

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

Kevin T. McCarney, dba
POQUITO MAS,
Opposer,

Opposition No. 107,026
Opposition No. 107,048

v.

UNA MAS RESTAURANTS, INC.,
Applicant

Assistant Commissioner for Trademarks
Box TTAB - No Fee
2900 Crystal Drive
Arlington, Virginia 22202-3513

**Attention: Albert Zervas, Interlocutory Attorney
VIA FACSIMILE (703) 308-9333**

OPPOSITION TO OPPOSER'S MOTION TO EXTEND REBUTTAL PERIOD

Opposer, Kevin T, McCarney, has filed a Motion for 30 Day Extension of Time of Opposer's Rebuttal Period. Opposer, however, has not explained what testimony he seeks to introduce during the Rebuttal Period, including whose deposition he seeks to take, if any. Accordingly, Opposer has not demonstrated "good cause" for granting its motion to extend its rebuttal period, and Applicant, Una Mas Restaurants, Inc., respectfully requests that Opposer's motion be denied.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is "good cause." TBMP §509. The party moving for the extension bears the burden of proof and must state with particularity its grounds, including detailed facts that constitute good cause. *SFW Licensing Corp. v. Di Pardo Packing Ltd.*, 60 USPQ2d 1372, 1375 (TTAB

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2001); *Procyon Pharmaceuticals, Inc. v. Procyon Biopharma, Inc.*, 61 USPQ2d 1542, 1543 (TTAB 2001); *HKG Indus., Inc. v. Perma-Pipe, Inc.*, 49 USPQ2d 1156, 1158 (motion to reopen denied because movant failed to provide detailed factual information in support of the requested relief).

Here, Opposer has not provided any facts, detailed or otherwise, that establish good cause exists to extend the rebuttal period. For example, Opposer has not provided any information regarding the type of evidence he seeks to enter during its Rebuttal Period, nor why he could not arrange for the entry of that evidence during his rebuttal period. The only ground Opposer has provided for bringing the motion is that "opposer is in California and its counsel is in Ohio." This conclusory statement by Opposer does not qualify as the type of detailed factual showing required by the Board to establish good cause.

Opposer's failure to provide any facts that establish good cause for extending the Rebuttal Period should be viewed as evidence that Opposer is merely bringing this motion to harass Applicant and cause Applicant to needlessly spend time and money fighting frivolous motions. Furthermore, Opposer should not be allowed to blind-side Applicant and belatedly establish good cause. First, Applicant notes that both parties filed Motions for Summary Judgments during this opposition proceeding. Therefore, Opposer was familiar with the evidence that Applicant would be relying on since July 2001.

Second, Opposer has known since at least April 17, 2002, the date its counsel filed a Stipulated Two Month Extension of Time of the Testimony Periods, that his Rebuttal Period would close on October 15, 2002 and open fifteen days before then. Since Opposer has known

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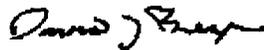
since April 2002 that he needed to keep the two week period of October 1, 2002 until October 15, 2002 open for his Rebuttal Period, his excuse that he is located in a different state from his counsel is not good cause for extending the Rebuttal Period.

For the above reasons. Applicant respectfully requests that Opposer's Motion to Extend be denied, as Opposer has not established good cause for granting the motion.

Respectfully submitted,

DORSEY & WHITNEY LLP

Date: 10/15/02



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CERTIFICATE OF SERVICE

I hereby certify that on this 15th day of October, 2002, a true and correct copy of the foregoing APPLICANT'S OPPOSITION TO OPPOSER'S MOTION TO EXTEND REBUTTAL PERIOD was served on Opposer's Attorney by facsimile to:

Robert V. Vickers
Fay Sharpe Fagan Minnich & McKee LLP
(216) 241-1666

I declare under penalty of perjury that the foregoing is true and correct.

Executed on October 15, 2002 at San Francisco, California.



Lisa Jeanetta

DORSEY & WHITNEY LLP

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RE: **Kevin T. McCarney, dba Poquito Mas,**
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Attached please find:

1. **Opposition to Opposer's Motion to Extend Rebuttal Period; and**
2. **Certificate of Service**


 Originator's Signature

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