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

Proceeding	92048989
Party	Plaintiff Top Tobacco, LP
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Date	01/27/2009
Attachments	Motion to Strike.pdf (3 pages)(69701 bytes)

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

TOP TOBACCO, L.P.,)	
)	
Petitioner,)	
)	
v.)	Consolidated Cancellation No. 92048989
)	
VAN NELLE TABAK NEDERLAND BV,)	
)	
Respondent.)	

**PETITIONER'S PRELIMINARY STATEMENT AND MOTION TO
STRIKE RESPONDENT'S MOTION TO COMPEL**

On December 11, 2008, Top Tobacco, L.P., ("Top") filed a motion to compel production of information relating to Respondent's intentions concerning the mark ROUTE 66. On January 2, 2009, and in accordance with Trademark Rule 2.120(e)(2), the Board issued a suspension order in these proceedings, prohibiting the parties from filing any paper not related to Top's motion to compel. *See* January 2, 2009 order. In clear disregard of the Board's order, and in an obvious attempt to distract the Board from the issue presented in Top's motion – namely Respondent's attempt to thwart discovery regarding its warehousing of the mark – on January 16, 2009, Respondent filed its own motion to compel and for an order deeming requests for admission admitted. Respondent's motion inappropriately argues the merits of the case, and is fraught with factual inaccuracies and incorrect standards of law. However, because Respondent's motion clearly violates the Board's order, Top respectfully requests that Respondent's Motion to Compel and For Order Deeming Requests for Admissions Admitted be stricken as premature.

To the extent that the Board deems that Respondent's motion addresses bona-fide discovery issues, Top is entitled to fully respond to these at the appropriate time, not when the Board has ordered proceedings be suspended and directed the parties not to engage in further motion practice. Accordingly, Top hereby reserves the right to respond to Respondent's motion, if and when it is timely filed after the suspension is lifted, or as otherwise ordered by the Board.

Respectfully submitted,

January 27, 2009

/Antony J. McShane/
One of the Attorneys for Petitioner,
Top Tobacco, L.P.

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CERTIFICATE OF SERVICE

I, Hillary A. Mann, an attorney, state that I caused a copy of the foregoing, Petitioner's Preliminary Statement and Motion to Strike Respondent's Motion to Compel to be served upon:

Brewster Taylor
STITES & HARBISON, PLLC
1199 North Fairfax Street
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via U.S. Mail on this January 27, 2009.

/Hillary A. Mann/
Hillary A. Mann, Esq.

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