

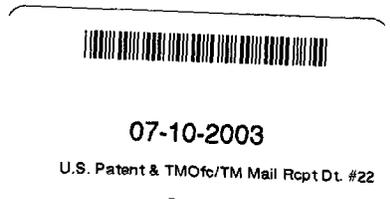
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

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HEARST COMMUNICATIONS, INC. and	:	
HEARST MAGAZINES PROPERTY, INC.	:	
	:	
Opposers,	:	Opposition No. 120,453
	:	
v.	:	
	:	
CHARLES BROWNING WILSON,	:	
	:	
Applicant.	:	
-----X		



**OPPOSERS' MOTION FOR
EXTENSION OF TRIAL TESTIMONY PERIODS**

Opposers, Hearst Communications, Inc. (hereby referred to as "Hearst Communications") and Hearst Magazines Property, Inc. (hereinafter occasionally collectively referred to as "Opposers" or "Hearst"), by and through their attorneys, Ostrolenk, Faber, Gerb & Soffen, LLP, hereby move to extend their trial testimony by two months from the date of the Board's decision on the motion or for such other length of time deemed reasonable by the Board for Opposers to take the trial testimony period of their witness Nikki Koval. The extension of time is requested because Opposer Hearst Communications' recent move out of its historic landmark building has caused substantial disruption to the ability of Opposers to present their case in chief prior to the expiration of their trial testimony period as previously extended.

FACTS

On May 5, 2003, Hearst Communications completed its move out of its landmark building at 959 Eighth Avenue in New York to permit a three year expansion of that facility. Affidavit of Barry S. Agdern (hereinafter referred to as the “Agdern Aff.”) at ¶ 5. The new temporary offices of Hearst Communications are located at 1345 Avenue of the Americas in New York. *Id.*

The practice of Barry Agdern, the inside Trademark Counsel for The Hearst Corporation and its related companies including Opposer Hearst Communications, was severely disrupted by the move. *Id.* at ¶¶ 1 and 6. As part of the move, all the files of Mr. Agdern were packed into boxes and moved from the old offices to the temporary new offices. *Id.* at ¶ 5. Mr. Agdern is still in the process of setting up his new office and unpacking boxed-up files. *Id.* at ¶ 6.

Full participation of Mr. Agdern is required by Opposers during their trial testimony period in order to strategize and prepare witnesses for deposition. During its trial testimony period, Hearst intends to take the trial testimony deposition of at least Nikki Koval of Hearst Brand Development. *Id.* at ¶ 7. In order to prepare Ms. Koval for her trial testimony deposition, Mr. Agdern requires additional time to locate and review his files in this opposition proceeding. *Id.*

ARGUMENT

A moving party need only show good cause for the requested extension if filed prior to the expiration of the period as previously extended. Trademark Board Manual of Procedure § 509.01. Opposers' trial testimony period had previously been extended through July 10, 2003. Opposers timely file this motion to extend time within the trial testimony period as previously extended.

Opposers also have good cause to move to extend their trial testimony period by an additional two months. Barry Agdern, in-house Trademark Counsel for Hearst Communications, has been unavailable to discuss strategy with the undersigned outside attorneys of record for Opposers or to prepare the business people at Hearst for deposition. His office move has caused substantial disruption to his practice which requires additional time to resolve.

Specifically, in his role as in-house Trademark Counsel, Mr. Agdern frequently contacts the undersigned attorneys for Opposers to discuss strategy essential to the orderly conduct and prosecution of this and other cases. Agdern Aff. at ¶ 3. He is also the liaison between the undersigned attorneys and the business people at Hearst. *Id.* The move has caused a substantial disruption to his practice and ability to work effectively. *Id.* at ¶ 6.

The dislocation has been outside of the control of Mr. Agdern. The Hearst Magazine Building, a historic landmark, is undergoing a three year renovation. Agdern Aff. at ¶¶ 4 and 5; *see also* Ex. A. As a result of his almost thirty years of work for Hearst, and the large number of U.S. and international trademark files maintained by Hearst, Mr. Agdern still has a massive number of trademark files which remain boxed up following the office move. *Id.* at ¶¶ 4-6.

By contrast, Opposers have had no difficulty in preparing and submitting other evidence into the record besides trial testimony. Opposers are timely filing their Notice of Reliance

today. As opposed to preparing for and attending trial testimony depositions taken by Hearst, the input of Mr. Agdern was not as necessary to the preparation and filing of the Notice of Reliance. Agdern Aff. at ¶ 9.

