law Firm



Norbert Stahl, Esq.
Registration No. 44,350

Attorney for Petitioner
LIVE VENTURES INC.

Correspondence Address:

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2 Meadowsweet Lane
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CANCELLATION No. 92047661

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**DECLARATION OF NORBERT STAHL IN SUPPORT OF PETITIONER'S REPLY
IN FAVOR OF REGISTRANT'S CONCESSION OF THE CASE.**

I, Norbert Stahl, declare as follows:

1. I am an attorney licensed to practice in the State of California and registered to practice before the United States Patent and Trademark Office and I am a member of Stahl Law Firm. I represent Petitioner Live Ventures Inc. (petitioner or "Live Ventures") in Cancellation No. 92047661 and I submit this declaration in support of Petitioner's Reply in favor of Registrant's Concession of the Case. I make this declaration based on my personal knowledge and could and would competently testify thereto if called as a witness.

2. On March 19, 2008, I served Petitioner's Second Set of Requests for Admissions to Registrant Saroj International ("Second RFAs") by mailing first class, postage prepaid, a copy of the Second RFAs to Gary Eastman, counsel for Saroj. Until today, Saroj has not responded or objected to the Second RFAs in any way.

3. On April 2, 2008, I served Petitioner's Second Set of Requests for Production of Documents and Things to Registrant Saroj International ("Second Document Requests") by mailing first class, postage prepaid, a copy of the Second Document Requests to Gary Eastman, counsel for Saroj. Until today, Saroj has not responded or objected to the Second Document Requests in any way.

4. On April 23, 2008, I served Petitioner's Second Set of Interrogatories to Registrant Saroj International ("Second Interrogatories") by mailing first class, postage prepaid, a copy of the Second Interrogatories to Gary Eastman, counsel for Saroj. Until today, Saroj has not responded or objected to the Second Interrogatories in any way.

5. Until today, petitioner Live Ventures has not received anything pursuant to the Order of the Trademark Trial and Appeal Board of February 21, 2008 ("Board Order") from registrant Saroj International, Inc. (registrant or "Saroj"), *i.e.*, no supplemental responses, no signed documents, and nothing else.

6. Until today, petitioner Live Ventures has not received any discovery request of any kind from registrant Saroj. Live Ventures has also not received any response of any kind to its requests for copies of any alleged requests from Saroj.

7. Until today, Saroj has never asked for a different mailing address for Stahl Law Firm. Saroj has the correct address. Stahl Law Firm routinely receives mailings from the United States Patent and Trademark Office, from opposing counsel in various matters, from co-counsel in foreign prosecutions, from clients, and from various other sources. No mailing to Stahl Law Firm has ever gone missing, with the sole exception of mailings by the office of Gary Eastman, counsel for Saroj, that were allegedly mailed to Stahl Law Firm.

I declare under penalty of perjury under the laws of the United States and the State of California that the foregoing is true and correct.

Executed in San Carlos, California, on June 23, 2008.

By  _____
Norbert Stahl
Registration No. 44,350
Attorney for Petitioner
LIVE VENTURES INC.

Correspondence Address:

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2 Meadowsweet Lane
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(650) 802-8800 (phone)
(650) 802-8484 (fax)

CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing DECLARATION OF NORBERT STAHL IN SUPPORT OF PETITIONER'S REPLY IN FAVOR OF REGISTRANT'S CONCESSION OF THE CASE has been served on Gary L. Eastman, Esq., Attorney for Registrant Saroj International, Inc., by mailing said copy on June 23, 2008, via First Class Mail, postage prepaid, to: Gary L. Eastman, APLC, 707 Broadway Street, Suite 1800, San Diego, California 92101.

Date: June 23, 2008

Stahl Law Firm



Norbert Stahl, Esq.
Registration No. 44,350

Attorney for Petitioner
LIVE VENTURES INC.

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