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

Proceeding	92043340
Party	Plaintiff A.V. IMPORTS, INC. ,
Correspondence Address	ANDREW C. AITKEN VENABLE LLP P.O. BOX 34385; 575 7th Street NW WASHINGTON, DC 20004
Submission	Opposition/Response to Motion
Filer's Name	Justin Pierce
Filer's e-mail	jepierce@venable.com,acaitken@venable.com
Signature	/Justin Pierce/
Date	11/11/2005
Attachments	Petitioner's Opposition to Respondent's Motion to Compel and Extend.PDF (21 pages)

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

A.V. IMPORTS, INC.,

Petitioner,

vs.

SPIRITS INTERNATIONAL, N.V.,

Respondent.

Cancellation No. 92043340

Registration No. 1,487,042

Mark: RUSSKAYA

Attorney's Reference: 38793-199035

**OPPOSITION TO RESPONDENT'S MOTION TO COMPEL
AND EXTEND THE CURRENT SCHEDULE**

Petitioner A.V. Imports, Inc. ("Petitioner" or "A.V. Imports"), by its counsel, hereby opposes, pursuant to the Federal Rules of Civil Procedure, and Rules 2.120(e) and 2.127(a) of the Trademark Rules of Practice, Respondent's Motion to Compel and for an Extension of the Current Schedule, and seeks to immediately resume the testimony period in this proceeding.

INTRODUCTION

In a last-ditch effort to avoid a timely resolution of this cancellation proceeding and delay the testimony period, Spirits International ("Respondent" or "SPI") has initiated a flurry of activity including this 11th hour motion and an attempt to "do-over" discovery¹. As shown herein, Respondent's motion to compel should be denied because it is untimely, it fails to comply with Trademark Rule § 2.120(e) because Respondent did not meet and confer, and it lacks merit. Respondent's motion to compel fails to raise any legitimate issues and appears to be

¹ On Monday, October 31, 2005, the day before the testimony period opened, Petitioner received over 3,500 pages of new documents from SPI. On Tuesday, November 1, 2005, Petitioner received new supplemental interrogatory responses from SPI identifying previously undisclosed facts and witnesses. There was no reasonable explanation as to why these materials were not produced during the discovery phase of the proceedings, and this late production causes prejudice to the Petitioner. Consequently this, and any related evidence, will be the subject of a motion to exclude during the testimony period.

a tactic primarily designed to cause delay. Respondent's motion raises a number of illusory discovery issues, by demanding the production of documents and information that it already has, and reiterates requests for documents that do not exist. Further, with respect to its request for an extension, Respondent fails to show the requisite good cause. Respondent's actions have caused, and will continue to cause, prejudice to Petitioner who still waits for the resolution of this proceeding in advance of launching RUSSKAYA brand vodka in the United States. The Board should deny Respondent's motion to compel and extend the current schedule and refuse to allow Respondent a *de facto* extension by virtue of filing a meritless motion.

FACTUAL BACKGROUND

Petitioner commenced this cancellation proceeding, seeking to cancel Respondent's registration in the RUSSKAYA mark, by filing its petition to cancel on May 19, 2004. The Board, however, inadvertently forwarded the notice and petition to cancel that instituted this proceeding to an incorrect address, and, as a result, Respondent was not required to answer the petition until September 22, 2004.

Respondent served its discovery requests on the Petitioner on March 7, 2005, and Petitioner served its responses to these discovery requests on April 12, 2005. The discovery period in this proceeding closed on April 15, 2005. After the parties agreed upon terms for a protective order to cover documents produced in this proceeding, Petitioner produced documents responsive to Respondent's discovery requests on May 19, 2005. Respondent made no complaints regarding the sufficiency of the production. Declaration of Justin Pierce ¶ 2 ("Pierce Decl.").

On October 21, counsel for Respondent, Lisa Pearson, called Justin Pierce, counsel for Petitioner, to request an extension of the current schedule and to inform him that Respondent would be producing a substantial number of documents within the next week or so. Pierce Decl.

¶ 3. Ms. Pearson did not indicate, in this call – or at any other time until Friday night, October 28, 2005 – that Respondent had any issue with the sufficiency of Petitioner’s discovery responses or document production. *Id.* Respondent sent an email, which Petitioner received at 6:29 p.m., after the close of business on Friday night, October 28, 2005 – over five months after receiving Petitioner’s documents – raising, for the first time, issues with Petitioner’s discovery responses. *Id.* at 4.