Opposers would have filed their motion to extend time sooner had they had any cause to believe that Applicant would deny consent to the requested extension of time. Applicant has previously cooperated with Opposers in rescheduling discovery and trial testimony dates. On June 30, 2003, the undersigned attorneys for Opposers requested this further extension of time from Applicant. However, on July 1, 2003, counsel for Applicant advised that his client had denied consent for the requested extension of time.

Applicant will suffer no prejudice if the Board grants Opposers' motion to extend. Agdern Aff. at ¶ 8. The opposition has been pending for almost three years. *Id.* An additional sixty days will not result in any detriment to Applicant. *See Sunkist Growers, Inc. v. Benjamin Ansehl Company*, 229 U.S.P.Q. 147, 149 (T.T.A.B. 1985)(granting extension of discovery period where applicant failed to point to any specific harm or prejudice which would result to applicant). Indeed, Opposers have no intention of filing any further requests, beyond the instant motion, to extend their trial testimony period. Agdern Aff. at ¶ 10.

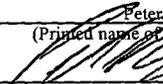
CONCLUSION

With the above, Opposers respectfully request that the Board grant Opposers' motion to extend their trial testimony period for two months from the date of the Board's decision on the motion. In the alternative, Opposers respectfully request that the Board extend their trial testimony period for such other length of time deemed reasonable to take the trial testimony period of a single witness, Nikki Koval.

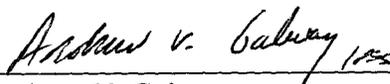
Dated: July 10, 2003
New York, New York

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Date of Deposit: July 10, 2003

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to the Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, Virginia 22202-3514.

Peter S. Sloane
(Printed name of person mailing paper or fee)

(Signature)

Respectfully submitted,


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1180 Avenue of the Americas
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Tel: (212) 382-0700

Attorneys for Opposers

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing **OPPOSERS' MOTION FOR EXTENSION OF TRIAL TESTIMONY PERIODS** was served upon counsel for Applicant this 10th day of July, 2003 by First Class Mail, postage prepaid, as follows:

James F. Gossett, Esq.
ARNSTEIN & LEHR
120 South Riverside Plaza, Suite 1200
Chicago, Illinois 60606-3910

A handwritten signature in black ink, appearing to read "Peter S. Sloane", written over a horizontal line.

Peter S. Sloane



07-10-2003

U.S. Patent & TMO/c/TM Mail Rcpt Dt. #22

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

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CHARLES BROWNING WILSON,	:	
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Applicant.	:	
	:	

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AFFIDAVIT OF BARRY S. AGDERN

STATE OF NEW YORK)
) ss.:
COUNTY OF NEW YORK)

BARRY S. AGDERN, ESQ., being duly sworn, deposes and says that:

1. I am an attorney admitted to the Bar of the State of New York. I am also the inside Trademark Counsel for The Hearst Corporation and its related companies including Hearst Communications, Inc. and serve as Hearst Communications, Inc.'s liaison to Hearst Magazines Property, Inc., joint Opposers in this opposition proceeding (hereinafter collectively referred to as "Hearst"). I hereby submit this Affidavit in support of Hearst's request for a further two-month extension of the trial testimony deadline beyond the current July 10, 2003 deadline.

2. As inside Trademark Counsel for Hearst, I play an important role in overseeing trademark litigation for Hearst, including oppositions and cancellations before the Trademark Trial and Appeal Board (hereinafter referred to as the "Board"). In the present

opposition, I am overseeing the work of Ostrolenk, Faber, Gerb & Soffen, LLP (hereinafter referred to as "Ostrolenk"), one of our outside law firms and the attorneys of record in this proceeding.

3. As part of my coordination efforts, I am the liaison between Ostrolenk and the business people at Hearst. I am frequently in contact with Andrew Galway, the lead outside attorney at Ostrolenk, and his associate Peter Sloane. Together, we discuss strategy essential to the orderly conduct and prosecution of this case. I am also often in contact with executives at Hearst to explain developments in the opposition proceeding and to perform other functions such as gathering documents in response to discovery requests and to prepare witnesses for discovery and trial testimony depositions.

4. I have worked for Hearst for almost thirty years. During that time, and up until recently, my office had been located at the historic Hearst Magazine Building at 959 Eighth Avenue in New York. My office suite at the landmark Hearst Magazine Building included files relating to trademark prosecution and litigation matters in the U.S. and around the world, including opposition proceedings before the Board. Those files filled multiple file cabinets and drawers scattered across many offices.

