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Filing date: **10/20/2020**

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

Proceeding	91253795
Party	Plaintiff Heaven Hill Distilleries, Inc.
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Submission	Reply in Support of Motion
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Signature	/Julie Laemmle Watts/
Date	10/20/2020
Attachments	Heaven Hill_Log Still - Reply in Support.pdf(667470 bytes )

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

In the Matter of Application Serial No. 88468304 for DANT & HEAD

Published in the Official Gazette October 8, 2019

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HEAVEN HILL DISTILLERIES, INC.,	:	
	:	OPPOSITION NO. 91253795
Opposer,	:	
	:	
v.	:	
	:	
LOG STILL DISTILLING, LLC	:	
	:	
Applicant.	:	
-----	X	

**REPLY IN SUPPORT OF MOTION TO COMPEL DISCOVERY RESPONSES**

The Board’s Order suspending proceedings, issued on August 24, 2020, specifically states that “[t]his suspension order *does not toll the time for either party to respond to any **outstanding** discovery.*” August 24, 2020 Order (emphasis added). Heaven Hill served its revised discovery requests on August 11, 2020, which was *before* the Board issued its Order. Therefore, Log Still’s time to respond to Heaven Hill’s revised discovery requests was not tolled by the Board’s Order.

Further, Heaven Hill did not “arbitrarily” pick August 11, 2020 as its date of service; that is in fact the date Heaven Hill served its revised discovery requests via email upon Log Still and is confirmed by both the email from Heaven Hill to Log Still and the Certificate of Service on both Heaven Hill’s revised Interrogatories and Requests for Production of Documents. See email and attached discovery requests attached as Exhibit 1 to Heaven Hill’s Motion to Compel Discovery Responses. Pursuant to Fed. R. Civ. P.

33(b)(2) and Fed. R. Civ. P. 34(b)(2)(A), Log Still had thirty days from this date of Service—August 11—to respond. Moreover, the parties discussed Heaven Hill revising its discovery requests in a meet-and-confer phone call on August 10, 2020, at which time Heaven Hill advised Log Still that it would revise and re-serve its discovery requests by the following day; therefore, Heaven Hill serving its revised discovery requests on August 11 was no surprise to Log Still.

Additionally, Heaven Hill's original discovery requests and revised discovery requests both provided a definition of "Opposer's Common Law Mark" separate and apart from "Opposer's Mark." Specifically, Heaven Hill's definition of "Opposer's Common Law Mark" provided "'Opposer's Common Law Mark' means THE DANT DISTILLERY COMPANY common law mark, which Opposer registered with the Kentucky Secretary of State as an assumed name corporation in 1993 and has maintained since that time" whereas "Opposer's Mark" was defined as "the J.W. DANT mark, including three (3) incontestable U.S. registrations for the mark in International Class 033, acquired by Opposer in 1993, as identified in Paragraph 2 and Exhibit A of the Notice of Opposition." See email and attached discovery requests attached as Exhibit 1 to Heaven Hill's Motion to Compel Discovery Responses. Neither the definition of, nor the discovery requests regarding, "Opposer's Common Law Mark" are hinged on the pending motion to amend. Therefore, there is no reason why Log Still cannot, or should not have to, respond to the outstanding discovery requests.

Finally, on September 16, 2020, when Heaven Hill attempted to work through this discovery dispute prior to seeking Board intervention, Log Still stated that it was working on its responses and planned to have responses to Heaven Hill the following week. See email attached as Exhibit 5 to Heaven Hill's Motion to Compel Discovery Responses. Log Still's current position that discovery is stayed pursuant to the Board's August 24 Order is inconsistent with Log Still's previous position that it was working on its responses and would provide same by the following week.

Heaven Hill respectfully requests this Board order Log Still to respond to the outstanding Interrogatories and Requests for Production of Documents served by Heaven Hill, which were due on September 11, 2020.

Dated: October 20, 2020

Respectfully Submitted,

HEAVEN HILL DISTILLERIES, INC.

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*Attorneys for Opposer,*

*Heaven Hill Distilleries, Inc.*

### **CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing has been served on counsel for Applicant, Log Still Distilling, Inc., by forwarding said copy on October 20, 2020, via email to: [trademarks@troutman.com](mailto:trademarks@troutman.com) and [austin.padgett@troutman.com](mailto:austin.padgett@troutman.com).

Signature: / Julie Laemmle Watts/

Date: October 20, 2020