On Monday, October 31, Petitioner sent a letter, by email and regular mail, in response stating that it simply did not have documents responsive to the majority of Respondent’s discovery requests.² *Id.* at 5; Exh. A to Pierce Decl. Petitioner, in an effort to quickly resolve the dispute, also indicated that it would further address Respondent’s newly raised concerns in a separate letter. *Id.* Later that evening Respondent served its motion to compel – without having ever met and conferred about any of the alleged discovery “deficiencies” described in its motion. *Id.* at 6. The testimony period was scheduled to begin the following day – November 1.

ARGUMENT

I. RESPONDENT’S MOTION TO COMPEL IS UNTIMELY

The Board should not consider Respondent’s motion to compel because it is untimely. Respondent chose to serve its motion on the eve of the testimonial period – on October 31 – five and a half months after Petitioner’s production of documents in May 2005. It appears as though Respondent is merely filing this motion to compel in order to delay the testimony period; as it voiced no concerns whatsoever about the adequacy of Petitioner’s May 2005 production until now. As such, Respondent’s motion to compel was not filed within a reasonable period of time after Petitioner served its responses, and documents in response, to Respondent’s discovery requests. *See* Trademark Rule § 2.120(e); *see also Societa Per Azioni Chianti Ruffino*

² Petitioner also informed Respondent, in this letter, that it did not consent to Respondent’s request for an extension of the current discovery schedule. Pierce Decl. ¶ 5.

Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL, 59 USPQ2d 1383, 1383 (TTAB 2001) (deficiencies in discovery responses should be addressed by the filing of a motion to compel discovery within a reasonable amount of time after receipt of the discovery responses). Respondent's filing of its motion to compel, just one day prior to the commencement of the testimony period in this proceeding, is not reasonable or timely, particularly in light of Respondent's five and a half months of silence with respect to Petitioner's discovery responses and document production.

II. RESPONDENT DID NOT MEET AND CONFER IN GOOD FAITH

Respondent has not met its burden of good faith effort to resolve this dispute as required by Trademark Rule § 2.120(e). Respondent's email, received at 6:29 pm Friday October 28 by counsel for Petitioner, raised for the first time issues with respect to Petitioner's document production. Pierce Decl. ¶ 4. On the following business day, Petitioner confirmed by letter that it did not have the majority of documents that Respondent sought and would address Respondent's newly raised issues in a separate letter. Pierce Decl. ¶ 5.

Respondent's lack of good faith in resolving this so-called discovery dispute is particularly evident because it filed its motion to compel the next business day after raising alleged discovery deficiencies for the first time. Respondent did not give Petitioner an adequate chance to respond its newly raised discovery issues, and thus did not make the requisite good faith effort to resolve this discovery dispute. *See Envirotech Corp. v. Compagnie Des Lampes*, 219 USPQ 448, 450 (TTAB 1979) (good faith effort is required where a party alleges failure to respond to its discovery – telephone communication between counsel would have been sufficient); *see also MacMillan Bloedel Ltd. Arrow-M Corp.*, 203 USPQ 952, 954 (TTAB 1979) (good faith effort is required where a party alleges failure to respond to its discovery – a statement that discovery has not been responded to is insufficient). Respondent's actions show that it did not act in good faith in an attempt to resolve the dispute.

Despite Petitioner's October 31 confirmation that it did not have documents responsive to the majority of Respondent's discovery requests, Respondent filed its motion to compel without having ever met and conferred about any of the alleged discovery "deficiencies" described in its motion. Had Respondent done so, it would have found that Petitioner did not have most of the documents that it sought and, as explained below, the parties could have easily resolved any "dispute" without requiring the Board's intervention. Accordingly, the Board should deny Respondent's motion to compel.

