

ESTTA Tracking number: **ESTTA328131**

Filing date: **01/22/2010**

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

Proceeding	92048989
Party	Plaintiff Top Tobacco, LP
Correspondence Address	Antony J. McShane Neal, Gerber & Eisenberg LLP 2 N LaSalle St Ste 2200 Chicago, IL 60602 UNITED STATES apeterson@ngelaw.com, lhirshfeld@ngelaw.com, amcshane@ngelaw.com, gleighton@ngelaw.com
Submission	Stipulated/Consent Motion to Extend
Filer's Name	Antony J. McShane
Filer's e-mail	amcshane@ngelaw.com, hmann@ngelaw.com, mkelber@ngelaw.com
Signature	/Antony J. McShane/
Date	01/22/2010
Attachments	Consented Motion to Extend Time to Respond to MTC.pdf (4 pages)(13634 bytes)

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

In the Matter of
Registration Nos. 2,950,896 and 3,328,623

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

**CONSENTED MOTION FOR EXTENSION OF TIME FOR PETITIONER TO FILE A
RESPONSE TO RESPONDENT’S MOTION TO COMPEL**

Petitioner, Top Tobacco, LP (“Top”), with the consent of Respondent, Van Nelle Tabak Nederland BV (“Van Nelle”), hereby moves for an additional extension of sixty (60) days, until April 12, 2010, of the time by which Top must file its brief in opposition to Van Nelle’s Motion to Compel. In support thereof, the Top states as follows:

1. On January 2, 2009, the Board suspended these proceedings pending disposition of Top’s Motion to Compel discovery.

2. On January 16, 2009, Van Nelle filed a Motion to Compel discovery. In response, on January 27, 2009, Top filed a Motion to Strike Van Nelle’s Motion to Compel because the proceedings were suspended for all issues not germane to its earlier filed Motion to Compel and, it submitted, Van Nelle’s Motion to Compel was not germane.

3. On June 25, 2009, the Board issued an Order denying Top’s Motion to Strike and directing Top to respond to Van Nelle’s Motion to Compel. *See* June 25, 2009 Order. As the

parties were engaged in settlement discussions, on June 30, 2009, Top filed a Consented Motion for Extension of Time for Petitioner to File a Response to Respondent's Motion to Compel, thereby giving Top until August 14, 2009 to file its Response, which the Board granted on July 2, 2009.

4. As settlement discussions have continued to progress, the parties filed joint motions to further extend the time for Top to file its Response on July 28, 2009, on September 29, 2009 and on November 25, 2009. In each case, the Board granted the joint motions, further extending the time to respond by sixty days in each case.

5. Over the past two months, the parties have been actively engaged in reaching an extensive settlement that would resolve this and numerous other proceedings pending before the Trademark Office. As this time, the parties have exchanged multiple drafts and are working toward finalizing language for this complex settlement agreement. Accordingly, the parties jointly seek an additional extension of sixty (60) days for Top to respond to Van Nelle's Motion to Compel, so as to preserve resources and permit the parties to continue to work toward finalizing a settlement in this matter. The requested extension would set the new date for Top's Response as April 12, 2010.

6. Counsel for Top and Van Nelle conferred regarding this matter on January 19, 2010, and agreed to this request for an extension of time.

WHEREFORE, the parties respectfully request that this Board enter an order granting Top an extension of time until April 12, 2010 to respond to Van Nelle's Motion to Compel.

Date: January 22, 2010

Respectfully submitted,

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

Antony J. McShane
Michael G. Kelber
Hillary A. Mann
NEAL, GERBER & EISENBERG LLP
2 North LaSalle Street, Suite 1700
Chicago, Illinois 60602
Telephone: 312.269.8000

CERTIFICATE OF SERVICE

I, Hillary A. Mann, an attorney, state that I caused a copy of the foregoing,
CONSENTED MOTION FOR EXTENSION OF TIME FOR PETITIONER TO FILE A
RESPONSE TO RESPONDENT'S MOTION TO COMPEL to be served upon:

Brewster Taylor
STITES & HARBISON, PLLC
1199 North Fairfax Street
Suite 900
Alexandria, VA 22314-1437

via U.S. Mail on January 22, 2010.

/Hillary A. Mann/
Hillary A. Mann