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

Proceeding	91156321
Party	Plaintiff The Chamber of Commerce of the United States of America
Correspondence Address	William M. Merone Kenyon & Kenyon 1500 K Street N.W., Suite 700 Washington, DC 20005 UNITED STATES ekane@kenyon.com
Submission	Reply in Support of Motion
Filer's Name	Erik C. Kane
Filer's e-mail	ekane@kenyon.com, tmdocketdc@kenyon.com
Signature	/Erik C. Kane/
Date	06/03/2008
Attachments	Reply Opp Motion to Extend.pdf (41 pages)(547637 bytes)

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

THE CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA

Opposer,

v.

UNITED STATES HISPANIC CHAMBER
OF COMMERCE FOUNDATION,

Applicant.

Opposition No.: 91/156,321

Serial No.: 78/081,731

**OPPOSER’S REPLY IN SUPPORT OF ITS
MOTION TO EXTEND ITS TESTIMONY PERIOD**

Opposer (“the U.S. Chamber”) has moved for a brief extension of time in its reply period for the limited purpose of presenting testimony to authenticate a fact that a third-party witness (Daniel Ramos) referenced during his trial deposition. *See* D.I. 72 (“*Opp. ’s Mot.*”). As Opposer explained in its motion, neither this fact nor the witness’ reliance on it was known to Opposer before it took the deposition of the third-party witness pursuant to a subpoena during the reply period, and as soon Opposer became aware of the circumstances, it subpoenaed the necessary additional party (“HCRA”) the next day for the purpose of offering testimony during the reply period, which period had never been extended before. Unfortunately, however, the person at the third party with relevant knowledge was not available to testify until after the close of the reply period, and although Opposer sought Applicant’s consent to extend the reply period by a week (as the witness was available a mere four days after the close of the period) so as to allow the

parties to complete the presentation of evidence in this matter, Applicant refused, thus necessitating the filing of Opposer's motion on a showing of good cause.

Applicant has now formally opposed Opposer's request for a short extension. Notably, though, Applicant in its papers does not challenge the fact that Opposer, in fact, *has* good cause for bringing the instant motion and seeking the extension. After all, for the reasons stated above (and as set forth in the original motion), such challenge likely would be doomed to fail given that Opposer has only sought a short extension for the very limited purpose of authenticating new facts that were not known to Opposer until late in its testimony period. Instead, Applicant seeks to tie the fate of its own motion to extend (D.I. 50) in with Opposer's motion, suggesting that both should either be denied or granted. Unlike Opposer here, however, Applicant was not able to establish good cause to support its motion. *See* D.I. 54. As such, Opposer's motion to extend its reply period should be granted and Applicant request to extend should be denied.

ARGUMENT

1. Opposer Has Established Good Cause for Why the Requested Extension Should be Granted

To establish good cause to extend a testimony period, the movant must demonstrate that "the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor."

TBMP, §509.01(a). As indicated above, Opposer only seeks to extend its reply testimony period for the limited purpose of offering testimony to authenticate a specific document that was only recently identified during the testimony of Mr. Ramos, a third party. *See also Opp. Mot.* at 2-3.

Specifically, Opposer wishes to extend its reply testimony period so that it can offer testimony from the Hispanic Association on Corporate Responsibility (HACR) to authenticate a document that shows what a particular page from the HACR website looked during the later part of last year (and in early 2008). Opposer only learned of the relevance of this old website page during the deposition of Mr. Daniel Ramos, who was designated by third parties Hispanic Achievers, Inc. and National Hispanic Corporate Achievers, Inc. to speak as their Rule 30(b)(6) corporate designee in connection with a subpoena *ad testificatum* issued by Opposer during its reply testimony period. More particularly, during the deposition, Opposer established that Mr. Ramos' organization sent a letter that was intended to reach Applicant's then-CEO (Michael Barrera) to Opposer instead. The relevance of the HACR website page is that according to Mr. Ramos, his organization looked to the website in early 2008 to find Mr. Barrera's name, title, and organization, and the website properly listed Mr. Barrera's as being affiliated with Applicant, but did not provide an address. *See Declaration of Erik C. Kane ("Kane Decl.")* ¶2 (Ramos Depo. 8:16 – 9:25); *Opp. Mot.* at Ex. 5. Thus, when the person who sent the letter went to look up the address for Applicant through other sources (namely, by conducting a search online), he or she must instead have come across and used the address for Opposer, either believing that the two organizations were one and the same (or otherwise connected) or thinking that one or more of Opposer's registered names "U.S. Chamber" and/or "U.S. Chamber of Commerce" was simply the short form for "U.S. Hispanic Chamber of Commerce," as used by Applicant. Either way, this evidence amounts to yet an additional instance of actual confusion in this case.