III. PETITIONER DOES NOT HAVE THE DOCUMENTS THAT RESPONDENT SEEKS AND HAS PRODUCED DOCUMENTS RESPONSIVE TO RESPONDENT'S REQUESTS

As Petitioner has repeatedly confirmed, A.V. Imports, has not yet commenced use of the RUSSKAYA mark in the United States, and as recognized by Respondent in its motion, Petitioner does not have any documents responsive to Respondent's discovery requests seeking Petitioner's sales figures, advertising, marketing, promotional material, distribution plans or contracts with distributors or importers. This includes Request Nos. 16-28, 30, 31, 33 and 36. There are no sales documents, there are no advertising documents, there are no contracts, there are no promotional materials, and there are no distribution plans. Pierce Decl. ¶ 7. Had Respondent met and conferred, as required by Trademark Rule § 2.120(e), Respondent's counsel would have learned this. Petitioner addresses Respondent's specific demands below. Specifically:

Request Nos. 1 and 2: These requests seek documents supporting or refuting allegations in the Petition to Cancel, and those concerning Petitioner's abandonment allegations. Respondent, by its own admission, acknowledges that Petitioner has produced documents that "support or refute [the] allegations in the Petition to Cancel". *See* Respondent's Motion at 4. Petitioner produced documents showing Respondent's abandonment and nonuse of the RUSSKAYA mark that related to an earlier proceeding before this Board. Certainly these

documents are responsive to Request Nos. 1 and 2. It should be no surprise that, when attempting to prove events that did not occur, specifically the absence of actual use of the RUSSKAYA mark, there are no further documents.

Request Nos. 9-14: These requests seek documents concerning ATF licenses or permits relating to the RUSSKAYA mark. Petitioner, as Respondent acknowledges, has received a certificate of label approval (“COLA”) from the Bureau of Alcohol, Tobacco & Firearms (“BATF”) for RUSSKAYA, and has already informed Respondent of this fact. Again, had Respondent attempted to make a good faith effort to raise this issue with Petitioner earlier, Petitioner may have been able to locate another copy of the document.³ In any event, the same document was produced by Respondent months ago in this proceeding as SPIG 0003, and thus, there is no prejudice to Respondent.

Request No. 15: This request seeks communications with the U.S. Patent & Trademark Office concerning the RUSSKAYA mark. As discussed above, had Respondent raised this issue earlier, and made a good faith effort to meet and confer, Petitioner could have produced this document without the intervention of the Board. Obviously the failure to produce the application was an oversight in our production which has in no way prejudiced Respondent.⁴ Copies of these documents are publicly available on-line at the U.S. Patent and Trademark Office website.

Request No. 35: This request asked for all evidence that Petitioner planned to rely upon in this proceeding. Petitioner objected to this request because it did not, and would not, *know* what evidence it would rely upon until the completion of the testimony period. Respondent’s assertion that Petitioner relied on “many” documents that it did not produce in its summary

³ Petitioner will produce a copy of its COLA for RUSSKAYA vodka to Respondent.

⁴ Petitioner will provide a copy of its trademark application for RUSSKAYA to Respondent.

judgment motion is simply wrong.⁵ These documents were either produced previously in this proceeding by Respondent, or were located by Petitioner's counsel on publicly available databases *after* the close of discovery. The documents Respondent refers to in its motion, exhibits E, J, and A, do not support its contentions.

(1) Exhibit E – a copy of the notice of recordation of assignment document issued by the United States Patent & Trademark Office for the March 6, 2002 assignment of the RUSSKAYA mark to Respondent by PepsiCo Inc. This document was produced by **Respondent** as SPIG 00071-00072.

(2) Exhibit J – a print-out, from the publicly accessible COLA database, reflecting that Respondent had still not received a COLA for RUSSKAYA brand vodka as of April 8, 2005. This document is attorney-work product located during the litigation and was not responsive to Respondent's discovery requests.

(3) Exhibit A (to a declaration in support of Petitioner's reply brief) – a copy of the distribution and supply agreement between Respondent Spirits International and its U.S. distributor, Allied Domecq ("Spirits Distribution Agreement").⁶ On June 25, 2005, Counsel for Petitioner found the Spirits Distribution Agreement on the public filing database of the U.S. Securities & Exchange Commission during the summary judgment motion briefing period. Pierce Decl. ¶ 8. Petitioner found this public document to rebut the new defense and argument that Respondent raised in its opposition to Petitioner's motion for summary judgment – the

⁵ Specifically, Respondent refers only to two exhibits (Exhibits E and J) to Petitioner's summary judgment motion, and one exhibit (Exhibit A to Declaration of Justin Pierce) to Petitioner's reply brief to Respondent's motion opposing summary judgment.

