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

Proceeding	92046084
Party	Plaintiff RIVER WEST BRANDS, LLC
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Date	11/01/2007
Attachments	9416-97737 - Petitioner's Reply to Respondent's Response.pdf ( 5 pages ) (144303 bytes )

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

In the Matter of U.S. Reg. Nos.  
0,833,808, 1,084,143, 1,084,144,  
2,362,262, 2,366,396; 0,858,691,  
0,859,016 and 1,120,124

Cancellation No. 92046084

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Marks: MISTER DONUT (word mark)  
MISTER DONUT (stylized)  
MISTER DONUT & Design

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River West Brands, LLC,

Petitioner,

vs.

DD IP Holder LLC,

Registrant.

**PETITIONER'S REPLY TO RESPONDENT'S RESPONSE TO  
PETITIONER'S MOTION TO COMPEL REGISTRANT TO ANSWER PETITIONER'S  
FIRST SET OF INTERROGATORIES AND TO PRODUCE DOCUMENTS**

During the pendency of its motion to compel, the Petitioner has continued to try to persuade the Registrant to comply with its discovery obligations. Despite the Petitioner's request for an accounting of complete records, the Respondent has told Petitioner nothing about documents (except that they are incomplete), informed the Petitioner that the documents are located in a storage facility in Massachusetts, and that Petitioner would have to incur attorneys' fees and travel expenses for their attorneys to sift through this partial production in questionable condition for inspection and copying.

The Respondent had received notice of the August 31, 2007 rule change (by Petitioner as well as the Federal Register) that delay under the guise of “negotiating a protective order” is not an excuse for noncompliance with discovery requests, particularly when Petitioner is willing to accept and enter into the Board’s standard protective order. The complete language for this is clear under Rule 2.116(a).

The Trademark Trial and Appeal Board's standard protective order is applicable during disclosure, discovery and at trial in all opposition, cancellation, interference and concurrent use registration proceedings, unless the parties, by stipulation approved by the Board, agree to an alternative order, or a motion by a party to use an alternative order is granted by the Board. The standard protective order is available at the Office's Web site, or upon request, a copy will be provided. No material disclosed or produced by a party, presented at trial, or filed with the Board, including motions or briefs which discuss such material, shall be treated as confidential or shielded from public view unless designated as protected under the Board's standard protective order, or under an alternative order stipulated to by the parties and approved by the Board, or under an order submitted by motion of a party granted by the Board.

Respondent’s strategy of delay and driving up the costs Petitioner is incurring in this proceeding by filing erroneous motions (such as a motion to bifurcate discovery) and frustrating the discovery process by imposing enhanced and unnecessary burdens on the Petitioner and has inevitably slowed the discovery process down to a stall. In this sense, the Respondent has been successful in continuing to not answer for its abandonment of MISTER DONUT and One Eyed Chef Design marks and continues to reserve rights over registrations they have been warehousing and that are not in use.

Rather than allowing this protective order issue to linger, Petitioner requests that the Board either dispose of it entirely by sending a message that if the Respondent believes that the Board’s Standardized Protective Order is sub-standard, inferior or insufficient that they should produce all documents without a protective order in place. After all, Respondent has not

provided any specific facts that justify the entry of a protective order. In the alternative, the Board can simply order that its Standard Protective Order be executed by the Parties and that Respondent produce all documents and answer all interrogatories fully and completely pertaining to its abandonment and/or use of MISTER DONUT and the One Eyed Chef Design marks without further delay.

RIVER WEST BRANDS, LLC



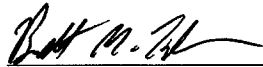
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**CERTIFICATE OF MAILING**

I hereby certify that the foregoing Petitioner's Reply to Respondent's Response to Petitioner's Motion to Compel Registrant to Answer Petitioner's First Set of Interrogatories and to Produce Documents is being filed electronically with the Commissioner for Trademarks, P.O. Box 1451, Alexandria, Virginia 22313-1451, on this 1st day of November, 2007.

Respectfully submitted,

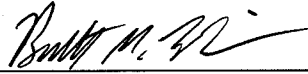


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Attorneys for Petitioner

**CERTIFICATE OF SERVICE**

I hereby certify that a copy of the foregoing Petitioner's Reply to Respondent's Response to Petitioner's Motion to Compel Registrant to Answer Petitioner's First Set of Interrogatories and to Produce Documents is being served by first-class mail, with sufficient postage prepaid, upon Stephanie K. Wade, Gabrielle S. Roth and Luna M. Samman of Dickstein Shapiro LLP, 1825 Eye Street, N.W., Washington, D.C. 20006, Attorneys for the Registrant, on this 1st day of November, 2007.



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