After taking Mr. Ramos' deposition, however, Opposer learned that HACR had updated its website to reflect the new CEO of Applicant. Opposer, though, was able to locate an archived copy of HACR's website (from [www. archive.org](http://www.archive.org)), which confirmed Mr. Barrera's testimony.

Upon finding this archived page, Opposer ask Applicant to stipulate to its authenticity, but Applicant refused to consent. *See Kane Decl.* ¶3. Thus, Opposer needed the testimony of HACR to help authenticate the previous version of the HACR website.

Consequently, Opposer moved promptly to take HACR’s deposition, issuing a subpoena within twenty-four hours of learning that Mr. Ramos had referenced the old HACR site. As there was no way for Opposer to know that those in Mr. Ramos’ organization referred to the HACR website when addressing the letter in question (Mr. Ramos is a third party who did not have any contact with Opposer prior to his deposition; *see Kane Decl.* ¶2 at 21:1 – 23:24), Opposer’s need to extend it reply period was therefore not for the lack of any diligence.¹

In fact, Opposer has by now *taken* the testimony of HACR in co-pending Cancellation No. 92/045,876 (the “Cancellation proceeding”), which is closely related to this proceeding both as to issues and parties (Mr. Ramos’ testimony was offered in that case as well), but which has not yet been formally consolidated. Opposer was able to take the testimony of HACR in the Cancellation proceeding because although the schedules of the two proceedings substantially overlap (Opposer’s reply period in the present action ran mostly concurrently with Opposer’s testimony period in the cancellation), Opposer’s testimony period in the cancellation ran a few extra days, thus permitting Opposer to complete the HACR testimony on May 2, 2008.² In fact, Applicant’s counsel attended that deposition (the direct portion of which was exceedingly short)

¹ Indeed, if the HACR representative had been available on the subpoenaed date, it would not have been necessary to file a request to extend time at all. As it turned out, though, the person who HACR wished to designate to testify on its behalf was unavailable on any date during the testimony period.

² Applicant wrongly argues that Opposer took HACR’s testimony outside its testimony period. Opposer could have awaited the Board’s decision to reopen testimony and then taken the deposition. However, given the overlapping schedule with the Cancellation proceeding, Opposer thought it more expedient to notice the testimony deposition in its testimony period in the Cancellation proceeding and then seek leave to reuse it here. Thus, Opposer’s deposition was timely within that co-pending proceeding.

and has already cross-examined the HACR corporate designee. *See Kane Decl.* ¶4 at 9:6 – 16:17.

As a result, it is anticipated that Opposer’s sole activity during any extended reply period would be to file a motion to reuse the HACR testimony from the Cancellation proceeding in the current opposition proceeding.³ In fact, Opposer will stipulate that this would be the *only* activity Opposer will take during its “reply,” unless that motion to reuse is for some reason denied. *But see* D.I. 38 (Cancellation No. 92/045,876) (granting leave to use testimony for opposition proceeding in related cancellation proceeding). Alternatively, should the Board not wish to upset the current schedule, Opposer would be willing to file its motion to reuse the HACR testimony now (provided the Board grants leave for it to be filed outside the reply testimony period) and defer the issue of reopening and extending the reply period.

2. The Merits of Opposer’s Motion Are Unrelated to the Issues Raised by Applicant Own Motion to Extend

Although it is true that both Applicant and Opposer have sought to extend their respective testimony period, Applicant incorrectly presumes that Opposer’s motion rises and falls with Applicant’s own motion for an extension of time. This is not the case. Each motion must be decided on its own merits, and the fact is that Applicant’s request to extend the testimony period for its case-in-chief (which had already been extended to a period of *seven months*) for the purposes of taking “discovery” of third parties that were known to Applicant since *before* its testimony period opened cannot possible (and does not) rise to the level of “good cause.”