⁶This agreement was attached as an exhibit to an Allied Domecq 20-F filing with the Securities & Exchange Commission. Petitioner found this particular document at www.sec.gov, printed it out on June 20, 2005, and attached it as Exhibit A to the Declaration of Justin Pierce in Reply to Respondent's Opposition to Petitioner's Motion for Summary Judgment.

argument that Respondent had intent to resume use of the RUSSKAYA mark and was prevented from doing so because of trademark litigation outside of the U.S.

The Distribution Agreement reflected that Respondent had actually agreed, as of November 15, 2000, not to market vodka within the U.S., except for certain brands specifically identified in agreement. RUSSKAYA was not one of the identified brands. In short, Respondent had agreed that it would not market RUSSKAYA brand vodka within the U.S. in November 2000. In any event, Respondent was certainly aware of this agreement with Allied Domecq, particularly because it claims to have plans to “relaunch” RUSSKAYA in the U.S. through Allied Domecq.

Incredibly, Respondent protests that Petitioner should have produced this document, even while it withheld this document from Petitioner. In any event, this document was not responsive to any of Respondent’s discovery requests. Furthermore, the Distribution Agreement is a rebuttal document and was only used to respond to SPI’s belated so-called “excuse” that litigation in foreign countries affected its decision not to sell RUSSKAYA brand vodka in the United States.

Respondent’s Claims About Other Documents

Respondent also mistakenly suggests that certain documents produced by Petitioner “allude to other documents that have not been produced,” which it argues are responsive to various requests. It cites three examples in support of this incorrect argument.

First, AVI 000108 – the one-page letter that Respondent claims to allude to a “General Contract terms” document sent to Ron Wollman of A.V. Imports on March 22, 2005, refers to the document immediately following the letter in question – a proposal titled “Protocol of Intentions” signed by Ron Wollman on March 29, 2005. Petitioner produced this document to Respondent in this proceeding as AVI 000109-000113. This document represents the general

contract terms that Petitioner proposed to its potential supplier, FKP Sojuzplodoimport. Pierce Decl. ¶ 9.

Respondent's suggestion that there are other documents is fallacious. Petitioner produced its preliminary proposal and there were no further documents relating to the proposed transaction. Pierce Decl. ¶ 10. Further, Respondent's suggestion that the one-page letter, AVI 000108, suggests the existence of a fully executed contract is also wrong. Petitioner has not entered into any supply agreement for a vodka product bearing the RUSSKAYA mark. *Id.*

Second, Respondent complains that because this letter, AVI 000108, states that future communications concerning RUSSKAYA should be made with Petitioner's associate Mr. Alex Slavnov, Petitioner should have produced documents from Mr. Slavnov. Apparently Respondent has not examined Petitioner's production thoroughly because, contrary to Respondent's assertion, Petitioner *did* produce a document from Mr. Alex Slavnov earlier in this proceeding as AVI 000114.⁷

Respondent also complains that Petitioner should have identified Mr. Slavnov in response to Interrogatory Nos. 3 and 7. Petitioner, however, did not identify Mr. Slavnov in response to Interrogatory Nos. 3 and 7 because these interrogatories sought the identity of person(s) with the most knowledge concerning the petition to cancel and the adoption of the RUSSKAYA mark by Petitioner in the U.S. Mr. Slavnov only worked to arrange a supply and distribution deal for RUSSKAYA vodka between Petitioner and a potential supplier. On information and belief, he does not have the most knowledge responsive to these interrogatories. Pierce Decl. ¶ 11.

Third, Respondent claims that the letter from FKP Sojuzplodoimport to Ron Wollman of A.V. Imports, AVI 000116-000119, references information that Mr. Wollman provided to Mr. Loginov of FKP Sojuzplodoimport regarding the cancellation proceeding, and that Petitioner

⁷ This document was an email from Mr. Alex Slavnov to Ron Wollman dated February 17, 2005.

should have produced this information pursuant to various requests. Petitioner cannot produce what it does not have. This letter only shows that the parties were not likely to enter into an agreement for vodka under the RUSSKAYA mark before the resolution of this proceeding. Next, Respondent continues its erroneous argument that Petitioner did not produce the supply contract that “the parties were ready to sign” as referred to in the letter. As discussed above, there was no supply contract, and Petitioner has already produced the closest thing to it – a preliminary proposal produced as AVI 000109-000113. Finally there are no documents, beyond what Petitioner has produced and agreed to produce, that are responsive to Respondent’s document requests. Pierce Decl. ¶ 10.

