

ESTTA Tracking number: **ESTTA487816**

Filing date: **08/07/2012**

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

Proceeding	91201931
Party	Plaintiff Starbuzz Tobacco, Inc.
Correspondence Address	NATU J PATEL THE PATEL LAW FIRM PC 2532 DUPONT DRIVE IRVINE, CA 92612 UNITED STATES NPatel@thePatelLawFirm.com
Submission	Opposition/Response to Motion
Filer's Name	Natu J. Patel
Filer's e-mail	NPatel@thePatelLawFirm.com
Signature	/natupatel/
Date	08/07/2012
Attachments	1. Starbuzz - Opp to Fantasia's MTC RFA.pdf (12 pages)(518428 bytes) 2. Starbuzz - Opp to Fantasia's MTC Interrogatories.pdf (12 pages)(475240 bytes) 3. Starbuzz - Opp to Fantasia's MTC RFP.pdf (13 pages)(571724 bytes) 4. Decl. of C.Federis - Starbuzz's Oppositions.pdf (101 pages)(2676257 bytes)

STARBUZZ TOBACCO, INC.,

Opposer,

v.

FANTASIA DISTRIBUTION, INC.,

Applicant.

OPPOSITION NO: 91201931

**STARBUZZ TOBACCO, INC.'S
OPPOSITION TO APPLICANT'S
MOTION TO COMPEL RESPONSES TO
REQUESTS FOR ADMISSION**

I.	FANTASIA’S MOTION TO COMPEL RFA RESPONSES FAILS BECAUSE SUCH MOTION IS COMPLETELY INAPPROPRIATE FOR REQUESTS FOR ADMISSION	4
II.	THE MOTION IS ALSO IMPROPER BECAUSE FANTASIA MISLEAD THE BOARD BY OMITTING STARBUZZ’S AMENDED RESPONSES.....	5
III.	EVEN ASSUMING THAT THE MOTION IS PROPER, IT SHOULD ALSO BE DENIED SINCE FANTASIA FAILS TO PROVIDE ANY EXPLANATION FOR SEEKING RESPONSES TO THE REQUESTS AT ISSUE.....	5
IV.	ALL OF STARBUZZ’S OBJECTIONS TO FANTASIA’S RFA ARE SOUND .	6
	A. The Requests at Issue are Irrelevant to the Present Opposition Proceeding.	6
	B. The Remaining Objections to Fantasia’s Requests are Also Justified.....	7
	CONCLUSION.....	8

<i>Playboy Enterprises, Inc. v. Welles</i> , 60 F. Supp. 2d 1050, 1057 (S.D.CA 1999).....	8
<i>Watercare Corp. v. Midwesco-Enterprise, Inc.</i> , 171 U.S.P.Q. 696 (TTAB 1971).....	4
Other Authorities	
TBMP § 523.01.....	4
TBMP § 524.04.....	4
Rules	
37 C.F.R. § 2.120(e).....	4
37 C.F.R. § 2.120(h)	4
Fed. R. Civ. P. 36(a)	4

Motion is designed to do nothing more than waste Opposer, Starbuzz Tobacco, Inc.’s (“Starbuzz”) resources in an effort to force the abandonment of this Opposition.

Under the Federal Rules, a motion to compel procedure is inapplicable to requests for admission. Just for this reason, the motion is procedurally deficient and should be denied. Additionally, combining three separate discovery motions into one memorandum is highly inappropriate.¹ Furthermore, Fantasia has improperly attempted to compel responses to discovery requests that Starbuzz has already answered, thus misleading the Board into believing that Starbuzz failed to respond.

Even assuming that the Motion was procedurally filed properly, it is still substantively deficient. The Motion fails to provide detailed explanations as to why Starbuzz’s responses or objections were insufficient. The disputed requests seek information that are simply irrelevant to the issues in the Opposition. Additionally, several of the requests are highly objectionable because they are compound, call for legal conclusions, and are unduly burdensome. Therefore, Starbuzz’s objections are completely warranted.

Accordingly, Starbuzz respectfully requests the Honorable Trademark Trial and Appeal Board (the “Board”) to deny Fantasia’s Motion in its entirety.

¹ Starbuzz notes that Fantasia’s combination of three motions in one memorandum is completely improper. *See* TBMP § 502.02(b). To avoid any further confusion and in accordance with the Board’s rules, Starbuzz is concurrently filing separate oppositions to the three motions. Each opposition addresses each set of discovery request.

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.