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

Proceeding	91189499
Party	Plaintiff Beyond Boundaries Travel, Inc.
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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Beyond Boundaries Travel, Inc. d/b/a Fan Trips,	)	Opposition No. 91189499
Opposer,	)	
v.	)	Mark: FANTRIP
	)	Application No.: 77/376,164
FanTrip LLC,	)	
Applicant.	)	

DECLARATION OF JOHN L. WELCH

I, John L. Welch, declare as follows:

1. I am Of Counsel to Lando & Anastasi, LLP of Cambridge, Massachusetts, counsel to Opposer Beyond Boundaries Travel, Inc. d/b/a Fan Trips, in this opposition proceeding.

2. I make this Declaration in support of Opposer's Opposition to "Applicant's Motion to Compel and Motion Pursuant to Fed. R. Civ. P. 56(f)" and in support of Opposer's Motion to Strike.

3. Applicant's counsel has completely and disturbingly mischaracterized the dealings between the parties, through their counsel, in this proceeding. Attached hereto as Exhibits A–E is a collection of e-mails and letters comprising the complete correspondence between counsel regarding this case.[1] It shows that counsel, while at times in disagreement over discovery issues, were courteous, civil, and cooperative.

[1] All email threads between the parties are presented. Earlier emails that appear in a thread here are not reproduced separately as they would be unnecessarily duplicative.

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4. Contrary to Applicant's assertions in its motion to compel, Opposer has never "stonewalled" as to discovery in this proceeding, nor has it resorted to "gamesmanship." Instead Opposer has met every deadline, obtained Applicant's agreement to extensions of time for discovery, and proceeded with courtesy and civility throughout.

5. Applicant's assertion that Opposer delayed production by three months (p. 3) is flatly and demonstrably wrong. Opposer and Applicant provided discovery responses virtually in tandem, in accordance with a mutually-agreed upon schedule, culminating in an exchange of production documents on September 11, 2009, as more fully described below.

6. The discovery period in this proceeding opened on June 9, 2009. On that very day, Applicant served its interrogatories and document requests by mail, making responses due on July 14, 2009. As Opposer informed Applicant at that time, the undersigned counsel was busy preparing for a pre-trial conference in New Orleans on July 23, 2009 for a patent infringement trial in *Innovention Toys, LLC v. MGA Entertainment, Inc., et al.* (Case No.: 2:07-cv-06510-MLCF-ALC). As Opposer also informed Applicant at that time, the trial was to commence on August 10, 2009, in the U.S. District Court for the Eastern District of Louisiana. Opposer therefore requested, and Applicant agreed to, a one-month extension of time for service of its written responses.

7. When, on or about July 23, 2009, the trial in New Orleans was postponed *sine die* (because both parties had filed motions for summary judgment). the undersigned promptly informed Applicant's counsel. (*See* Exhibit E, p. BB0121.) Opposer then

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proceeded to serve its written responses to discovery on the extended date of August 14, 2009.

8. Production of Opposer's documents, however, was delayed for three reasons: (1) the undersigned took a vacation to Cape Cod; (2) Opposer's information technology specialist went on vacation for three weeks; and (3) Opposer's president, Jeannie Barresi was traveling to Egypt during the latter part of August. (See Exhibit A, p. BB0105.) Counsel for the parties agreed to exchange documents on September 11, 2009.

9. Opposer then served by mail its production documents on September 11, 2009 (not on September 15, 2009, as falsely claimed by Applicant). Letter from John L. Welch to Jeffrey M. Drake, Esq. (Sept. 11, 2009) (Exhibit F.) Thus Opposer had completed its discovery responses on September 11, 2009, still only half-way through the discovery period. Contrary to Applicant's baseless assertion, Opposer made a good faith effort to search for and produce documents responsive to Applicant's requests. It then produced the non-privileged relevant documents that were responsive to the requests.

10. During the discovery and settlement conference held by counsel on June 9, 2009, the parties agreed that no motions for summary judgment would be filed before October 1, 2009. Letter from John L. Welch to Jeffrey M. Drake, Esq. (June 8, 2009) (Exhibit D.) Opposer abided by that agreement, and waited to file for summary judgment until October 1st. Astoundingly, Applicant now asserts that there was something wrong with Opposer filing its summary judgment motion on October 1st, as if Opposer should have waited for Applicant's permission or gotten Applicant's prior approval. This, of course, contrasts sharply with Applicant's own actions in serving its discovery demands

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on the first day of the discovery period, obviously in an attempt to obtain some tactical advantage over Opposer.

11. Applicant never complained about the documents produced by Opposer on September 11th until it filed its motion to compel, one week before the deadline for Applicant's response to Opposer's summary judgment motion. In other words, Applicant had Opposer's production documents in its hands for six weeks, and Opposer's summary judgment papers for four weeks, before making any effort to address the motion or the document production. At the last hour, apparently having recognized that it had no response to the summary judgment motion, Applicant in desperation has concocted a fairy tale about Big Bad Opposer terrorizing poor little Applicant. Unfortunately the facts get in Applicant's way.

12. Applicant tries to make some hay out of the undersigned's statement on July 9th that "I suspect we will have a lot more documents than you will." (p. 3). Actually, Opposer did produce nearly four times as many documents as Applicant. But the undersigned was at the time under the mistaken impression that Opposer was a much larger operation and would have many more documents than it had. For example, the undersigned assumed that Opposer would have fliers and brochures reflecting use of its FAN TRIPS mark, but that is not the case.

13. Moreover, and again contrary to Applicant's overblown assertions, Opposer is a very small company. It is run by a husband and wife team and has a total of six employees. Its FAN TRIPS business has provided less than 35% of its revenues since 2003. Applicant's counsel has Opposer's revenue figures for the FAN TRIPS portion of

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