In summary, Respondent’s demands lack merit and Respondent has, or has access to, all of the documents and information that it claims it does not have⁸.

V. RESPONDENT FAILS TO SHOW GOOD CAUSE FOR THE EXTENSION IT REQUESTS

Respondent fails to show good cause for an extension caused by its own inaction with respect to discovery. Respondent failed to raise any concerns with Petitioner’s production after receiving it nearly five and half months ago; but now, as described above, seeks to raise a series of baseless issues with Petitioner’s production. As such, the Board should deny Respondent’s request for an extension. *See, e.g., Baron Philipe*, 55 USPQ2d 1848, 1851 (Board did not grant extension, even for maternity leave, where counsel knew this and knew that client would not be able to comply with deadline but waited until the last moment to file a motion to extend). Respondent’s motion to compel and extend the schedule appear to be a pretext for Respondent’s real objective – the further delay of these proceedings. In fact, by merely filing its untimely motion to compel, Respondent has achieved its ends – in part – because filing a motion to compel suspends the proceeding until the motion is resolved. We submit that the Board should

⁸ While there may have been some materials that have come into existence *after* the close of discovery, there was no agreement among the parties to update the discovery.

not permit this abuse of the process and should deny Respondent's request to extend the testimony period. There is simply no reason justifying the extension that Respondent requests.

Counsel for Respondent argues that Respondent needs the extension because of supposed discovery deficiencies and because she is changing firms on November 15. Petitioner has addressed the supposed discovery issues at length above. The testimony period commencement date was set for this action by the Board on September 19, 2005 (*see* Order at 9), yet Respondent waited until the proverbial "last moment" to file its request for an extension on October 31. Ms. Pearson could have easily began transitioning this proceeding to her new firm, or to another attorney familiar with the proceeding at her old firm – like Mr. Georges Nahitchevansky, as early as September 29, when she first announced her intention to change firms. Counsel for Respondent has now had over a month to transition this proceeding and now seeks this delay as a result of her own volition – the changing of a firm is a circumstance wholly within her control. *See Pumpkin Ltd.*, 43 USPQ2d 1582; *see also Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848 (TTAB 2000) (counsel's press of other business, docketing errors and misreading of relevant rule are circumstances wholly within counsel's control).

Moreover, Respondent will suffer no prejudice in this proceeding because Ms. Pearson, on Friday, November 11, confirmed that she will continue to represent Respondent at her new firm as of November 16, the day after she leaves her old firm. Pierce Decl. ¶ 12; Exh. B to Pierce Decl. As such, Respondent's argument in its motion, that Ms. Pearson's new firm, Kilpatrick Stockton, had a conflict of interest preventing her from continuing to handle this proceeding, is now moot. *See* Respondents' Motion at 6. Evidently this potential conflict of interest has been resolved and Respondent will continue to have uninterrupted representation from the same lead counsel in this proceeding.

Further, Respondent has not indicated any other scheduling issues that will prevent the testimony period from moving forward. Petitioner has already attempted to accommodate Ms. Pearson's, and Respondent's, schedules by offering to schedule an upcoming testimonial deposition at a time convenient to Ms. Pearson and Respondent during the currently scheduled testimony period. Exh. A to Pierce Decl. There is simply no basis, under these circumstances, for an extension of the current schedule.

In view of the foregoing, Petitioner requests a teleconference or hearing with the Board, its representative, or the interlocutory attorney assigned to this proceeding in order to reset a schedule for the parties to conduct the testimony period and immediately move forward with this proceeding.

Respectfully submitted,

Date: November 11, 2005

By:

A handwritten signature in cursive script, appearing to read "Justin Pierce", is written over a horizontal line.

