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

Mailed: June 25, 2009

Cancellation No. 92048989

Top Tobacco, LP

v.

Van Nelle Tabak Nederland BV

Robert H. Coggins,
Interlocutory Attorney:

The Board now considers petitioner's motion (filed January 27, 2009) to strike respondent's motion to compel. By way of the motion, petitioner argues that proceedings were suspended by the Board on January 2, 2009, pending disposition of petitioner's earlier-filed motion to compel, that such suspension was for all issues not germane to petitioner's motion to compel, and that respondent's later-filed motion to compel is not germane to petitioner's motion to compel and therefore should be stricken.

A review of the exhibits submitted with petitioner's motion to compel reveals that the parties were previously engaged in negotiations to resolve bilateral issues of discovery. That is, each party had identified alleged deficiencies in the other party's discovery responses, and those issues were outlined and discussed by each party in the same correspondence. The issues raised by respondent in its motion to compel are the very issues raised by respondent in its correspondence with petitioner, which correspondence also

included the very discovery issues raised by petitioner in petitioner's motion to compel.

The Board's growing docket of active cases, and the resulting, inevitable increase in motion practice before the Board, increasingly strains the Board's limited resources. Both the Board and parties before it have an interest in minimizing the amount of Board time and resources that must be expended on matters, such as the matter decided herein and those in the outstanding motions to compel. In an effort to conserve limited Board resources and to maintain efficiency in this proceeding, the Board exercises its discretion to determine both outstanding motions to compel at the same time.[1]

Accordingly, petitioner's motion to strike is **denied**. Petitioner is allowed until **twenty days** from the mailing date of this order in which to file a brief in opposition to respondent's motion to compel, failing which that motion will be granted as conceded.

Proceedings remain suspended pending disposition of the parties' motions to compel. Those motions will be taken up in due course. The parties should not file any paper which is not germane to the motions to compel. *See* Trademark Rule 2.120(e)(2).

[1] The parties are reminded that "[i]f issues raised in the motion are subsequently resolved by agreement of the parties, the moving party should inform the Board in writing of the issues in the motion which no longer require adjudication." Trademark Rule 2.120(e)(1).