



McCain served its second set of interrogatories and requests for production of documents on April 26, 2002, such that responses to that set were initially due on May 31, 2002.

The time for Loufrani to respond to McCain's first set of interrogatories and document requests was extended initially to June 1, 2002, as reflected in the letter from Loufrani's counsel, Peter E. Nussbaum, Esq., dated April 29, 2002, a copy of which is annexed hereto as Exhibit 3. Thereafter, the time for Loufrani to respond to McCain's first and second sets of interrogatories and document requests was extended to June 17, 2002, as reflected in the letter from Mr. Nussbaum dated May 24, 2002, a copy of which is annexed hereto as Exhibit 4.

To date, no responses to any of McCain's interrogatories and document requests have been received by the undersigned counsel for McCain.

On or about June 12, 2002, Mr. Nussbaum and his firm filed a request to withdraw as counsel for Loufrani. So far as McCain is aware, that request has not yet been acted upon by the Board. Prior to making the present motion, in an effort to avoid the necessity for doing so, the undersigned counsel spoke with Peter Nussbaum, Esq. Mr. Nussbaum advised the undersigned that he had received letters from the Board relieving him of counsel in other proceedings involving Loufrani, and that he anticipated receiving a similar order in the present proceeding shortly. Mr. Nussbaum was unable to provide the undersigned with any information as to when (if at all) McCain would receive responses to its outstanding discovery requests.

Accordingly, the undersigned hereby certifies that he has made a good faith effort by telephone conference to resolve with counsel for Loufrani the issues presented by the present motion, and has been unable to reach agreement.

McCain respectfully requests that the Board rule that the right to make objections to McCain's discovery requests has been forfeited by the complete failure of Loufrani to respond.

In that regard, § 403.03 of the Trademark Trial and Appeal Board Manual of Procedure states:

A party which fails to respond to a request for discovery during the time allowed therefor, and which is unable to show that its failure was the result of excusable neglect, may be found, upon motion to compel filed by the propounding party, to have forfeited its right to object to the discovery requests on its merits. [Citations omitted.]

McCain is not aware of any circumstances which would constitute excusable neglect so as to preserve for Loufrani the right to make substantive objections.

Moreover, McCain's first set of interrogatories and document requests has now been outstanding for over four months with no response whatsoever. Accordingly, Loufrani should be directed to answer in full all interrogatories previously interposed by McCain, and to produce all documents requested by McCain.

McCain further requests that the Board provide *McCain only* (and not Loufrani) with additional time to take discovery. At a minimum, McCain anticipates the need to take Loufrani's deposition. McCain thus respectfully requests that the Board extend *for McCain only* the period to complete discovery by a period of at least three (3) months subsequent to the date on which Loufrani is required to answer the outstanding interrogatories and produce the requested documents.

Finally, McCain respectfully requests that the Board reset the trial dates in this proceeding in a manner commensurate with the requested enlargement of McCain's discovery period.

Mr. Nussbaum suggested that the undersigned serve the present motion both on Mr. Nussbaum and on Loufrani directly, in view of Mr. Nussbaum's motion for leave to withdraw, and authorized the undersigned to do so. As reflected in the accompanying certificate of service, McCain has done so.

Respectfully submitted,

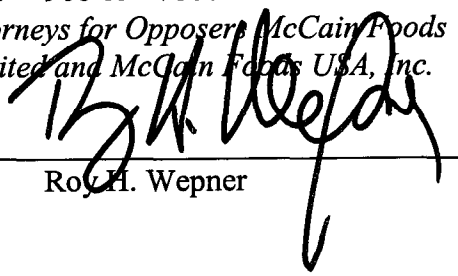
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*Attorneys for Opposer, McCain Foods  
Limited and McCain Foods USA, Inc.*

Dated: Aug 1, 2002

By:   
Roy H. Wepner

**CERTIFICATE OF SERVICE**

I hereby certify that a true copy of OPPOSER'S FIRST MOTION TO COMPEL DISCOVERY BY APPLICANT PURSUANT TO 37 C.F.R. § 1.20(e) was served upon the following counsel of record for applicant this 1<sup>st</sup> day of August, 2002, as follows:

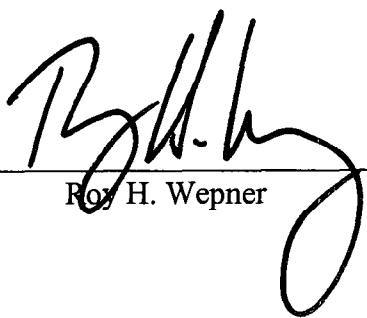
Peter E. Nussbaum, Esq.  
WOLFF & SAMSON  
5 Becker Farm Road  
Roseland, NJ 07068-1776

**VIA FIRST-CLASS MAIL**

and upon the applicant directly, as follows:

Mr. Franklin Loufrani  
c/o The Smiley Licensing Corporation  
BIG 97 bd  
Hausmann 75008  
Paris, FRANCE

**VIA FIRST-CLASS MAIL.**

  
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Roy H. Wepner