Andrew C. Aitken

Justin Pierce

Venable LLP

P.O. Box 34385

Washington, D.C. 20045-9998

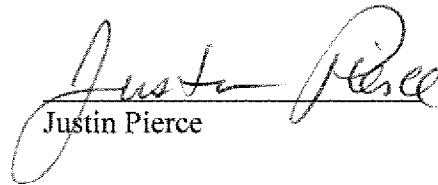
Telephone: (202) 344-4000

Fax: (202) 344-8300

Attorneys for Petitioner

CERTIFICATE OF SERVICE

The undersigned, attorney for Petitioner, hereby certifies that he served, by first class mail, postage prepaid, and email, a copy of the foregoing Petitioner's Opposition to Respondent's Motion to Compel and Extend the Current Schedule upon Lisa Pearson, Esq., Fross Zelnick Lehrman & Zissu, P.C., 866 United Nations Plaza, New York, NY 10017, this 11th day of November, 2005.


Justin Pierce

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

A.V. IMPORTS, INC.,

Petitioner,

vs.

SPIRITS INTERNATIONAL, N.V.,

Respondent.

Cancellation No. 92043340

Registration No. 1,487,042

Mark: RUSSKAYA

Attorney's Reference: 38793-199035

DECLARATION OF JUSTIN PIERCE

I, JUSTIN PIERCE, hereby declare as follows:

1. I am an associate at the firm of VENABLE LLP, and, along with Andrew C. Aitken, have represented A.V. Imports, Inc. – the Petitioner, in this proceeding. I make this declaration, based upon my personal knowledge, in support of Petitioner's Opposition to Respondent's Motion to Compel Discovery and for an Extension of the Current Schedule.
2. Petitioner produced documents responsive to Respondent's discovery requests in this proceeding on May 19, 2005. Respondent has made no complaints regarding the sufficiency of this production.
3. On October 21, counsel for Respondent, Lisa Pearson, called Justin Pierce, counsel for Petitioner, to request an extension of the current schedule and to inform him that Respondent would be producing a substantial number of documents within the next week or so. Ms. Pearson did not indicate, in this call – or at any other time until Friday night, October 28, 2005 – that Respondent had any issue with the sufficiency of Petitioner's discovery responses or document production.

4. Respondent sent an email, which Petitioner received at 6:29 p.m., after the close of business on Friday night, October 28, 2005 – over five months after receiving Petitioner’s documents – raising, for the first time, issues with Petitioner’s discovery responses.

5. On Monday, October 31, Petitioner sent a letter, by email and regular mail, in response stating that it simply did not have documents responsive to the majority of Respondent’s discovery requests. *See Exhibit A* attached hereto. Petitioner, in an effort to quickly resolve the dispute, also indicated that it would further address Respondent’s newly raised concerns in a separate letter. *Id.* Petitioner also informed Respondent that it did not consent to Respondent’s request for an extension of the current discovery schedule.

6. Later, that evening, on October 31, Respondent served its motion to compel – without having ever met and conferred about any of the alleged discovery “deficiencies” described in its motion.

7. Respondent did not need to file this motion because Petitioner has no documents responsive to Respondent’s discovery requests seeking Petitioner’s sales figures, advertising, marketing, promotional material, distribution plans or contracts with distributors or importers. This includes Request Nos. 16-28, 30, 31, 33 and 36. There are no responsive sales documents, advertising documents, contracts, promotional materials or distribution plans.

8. Respondent’s claims in its motion concerning documents Petitioner attached as exhibits in support of its summary judgment motion are incorrect. For example, on June 25, 2005, Counsel for Petitioner found the Spirits Distribution Agreement on the public filing database of the U.S. Securities & Exchange Commission during the summary judgment motion briefing period in order to rebut the newly raised excusable nonuse argument of Respondent. This document was not attached to Petitioner’s motion for summary judgment; it was attached to Petitioner’s Reply to Respondent’s Opposition to Petitioner’s Motion for Summary Judgment.

9. Respondent's assertion that AV 000108 produced by Petitioner alludes to "General Contract terms" that Petitioner has not produced is incorrect. This one-page letter refers to the document immediately following the letter, a proposal titled "Protocol of Intentions" produced by Petitioner as AV 000109-000113. This document represents the contract terms that Petitioner proposed to its potential supplier, FKP Sojuzplodoimport.

