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

Proceeding	92055738
Party	Plaintiff J J Holand Limited
Correspondence Address	KEITH MURRAY MCCULLOCH J J HOLAND LIMITED 87/171 WIRELESS ROAD, PATHUMWAN BANGKOK, 10330 THAILAND mccullochkm@gmail.com, lstraube@gmail.com
Submission	Opposition/Response to Motion
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Date	10/23/2014
Attachments	Potomac JJH Objection to Motion to Extend Time Final.pdf(143622 bytes)

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

J J HOLLAND LIMITED	:	
Petitioner	:	Cancellation No. 92055738
v.	:	
	:	
POTOMAC TOBACCO COMPANY, LTD.	:	
Registrant.	:	
	:	

PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO EXTEND TIME
TO RESPOND TO PETITIONER'S DISCOVERY REQUESTS AND MOTION TO
EXTEND THE TRIAL DATES IN THIS PROCEEDING

I. Objection to Motion to Extend time to respond to Discovery Requests

Respondent has filed its motion without consent. Respondent and Petitioner corresponded regarding Respondent's request for extension of time, and Petitioner attempted to make a reasonable compromise even to Respondent's unusually long extension request. Petitioner's condition was that this request not be abusive or used for other purposes. In particular, Petitioner voiced concern that Respondent could use the time to seek to transact business or to comply with any state or federal law or regulations, or to take actions to address issues such as abandonment, which it would then use in these proceedings. Respondent has refused to stipulate that such is not its intent.

In light of the failure of Respondent to stipulate that its purposes in requesting an extension was genuine and without ulterior motives, we cannot consent to the extension and must oppose it.

We dispute that the Respondent has made a showing of good cause for its inability to respond to any of the discovery requests outstanding in a timely fashion.

Petitioner submitted its discovery requests by first class mail (with courtesy copy by email) as follows:

1. Petitioner's First Set of Requests for Production of Documents and Things to Registrant on September 3, 2014 (9)
2. Petitioner's First Set of Interrogatories to Registrant on September 4, 2014 (1-13)
3. Petitioner's Second Set of Requests for Production of Documents and Things to Registrant on September 4, 2014 (28)
4. Petitioner's Second Set of Interrogatories on September 5, 2014 (14-28)
5. Petitioner's First Set of Requests for Admission to Registrant on September 24, 2014
6. Petitioner's Second Set of Requests for Admission to Registrant on September 24, 2014
7. Petitioner's Third Set of Requests for Production of Documents to Registrant on September 24, 2014

Petitioner also submitted a correction on the instructions. The correction specifically was to correct the trademark numbers for Respondent's YES International mark and Petitioner's YES registration and application numbers, all of the foregoing inadvertently had the Respondent's YES number in the original instructions. An obvious error, but one to be corrected nevertheless to avoid confusion.

Unfortunately, inadvertently an incomplete unsigned draft rather than the final signed copy was sent, necessitating the “second” correction the Respondent refers to.

Petitioner is of the view that the Rules governing these proceedings already recognize the difficulties some parties will encounter in meeting the discovery obligations, and set 30 days in light of that fact. The arguments that Respondent cite are not unlike the issues confronting other parties, but the Rules require diligence and a genuine good faith effort before seeking extensions of time. In this case, the Respondent has made no such showing. The Respondent has not made any response, partial or otherwise, to the Discovery requests to date, although the filing of the request for an additional 60 days was made 30+5 days after the serving of the first request sought to be extended. The Respondent was aware of the types of documents that would be sought by the Petitioner from the issues raised in the complaint; if not all, at the very least a majority. Furthermore, Respondent itself served similar discovery requests previously on Petitioner in previous proceedings. It simply cannot be said that Respondent should not have at least had large portions of the documents collected for these proceedings.

Petitioner has failed to provide the Board with any explanation for the delay in obtaining the documents and moreover has made no effort to tell the Board where they are located that makes it so particularly time consuming. The Discovery requests were made near the end of discovery, after Petitioner had waited for Respondent to collect documents.

In addition, Petitioner must point out at this time that Respondent has failed to comply with its obligations to provide Initial Disclosures in compliance with Fed. R.

Civ. P 26. Respondent allowed Discovery to close without serving complete signed Initial Disclosures upon Petitioner as required by the applicable rules.

Respondent provided Petitioner with a document entitled Respondent's Initial Disclosures; however that document failed to comply with the applicable rules regarding Initial Disclosures and discovery documents and accordingly Respondent is in default of its obligations. Registrant never provided any update to its defective document, leaving it without any Initial Disclosures and subject to sanctions and prohibitions therefore.

Moreover, in the aforementioned defective "Respondent's Initial Disclosures" document provided to Petitioner, the Respondent stated "Copies of the above-noted documents and things, if available, will be located in the offices of Gunzburg, Cornette & Schotts, Advocates, President Building, Franklin Rooseveltplaats, 12 bus 3, 2060 Antwerp, Belgium [underlining added]".

Petitioner is left to ponder whether the documents and things referred to by Respondent are not in existence or whether Respondent through willful neglect failed to proceed to collect the documents identified therein. In any event, Respondent's willful neglect to proceed with collecting any documents and things in the location advised 6 months ago and failing to alert Petitioner of their availability should not now be rewarded with an additional 60 days of delay.

Petitioner's First Set of Requests for Production of Document and Things, has as document request number 9, the following:

9. All documents upon which Registrant plans to rely upon in these proceedings which are currently in Registrant's possession.

Petitioner finds it difficult to believe that any good faith argument exists for a diligent party to claim they are unable to fulfill such request within 35 days, particularly when discovery has already closed.

Respondent has allowed the due date for its responses to the Petitioner's discovery requests to pass without providing any response to the Petitioner.

Petitioner requests that the Board order that Respondent provide its full and complete responses to all Petitioner's discovery requests without objection within not more than 15 days, failing which Petitioner be held in default with appropriate sanctions.

II. Consent to Motion to Extend the Trial Dates in this Proceeding

Petitioner consents to the Respondent's Motion to extend the trial dates in this proceeding. In light of the delay that will no doubt occur due to Respondent's failure to timely respond to discovery and the time to respond to this set of motions and our motion to compel, it is obvious that the remaining trial dates cannot now be met and we concur with and consent to a 90 day extension. Should this process exceed 60 days, we request the Board add additional days to the extension as appropriate.

A handwritten signature in blue ink, appearing to read 'K M M', is centered at the top of the page.

Dated: October 23, 2014

Mr. Keith Murray McCulloch

J J Holand Limited

Authorized Officer and Representative

87/171 Wireless Road

Pathumwan, Bangkok 10330

Thailand

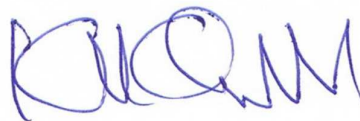
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Certificate of Service

I hereby certify that a true and complete copy of the foregoing PETITIONER'S RESPONSE TO RESPONDENT'S MOTION TO EXTEND TIME TO RESPOND TO PETITIONER'S DISCOVERY REQUESTS AND MOTION TO EXTEND THE TRIAL DATES IN THIS PROCEEDING has been served upon POTOMAC TOBACCO COMPANY, LTD., by mailing said copy on October 23, 2014, via First Class Mail, postage prepaid, to its representative of record in this matter at the correspondence address of record: KATHRYN JENNISON SHULTZ, JENNISON & SHULTZ, P.C., 2001 JEFFERSON DAVIS HWY, SUITE 1102, ARLINGTON, VA 22202, USA.

BY:



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