³ The Board has in fact already granted a similar motion in the Cancellation proceeding upon finding Applicant and its affiliated entity in the Cancellation proceeding to be in privity and the issues involved to be substantially the same. *See* D.I. 38 therein. Opposer (Petitioner therein) has reused testimony from this proceeding in the Cancellation proceeding.

Specifically, and as detailed more fully in Opposer’s opposition (D.I. 54) to Applicant’s motion for an extension, Applicant waited over seven months before scheduling ten depositions of ten third parties (including many of whom Applicant admittedly had been aware since before its testimony period even opened) over the last few days of its testimony period, which would have necessitated double- and triple-tracking those depositions. Moreover, and as was confirmed by the U.S. District Court for the Southern District of New York and shown by the questions Applicant asked during the depositions that have already taken place, these “trial” depositions were really just thinly-veiled discovery devices, and thus inappropriate for use as trial vehicles. Finally, and given the last minute flurry of deposition activity, it was unsurprising that many of the third parties simply could not attend at the precise times that were necessary so as to fit into Applicant’s last minute deposition scheduling blitz. In view of all of this, Applicant could not—and, notably, in its moving papers it *did not even try to*—establish that “good cause” exists for why its testimony should be extended yet again, thus delaying these proceedings further..

Indeed, in sharp contrast to the situation presented on Opposer’s motion, in Applicant’s case, no new facts or discoveries necessitated these last minute depositions. Rather, Applicant, despite having had 18 months for discovery, another 16 months to plan its case, and another seven months to put on its case-in-chief, evidently just decided at the last moment that it wanted to conduct a fishing expedition of the various third parties, as one can tell by the breadth of the subpoenas that Applicant served. *See generally* D.I. 51 at Ex. A. Moreover, and again unlike the present situation, Applicant *was aware* of the existence of (and equally important, the alleged relevance of) at least some of the third parties for almost a year before it sought to subpoena them. *See Kane Decl.* ¶4 (Bokat Depo. 27:18-19) (questioning Opposer’s witness about one of the third parties, called the U.S. Women’s Chamber of Commerce). If Applicant desired to

obtain the testimony of these known parties during its case-in-chief (which testimony, again, was not being offered in response to any new “evidence” that may have been discussed by one or more of Applicant’s other witnesses, all of whom, incidentally, were associated with Applicant), it certainly had ample time to converse with them and schedule the deposition, which is unlike the situation here. Applicant, however, simply chose not to do so.

Also, and again unlike Applicant’s situation, Opposer is not seeking an extension to take discovery. As can clearly be seen from the “trial” transcripts of several of the third parties who testified before the end of Applicant’s trial period, Applicant was using its “trial” testimony to fish for information. Opposer, in sharp contrast, only deposed HACR for the limited purpose of authenticating a website page that had been identified the week before by another trial witness (Mr. Ramos). *Compare* D.I. 54, Ex. B (Applicant’s deposition of Curtis Carlson) to *Kane Decl.* ¶4 (HACR Depo. 5:21 – 9:2).⁴ If Applicant is given more time to finish up the remaining “trial” depositions, more of the same would be expected, further wasting party time and money.

⁴ Of course, even though Opposer limited its deposition of HACR to a specific and definable issue, Applicant could not resist cross-examining HACR on matters clearly outside the limited scope of that deposition (for which Opposer timely objected to such questioning). *See Kane Decl.* ¶4 at 9:6 – 16:17.

CONCLUSION

Applicant has failed to provide any justification for why it needs an extension other than to continue its practice of 11th hour discovery. Opposer, on the other hand, merely seeks to authenticate a single document, which was only recently discovered, and even Applicant cannot dispute that Opposer's situation demonstrates "good cause." For the reasons set forth above, the Board should therefore grant Opposer's motion for an extension and deny Applicant's request.