5. On May 5, 2003, Hearst Communications, Inc. completed its move out of its landmark building to permit a three year expansion of that facility. The new temporary offices of Hearst Communications, Inc. are located at 1345 Avenue of the Americas in New York. As part of the move, all my files were packed into boxes and moved from the old offices to the temporary new offices. During the transition period, I have had to create duplicate files for many of my different trademark matters.

6. The move has caused a substantial disruption to my practice and ability to

work effectively. I am still in the process of setting up my new office and unpacking my boxed-up files. I am also coordinating the matching of the duplicate files with the original files. An article from the April 23, 2003 edition of The New York Times newspaper mentioning the upheaval at Hearst caused by the move is attached as Exhibit A.

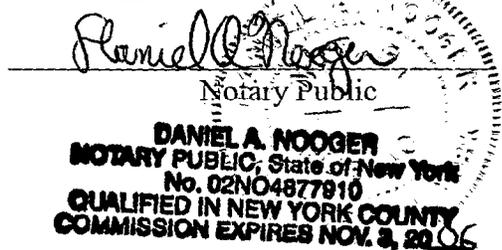
7. During its trial testimony period, Hearst intends to take the trial testimony deposition of at least Nikki Koval of Hearst Brand Development. In order to prepare Ms. Koval for the deposition, I require additional time to locate and review my files in this opposition proceeding. Ms. Koval is located in a different facility from our temporary offices thereby further exacerbating the coordination necessary to prepare for her deposition.

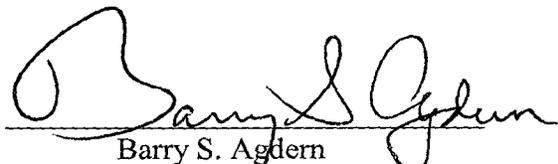
8. There should be no need for Applicant to deny consent to a further extension of Hearst's trial testimony period. This opposition proceeding has been pending for almost three years without any apparent prejudice to Applicant.

9. Hearst is preparing to file its Notice of Reliance during the trial testimony period. Preparation of the Notice of Reliance was handled primarily by Ostrolenk. My input was not as necessary to the preparation and filing of the Notice of Reliance as it will be to prepare for and attend any trial testimony depositions taken by Hearst.

10. Should the Board grant the requested extension of time, Hearst will not file any further requests to extend its trial testimony period. This will be the last such extension request.

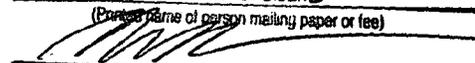
Sworn to and subscribed before
me this 9th day of July, 2003


Daniel A. Nooger
Notary Public
DANIEL A. NOOGER
NOTARY PUBLIC, State of New York
No. 02NO4877910
QUALIFIED IN NEW YORK COUNTY
COMMISSION EXPIRES NOV. 3, 2006


Barry S. Agdern

*Express Mail mailing label No. EV325557186 US
Date of Deposit: July 10, 2003

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to addressee" service under 37 CFR 1.70 on the date indicated above and is addressed to: Box ITAB-NO FEE, Assistant Commissioner for Trademarks, 2800 Crystal Drive, Arlington, Virginia 22202-3514.

Peter S. Sloane
(Print name of person mailing paper or fee)

Signature

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing **AFFIDAVIT OF BARRY S. AGDERN** was served upon counsel for Applicant this 10th day of July, 2003 by First Class Mail, postage prepaid, as follows:

James F. Gossett, Esq.
ARNSTEIN & LEHR
120 South Riverside Plaza, Suite 1200
Chicago, Illinois 60606-3910

A handwritten signature in black ink, appearing to read 'Peter S. Sloane', written over a horizontal line.

Peter S. Sloane

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The New York Times

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April 23, 2003, Wednesday

DINING IN, DINING OUT/STYLE DESK

Popovers, and a Century of Advice

By ALEX WITCHEL (NYT) 1974 words

ELLEN LEVINE moved her company into a new building a few weeks back, and when she tried to close the fancy double doors to her office, they kept jamming. She gave up and laughed. "I'm the housewife from hell this week," she said easily, sitting cross-legged on the couch.

