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

Proceeding	92051140
Party	Plaintiff Leonid Nahshin
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Date	01/11/2011
Attachments	Motion to take Foreign Deposition Nahshin.pdf (4 pages)(156463 bytes)

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

Leonid Nahshin,
Plaintiff-Petitioner

v.

Product Source International, LLC
Defendant-Respondent

Petition No.: 92/051,140
Registration No.: 3,350,041
Mark: NIC-OUT
Interlocutory Attorney:
Ann Linnechan, Esq.

**MOTION TO TAKE TESTIMONIAL DEPOSITION IN FOREIGN COUNTRY UPON
WRITTEN QUESTIONS**

I, Vera Chernobylsky, attorney for Plaintiff-Petitioner, Leonid Nahshin, (hereafter "Petitioner") state it is necessary in the above-entitled case to take the depositions of the following people in the state or country of Israel:

Leonid Nahshin.

Pursuant to Trademark Rule 37 CFR § 2.123(a)(2), a testimonial deposition taken in a foreign country shall be taken by deposition upon written questions as provided by §2.124, and based on the above declaration, Vera Chernobylsky, moves this Honorable Tribunal for an order issuing a commission for depositions to be taken in the state or country of Israel and that the commission be effective for 30 day(s) from the date of signing by the clerk.

Relevant Facts

Petitioner, an Israeli Citizen located and doing business at 153/36 Beer-Sheva, Israel.

Petitioner's Testimony is relevant to this case due to Petitioner's personal knowledge of the following facts:

1. Petitioner is the owner of the mark NIC-OUT used on or in connection with a cigarette filter holder to reduce the inhalation of tar and nicotine.

2. Petitioner first used the mark NIC-OUT in connection with the above-identified goods in interstate commerce at least as early as October 1, 2000.

3. Petitioner's use of the mark NIC-OUT in connection with the above-identified services has been continuous since on or about October 1, 2000.

4. Petitioner has invested significant sums of money in the promotion of the mark NIC-OUT and the Petitioner's goods in the United States.

5. As a result of the aforesaid, Petitioner has developed a valuable reputation and goodwill in its NIC-OUT mark and has achieved a following among the relevant consuming public prior to the filing, registration and/or priority date of Defendant – Respondent, Product Source International's, LLC (hereinafter "Respondent") mark NIC OUT identified more fully in U.S. Registration No. 3,350,041.

6. Petitioner filed USPTO Trademark Application Serial Number 78206651 on January 23, 2003 with USPTO Word Mark: "NIC-OUT" for International Class "034" , Goods & Services described as "G & S: cigarette filter holder to reduce the inhalation of tar and nicotine.; cigarette filter holder to reduce the inhalation of tar and nicotine."

7. Petitioner was barred by the Respondent, to deliver and sell in United States Petitioner's product under Petitioner's Trademark NIC-OUT.

8. Petitioner's consumers confronted with the Respondent's mark NIC OUT will inevitably be confused and deceived into the mistaken belief that the Respondent's goods have their origin or are in some manner connected with the Petitioner and/or Petitioner's goods offered in connection with his NIC-OUT mark.

9. Petitioner will be seriously damaged by the continued registration of Registrant's mark NIC OUT.

I hereby declare that the above statement is true to the best of my knowledge and belief, and that I understand it is made for use as evidence in court and is subject to penalty for perjury.

DATED: January 12, 2011

Respectfully submitted,

By:



Vera Chernobylsky, Esq.

Attorney of Record for Leonid Nahshin

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