10. Petitioner had no other documents relating to the proposed transaction and has not entered into a supply agreement for RUSSKAYA vodka.

11. Respondent claims that Petitioner should have identified Mr. Slavnov in response to Interrogatory Nos. 3 and 7. Mr. Slavnov, to our knowledge, has little knowledge responsive to these interrogatories. Mr. Slavnov has only worked to arrange a supply and distribution deal for RUSSKAYA vodka between Petitioner and a potential supplier. On information and belief, he does not have the most knowledge responsive to these interrogatories.

12. On Friday, November 11, Lisa Pearson, counsel for Respondent sent an email to counsel for Petitioner, Justin Pierce and Andrew Aitken, confirming that she will continue to represent Respondent at her new firm – Kirkpatrick Stockton, as of November 16, the day after she leaves her old firm – Fross Zelnick. *See* Exhibit B attached hereto.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge.

Date: November 11, 2005

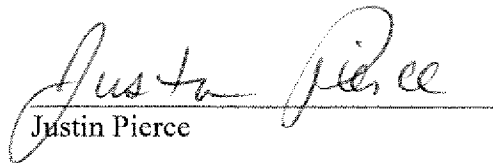

Justin Pierce

EXHIBIT A

October 31, 2005

VIA REGULAR MAIL AND EMAIL (PDF)

Lisa Pearson
Fross Zelnick Lehrman & Zissu, P.C.
866 United Nations Plaza
New York, NY 10017

Re: A.V. Imports, Inc. v. Spirits International, N.V.

Dear Lisa:

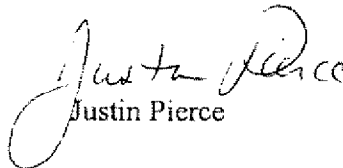
We received your October 28th email and letter, included within a box of approximately 3,500 pages of newly produced documents, that we received today via Federal Express. We write to address the new discovery issues you raise and your request to conduct additional discovery in this matter.

Your request for supplemental discovery responses is untimely. We do not agree to supplement our discovery responses at this time. As your October 28th email recognizes, Petitioner – A.V. Imports, Inc. (“A.V. Imports”) simply does not have documents responsive to the majority of Respondent – Spirits International, N.V.’s (“Spirits”) discovery requests. We will, however, address the new issues you now raise, on the eve of the testimonial period, in a separate letter.

We understand that you will be leaving your current firm, Fross Zelnick, on November 15, 2005. As such, we are willing to be flexible in scheduling for the testimonial deposition currently noticed for November 21, 2005. Please let us know if you are able to attend this deposition as scheduled. A.V. Imports, however, will not consent to an extension of the discovery schedule.

Please call us if you have any question concerning this letter.

Sincerely,


Justin Pierce

cc: Andrew C. Aitken

EXHIBIT B

Pierce, Justin E.

From: Lisa Pearson [LPearson@frosszelnick.com]
Sent: Friday, November 11, 2005 12:41 PM
To: Pierce, Justin E.
Cc: Aitken, Andrew C.; Overheu, Marilyn R.; LPearson@Kilpatrickstockton.com
Subject: RE: A.V. Imports v. Spirits International -- RUSSKAYA Cancellation

Dear Justin:

I am writing to advise you that November 15, 2005 will be my last day at Fross Zelnick. I am joining the New York office of Kilpatrick Stockton, LLP and I can now confirm that I will be handling this matter going forward. Starting November 16, 2005, my contact information will be:

Lisa Pearson
Kilpatrick Stockton LLP
31 West 52nd Street 14th Floor
New York, New York 10019
T 212-775-8700/ F 212-775-8800
LPearson@Kilpatrickstockton.com

Please note my new address in your file.

If possible, I would like to schedule a call with you (and anyone else at your firm who needs to be involved) to discuss my request for an extension of the current schedule, whether your scheduled deposition is necessary or the matters you plan to cover could be addressed in a stipulation, and your position on the authenticity of the pleadings we have produced to you from the various litigations involving trademark ownership. Are you available for such a call on November 16 or 17? Please advise.

Thanks. Lisa

Lisa Pearson
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Telephone: 212-813-5900
Fax: 212-813-5901

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11/11/2005