As the editor in chief of Good Housekeeping, Ms. Levine is certainly more than a housewife. When the magazine was first published in 1885, it did define the role of the American housewife and her home, but when Ms. Levine became its editor in 1995, she updated its focus to reflect its working mom readers. She was the first woman in its 110-year history to hold the job.

That's rather incredible, isn't it? That men were telling women how to run their homes until only eight years ago?

Ms. Levine, 60, flashed a red-lipsticked smile and kept her mouth shut. She didn't make it this far for nothing. Good Housekeeping magazine -- which incorporates the Good Housekeeping Institute, the consumer product evaluation laboratory founded in 1900 that tests everything from hair spray to vacuum cleaners and administers the Good Housekeeping Seal -- has a circulation of 4.6 million. And that isn't just heartland reading. Even in the New York metropolitan area, 270,000 women are less interested in what Prada is making than in what they can make for dinner in 20 minutes or less.

"I'm not editing for the person addicted to high-fashion magazines," Ms. Levine said. "I grew up in the suburbs, went to a public high school, got married at 21 and was a Little League mom. If I can find an editor who grew up in North Dakota instead of one who went to New York City prep schools, I hire her."

During this month of upheaval (its publisher, the Hearst Corporation, is moving out of its landmark building at Eighth Avenue and 57th Street for three years of expansion), Good Housekeeping gets a new home while celebrating the reissue of "The Good Housekeeping Hostess: An Old-Fashioned Guide to Gracious Living" (Hearst Books), originally published in 1904, and the "Good Housekeeping Everyday Cook Book" (Hearst Books), from 1903, which tells you how to make the jellied prune ring of your dreams.

Of the hostess manual, Ms. Levine said: "When I read it, I thought, 'Wow, these women could have been special events planners.' Their interest in originality surprised me." Among the suggested gatherings is one that would be equally welcome today, the Cold Comfort Dinner: "Each course at one of these affairs is served cold and the comfort extends equally to hostess, guest and maid," the description reads. "The woman who does not keep a maid

can entertain charmingly in this way and without the addition of that final course so often seen in maidless entertaining, of 'hot, wornout hostess.'

Ms. Levine said: "The one thing that hasn't changed in 100 years is caring about having people in your home. Years ago I used to be a wreck before a dinner party. I'm much calmer now. I set the table the same way all the time. I know the flowers I want, and I no longer worry that the guests might not like the food. My mother's generation never got over being nervous about a party." She sighed. "There are so many decisions to be made in the course of a day," she said. "How the party goes isn't going to be the mountain I die on."

Still on the couch, she tossed her silver-white hair away from her face. If being a good hostess means being secure enough to concentrate on other people's happiness instead of your own insecurities, Ms. Levine is a perfect example. She is the rare powerful woman in New York City who admits her age in an instant and has let her hair turn from brown to gray to white with nary a highlight. "When the kids were little," she said, "I told one of them I was going to turn my hair back to brown, and he started to cry. He said, 'I like you the way you are.' So that was it."

She is also the rare New York woman in power who has not had plastic surgery. While most of her contemporaries' faces could double as porcelain plates, Ms. Levine's face moves in every direction and she almost never looks tired. She is enormously curious about everything, and she frequently goes into that unmistakable editor's trance where, in the middle of a conversation, she tunes out, considering the topic at hand as a story idea -- yes, no, maybe -- then just as suddenly tunes back in. She is never off duty.

"I'm married to a surgeon who thinks elective surgery is a very scary thing," she said, and smiled. "Who's to say five years from now. But I feel kind of comfortable being who I am."

Her husband of almost 40 years is Dr. Richard Levine, vice chairman of the obstetrics and gynecology department at the Columbia-Presbyterian Center. Before they met in a summer job car pool when she was 18, she was Ellen Jacobson of Englewood, N.J. Six months after she graduated from Wellesley College and began her career as a reporter for The Record in Hackensack, N.J., she married him, and she had her two sons, Daniel and Peter, soon after. In 1976 she returned to work full time as a senior editor at Cosmopolitan. In 1982 she became editor in chief of Woman's Day, and in 1990, editor in chief of Redbook before taking over Good Housekeeping in 1995.

Since then, she has been giving lunches in the magazine's living room and dining room suite, which features an original Grandma Moses painting and a display of distinctive glass rolling pins from the turn of the last century. Ms. Levine recently presided over the final lunch there (the dining room will move to 250 West 55th Street along with the test kitchens and the institute), and the 15 guests celebrated a feature from the April issue, "Get-Rich Secrets of Successful Women." Two of them attended: Melody Hobson, president of Ariel Capital Management, a Chicago-based investment firm, and a financial correspondent on "Good Morning America," and Barbara Corcoran, who founded the Corcoran Group, one of the largest residential real estate firms in New York City.

