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

Proceeding	91177737
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

STAMPS.COM INC.,

Opposer,

v.

PSI SYSTEMS, INC.,

Applicant.

Opposition No. 91177737

Application Serial No. 78/591,795

Mark: ISTAMPS

Published: April 10, 2007

**STAMPS.COM INC.'S OPPOSITION TO PSI'S MOTION FOR PROTECTIVE
ORDER AND REPLY IN SUPPORT OF MOTION TO COMPEL PRODUCTION
OF DOCUMENTS AND FURTHER SUPPLEMENTAL RESPONSES TO
INTERROGATORIES FROM PSI SYSTEMS, INC.**

I. Introduction¹

For approximately one year, PSI and Stamps.com have each had outstanding sets of requests for production to each other. These requests for production are contention requests, similar in number and scope. Upon receiving PSI's requests, Stamps.com worked diligently to assemble and review the numerous documents which were responsive to PSI's requests. Stamps.com produced most of these documents on May 16, 2008.

¹ Throughout this Reply in Support of Stamps.com Inc.'s Motion to Compel Production of Documents and Further Supplemental Responses to Interrogatories From PSI Systems, Inc. ("Reply"), Stamps.com Inc.'s motion in issue is referred to as the "Motion" or "Motion to Compel," PSI Systems, Inc.'s response styled "PSI Systems' Opposition to Stamps.com's Motion to Compel Responses to Document Requests and Interrogatories and Motion for Protective Order" is referred to as the "Opposition," Stamps.com Inc. is referred to as "Stamps.com," and PSI Systems, Inc. is referred to as "PSI." The Trademark Trial and Appeal Board is referred to as "TTAB" or simply the "Board." PSI's Application Serial No. 78/591,795 is referred to as the "Application." Stamps.com's USPTO Registration Nos. 2795182, 1930424, 2152671 and 3149972 are referred to collectively as its "Registrations."

To date, PSI has engaged in no like effort. Rather, in response to Stamps.com's instant Motion to Compel, PSI complains that it will have to undertake great efforts (like those of Stamps.com) to respond. PSI objects to the Stamps.com's Requests, primarily on the ground that they are overly broad, or duplicative. But the contention Requests are reasonable given the factors which must be established by Stamps.com, and the Requests are not duplicative given the issues presented in this intent to use proceeding concerning new technology.

As for PSI's remaining contentions, each is specious. The very rules cited by PSI reflect that Stamps.com's Requests are relevant and not objectionable on privacy grounds, contrary to PSI's assertions.

In light of PSI's indefensible positions, Stamps.com's Motion should be granted. For the same reasons, PSI's purported "Motion for a Protective Order" should be denied. Such Motion should also be denied because it is procedurally improper, as it was not brought in a timely manner.

II. Stamps.com's Discovery Requests are Not Overly Broad or Unduly Burdensome

PSI makes the general statement that Stamps.com's Requests as a whole are overly broad: "Stamps.com's document requests are overly broad and unduly burdensome." (Opposition, Page 8.) However, PSI makes absolutely no overbreadth argument – or any argument at all - regarding Request Nos. 1, 2, 9, 16, 17, 25-28, 31, 33, 34-38, 40-52, 54, 55, 56, and 58-62. This is an implicit concession that more than half of Stamps.com's requests are unobjectionable.

With regard to the remaining Requests and the burden of responding, PSI promulgated similar – often nearly identical – Requests for Production, and Stamps.com responded to them diligently. Further, the scope and number of interrogatories promulgated by PSI is substantively identical to those promulgated by Stamps.com. In objecting to the scope of Stamps.com’s Requests for Production, PSI therefore is in violation of T.B.M.P. § 402.01, which provides, “a party ordinarily will not be heard to contend that a request for discovery is proper when propounded by a party itself but improper when propounded by its adversary. A contention of this nature will be entertained only if it is supported by a persuasive showing of reasons why the discovery request is proper when propounded by one party but improper when propounded by another.”

For example, PSI objects that Stamps.com’s Request No. 11 is overly broad. Such Request seeks: “Any and all DOCUMENTS that constitute, refer to, reflect, illustrate, or otherwise contain any information regarding the marketing channels or channels of trade that YOU use, have used, or intend to use in connection with specialized labels or sheets of labels upon which postage may be printed that have been, or are intended to be used in the United States.” This is substantively identical to PSI’s Request for Production No. 16, which seeks: “All documents and things which refer to or relate to the channels of trade in which Opposer’s goods or services allegedly identified by Opposer’s Marks are sold, provided, marketed, advertised or promoted by Opposer in the United States, including but not limited to, outline channels, partners, portals and affiliates.” Likewise, PSI’s Request No. 19 is substantively identical to Stamps.com’s Request No. 57. PSI’s Request No. 19 seeks: “All documents and things

which refer or relate to Applicant.” Stamps.com’s Request No. 57 seeks: “Any and all documents that refer to, reflect, illustrate, or otherwise contain any information regarding OPPOSER.” Further, PSI’s Request No. 20 is substantively identical to Stamps.com’s Request No. 39. PSI’s Request No. 20 seeks: “All documents and things which refer or relate to ISTAMPS.” Stamps.com’s Request No. 39 seeks: “Any and all DOCUMENTS that constitute, refer to, reflect, illustrate or otherwise contain any information regarding stamps.com.”

Further, each party promulgated a similar number of requests for production: Stamps.com promulgated 64, and PSI promulgated 51.

PSI promulgated its Requests for Production on July 6, 2007. For nearly a year, Stamps.com acted diligently to respond to PSI’s requests, and produced responsive documents of a substantial number. PSI now complains that it received numerous documents, but Stamps.com merely provided a reasonable response to PSI’s contention Requests. PSI cannot now escape its obligations by complaining of the time and expense to respond to document requests of a similar scope. Moreover, PSI should be expected to construct search parameters that can be completed within a reasonable scope, time, and expense as Stamps.com did. Requiring anything less of PSI would violate TMBP § 402.01.

Lastly, without citing to any evidence PSI states that it “knows from experience that the burden and expense to PSI in responding to Stamps.com’s proposed discovery outweighs the discovery’s likely benefit.” (Opposition, p. 9.) However, PSI has already had a motion to compel decided against it in such action. (Sobodash Dec., ¶6, Ex. “B.”)

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