Respectfully Submitted,

Date: June 3, 2008

 /s/ Erik C. Kane
Edward T. Colbert
William M. Merone
Erik C. Kane
KENYON & KENYON LLP
1500 K Street, N.W.; Suite 700
Washington, D.C. 20005
Tel.: (202) 220 – 4200
Fax: (202) 220 – 4201

*Counsel for Opposer, The Chamber of Commerce of
the United States of America*

CERTIFICATE OF SERVICE

I hereby certify that the required number of copies of the foregoing ***OPPOSER'S REPLY***
IN SUPPORT OF ITS MOTION TO EXTEND ITS TESTIMONY PERIOD was served on the
parties or counsel on the date and as indicated below:

By First-Class Mail (Postage Prepaid)

Jill M. Pietrini
Andrew Eliseev
MANATT PHELPS & PHILLIPS, LLP
11355 W. Olympic Boulevard
Los Angeles, CA 90064-1614

Date: June 3, 2008

_____/s/ Erik C. Kane
Edward T. Colbert
William M. Merone
Erik C. Kane
KENYON & KENYON LLP
1500 K Street, N.W.; Suite 700
Washington, D.C. 20005
Tel.: (202) 220 – 4200
Fax: (202) 220 – 4201

*Counsel for Opposer, The Chamber of Commerce of
the United States of America*

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

THE CHAMBER OF COMMERCE OF
THE UNITED STATES OF AMERICA

Opposer,

v.

UNITED STATES HISPANIC CHAMBER
OF COMMERCE FOUNDATION,

Applicant.

Opposition No.: 91/156,321

Serial No.: 78/081,731

**DECLARATION OF ERIK C. KANE IN SUPPORT OF OPPOSER'S REPLY TO
ITS MOTION TO EXTEND ITS TESTIMONY PERIOD**

The undersigned, Erik C. Kane, states that the following is true and accurate to the best of his information and belief and if called to testify, could and would testify competently as follows:

1. I am an associate with the law firm of Kenyon & Kenyon LLP. Included among my duties is representation of The Chamber of Commerce of the United States of America ("Opposer") in the above captioned opposition proceeding. I am making this declaration in support of Opposer's Reply Brief to Its Motion for an Extension of Time.
2. Attached as Exhibit A is a true and correct copy of portions of the testimonial deposition of Daniel Ramos submitted in this proceeding.

3. Attached as Exhibit B is a true and correct copy of a letter sent by me to Jill Pietrini and Andrew Eliseev on April 22, 2008 as well as a follow up email sent by me to Andrew Eliseev on April 25, 2008.

4. Attached as Exhibit C is a true and correct copy of portions of the testimonial deposition of Rima K. Matsumoto taken in Cancellation Proceeding No. 92/045,876.

5. Attached as Exhibit D is a true and correct copy of portions of the testimonial deposition of Stephen A. Bokar submitted in this proceeding.

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

Dated: 6/3/08 Earl C. Kone

CERTIFICATE OF SERVICE

I hereby certify that the required number of copies of the foregoing *Declaration of Erik C. Kane* was served on the parties or counsel on the date and as indicated below:

By First-Class Mail (Postage Prepaid)

Jill M. Pietrini
Attorney for Applicant
MANATT PHELPS & PHILLIPS, LLP
11355 W. OLYMPIC BOULEVARD
LOS ANGELES, CA 90064-1614

Date:

6/3/08



Edward T. Colbert
William M. Merone
Erik C. Kane
KENYON & KENYON LLP
1500 K Street, N.W.; Suite 700
Washington, D.C. 20005
Tel.: (202) 220 – 4200
Fax: (202) 220 – 4201

*Counsel for Opposer,
The Chamber of Commerce of the United
States of America*

Exhibit A

ORIGINAL

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

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THE CHAMBER OF COMMERCE OF)	
THE UNITED STATES OF AMERICA,)	
Opposer,)	
v.)	Opposition No.
UNITED STATES HISPANIC)	91/156,321
CHAMBER OF COMMERCE FOUNDATION,)	Serial No.
Applicant.)	78/081,731
_____)	

Deposition of DANIEL RAMOS, a witness herein,
called for examination by counsel for Opposer in the
above-entitled matter, pursuant to notice, the witness
being duly sworn by Nancy M. Wingo, a Notary Public in
and for the State of Florida, taken at the offices of
Veritext Court Reporters, 37 North Orange Avenue, Suite
500, Orlando, Florida, at 1:00 p.m., on April 21, 2008,
and the proceedings being taken down by Stenotype by
Nancy M. Wingo, RPR, RMR, FPR

1 describe for me the logistics for how it was that this
2 envelope came to be addressed and mailed to Mr. Barrera
3 after it was decided that copies of these correspondence
4 should, in fact, be sent to him?