As is Ms. Levine's custom, she uses these lunches -- she gives six to 10 of them each year -- as the social equivalent of an editor's ideas meeting. Staff members took notes around the table as the guests, mostly women on that day, spoke about their relationship to money. Speakers at recent lunches have ranged from Laura Bush, talking about reading, to Representative Carolyn McCarthy on gun control, to Marie Osmond recounting her postpartum depression.

But no matter who attends, the real stars of the lunches are the fresh-from-the-oven popovers that have been served as far back as anyone can remember, for at least the last 60 years. They have become the lunch's trademark, and the printed recipe is given to guests to take home. This final event in the old building celebrated popovers as its theme and included variations in both the entree and dessert.

"It was the kind of thing people used to eat in restaurants, as a treat at someone else's table, because they felt it was too hard to make at home," Ms. Levine said. "But it's not the chemistry that's difficult, it's the time."

Even more difficult was concentrating on the subject of investments as the popovers were served, their warm, yeasty aroma preceding the presentation of the golden scene stealers. While Jane Bryant Quinn, who writes on financial issues for both Good Housekeeping and Newsweek, admitted to her own math anxiety, guests twisted off pieces of the eggy bread in tortured little bites, while eating their salads. Except for Gayle King, editor at large at O, the Oprah Magazine, who was the only guest who ate her popover with gusto, even using the butter curls that accompanied it. "I'll just work out harder tonight," she said.

When the main course of stuffed Cornish hen with cremini and porcini mushrooms, organic baby carrots and flaky vol-au-vents (popover!) was cleared, only three guests had left their real popovers untouched. An act of superhuman will. Or the most sour of self-disciplines.

Then, as Alexandra Lebenthal, president of Lebenthal, talked about fear and the market, and Ms. Hobson talked about the economic tide turning for the better, dessert was served. In addition to strawberry shortcake (popover!), there were three selections from the hostess manual: strawberry éclairs; ojalda, a zeppolelike cookie covered with confectioners' sugar; and orange cups, a custard that tasted like a melted Creamsicle, but better. From the show of hands, it was clearly the winner.

Ms. Levine wrapped up the lunch as briskly as she had begun and headed to the test kitchen for a review of the food to be featured in the September issue. "I changed the food pages when I came," she said. "The recipes were pretty fatty, and each one took an hour and a half."

As her food editor, she hired Susan Westmoreland, daughter-in-law of Gen. William C. Westmoreland, and the mother of an 8-year-old son. "We brought the magazine into reality for women who cook after work and need to make what their kid would eat," Ms. Levine said. "A reader wrote to us early on and said: 'Brussels sprouts? I can't serve that.' We have to not get carried away with what we like to eat."

Ms. Levine sat down and ate the second or third reinterpretation of a cookie she had discovered at Vice Versa, an Italian restaurant on West 51st Street. She had taken it back to Ms. Westmoreland, whose crew ultimately recreated a no-bake version by crumbling graham crackers, mixing them with Rice Krispies and melted chocolate, then refrigerating. "This is to die," Ms. Levine said worshipfully. "That's a winner."

As she headed back to her office, she put on her "Can Do" baseball cap and wiped the chocolate from her fingertips. "The ordinary things of life," she said, "are what really resonate."

POPOVERS

Adapted from Good Housekeeping

Time: 1 hour 15 minutes

5 tablespoons unsalted butter, melted

3 large eggs

1 cup whole milk

1 cup all-purpose flour

1/2 teaspoon salt.

1. Heat oven to 375 degrees. If using a popover tin with 6-ounce cups, grease 6 cups with 2 tablespoons butter. If using a muffin tin with cups 2 1/2 inches wide by 1 1/4 inches deep, grease 12 cups. With 6-ounce custard cups,

grease 8 cups.

2. In large bowl of mixer, beat eggs until frothy; beat in milk and remaining butter. Lower speed and beat in flour and salt.

3. Divide batter among prepared cups. Bake 50 minutes; make slit in each to let out steam; bake 10 minutes more. Immediately remove from cups. Serve hot with butter.

Yield: 6 popovers in popover tin, 12 in muffin tin, 8 in custard cups.

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