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

Proceeding	91229987
Party	Defendant Vlaktor Trading Limited
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Date	08/16/2017
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

In re: Application Serial No. 79/184,925
Trademark: TALKA plus design
Published: July 19, 2016

SAZERAC BRANDS, LLC,

Opposer

v.

VLAKTOR TRADING LIMITED

Applicant

Opposition No.: 91229987

APPLICANT’S BRIEF IN RESPONSE TO OPPOSER’S MOTION TO COMPEL

The motion of Sazerac Brands, LLC (“Opposer”) to compel discovery and for an extension of deadlines demonstrates that Opposer has been courteous with and generous to Vlaktor Trading Limited (“Applicant”) in regard to outstanding discovery requests propounded to it by Opposer. The motion further demonstrates that Applicant has been dilatory in responding to Opposer’s discovery requests. There are many factors which contributed to the situation before the Board but these factors, considered alone or in combination, do not excuse Applicant from its obligation to provide Opposer with the discovery responses to which it is entitled.

Opposer asks the Board to hold that Applicant has forfeited its right to object to any one of the outstanding discovery requests. While the Board would be acting well within its authority

to grant this part of Opposer's motion, the Board has great discretion in determining whether such forfeiture should be found. *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1554 (TTAB 2000). Indeed, as quoted in Opposer's brief, TBMP § 403.03 provides that "[a] party which fails to respond to interrogatories or document requests 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 request on its merits." Thus, even in a case where a party can't show excusable neglect, a finding of forfeiture is discretionary with the Board. The declaration of Mr. Lauter submitted with Opposer's motion demonstrates that Applicant has not once refused to provide responses to Opposer's discovery and, although the responses are woefully overdue, Applicant and its counsel have cheerfully participated in multiple meet and confer telephone conferences. Yes, promises have been left unfulfilled and, again, responses are long overdue. Nonetheless, Applicant respectfully requests that its right to object not be extinguished.

Respectfully submitted,

/David C. Purdue/

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Certificate of Service

I certify that, on August 16, 2017, I served the foregoing APPLICANT'S BRIEF IN RESPONSE TO OPPOSER'S MOTION TO COMPEL on Opposer by attaching it to email and sending the email to Opposer's counsel at the following email addresses:

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