5 A Like I said, it was -- the names were taken
6 off the HACR website and then labels were typed up off
7 the HACR website by, possibly, a volunteer. And then
8 the labels were affixed to envelopes and then I took it
9 down to the post office.

10 Q Now, when you say "the names were taken off
11 the website," do you recall if the names included
12 affiliate -- the organization with which the board
13 members or other people identified on the website were
14 affiliated?

15 A Yeah. The website had the affiliated
16 organizations for all the people named on the website
17 who were board members or directors. I don't remember
18 the exact titles but I know board members and I remember
19 some other names there with some titles on it. But we
20 took it directly off the website. The names were taken
21 directly off the website.

22 Q Okay. Now, to the best of your
23 understanding, do you know who Mr. Barrera is or was?

24 A The only contact that I knew was off the HACR
25 website.

1 Q Okay. Have you been contacted by anybody
2 from the United States Chamber of Commerce, including
3 their attorneys, in connection with this deposition?

4 A All I know is that I received a subpoena and
5 I'm here.

6 Q You've not spoken with anybody?

7 A I have never had a conversation with anyone,
8 I have never received anything, other than the subpoena.

9 Q Are you represented by an attorney today?

10 A No, I'm not. It's too much money.

11 Q Have you -- what have you done in preparation
12 for the deposition?

13 A Nothing.

14 Q You haven't spoken with anybody regarding
15 this?

16 A No, not even a lawyer. The only thing was, I
17 spoke to a lawyer who told me he wanted \$3,500 to come
18 here and I can't afford \$3,500. So I came and, you
19 know, here I am.

20 Q And so, right now, in the room, there's only
21 three people, you Mr. Merone and the court reporter?

22 A Yes.

23 Q And did you speak with Mr. Merone this
24 morning?

25 A Only -- I came in before he was here and then

1 he came in a little bit later.

2 Q Did you talk to Mr. Merone at all?

3 A We had a little bit of a conversation but
4 very little.

5 Q What did you talk about? Tell me in detail,
6 please.

7 A I just asked him what this involved. And he
8 said it involves a trademark situation between these two
9 organizations. That was about it.

10 Q What else did he say?

11 A That's it, you know, nothing much. That was
12 about it.

13 Q Did you ask him why were you called to be
14 deposed?

15 A I had asked that question, yes. And he said
16 because a letter was received that involves a letter
17 that was sent. That's what he said. That's it.

18 Q Did he show you the letter?

19 A Yes.

20 Q So what I'm saying is I'd like to hear more
21 detail.

22 A But I didn't see the envelope -- I don't even
23 remember this envelope, to be honest with you, till now.

24 Q What exactly did Mr. Merone describe to you
25 about this dispute?

1 A That's it. That's all he said, it was a
2 trademark issue between two organizations.

3 Q Did he say what trademark?

4 A No.

5 Q Did he ask you anything about the envelope?

6 A He just asked me if this envelope came from
7 my organization.

8 Q What did you say?

9 A I said, apparently, from what I see, yes.

10 Q And then what did Mr. Merone say?

11 A That's it.

12 Q How long did you spend before I called in?

13 A I guess I was here for about 12 minutes,
14 maybe 15.

15 Q So, mostly, you sat in silence?

16 A Yeah, except I made a phone call.

17 Q Did Mr. Merone explain to you who he was
18 representing in this proceeding?

19 A I don't remember the law firm that he
20 represents.

21 Q No. I'm talking about the party that he
22 represents:

23 A He told me he represented the United States
24 Chamber of Commerce.

25 Q Did he ask you if you know anything about

Exhibit B

April 22, 2008

By First Class Mail & Facsimile

Jill M. Pietrini, Esq.
Andrew Eliseev, Esq.
MANATT, PHELPS & PHILLIPS L.P.
11355 West Olympic Blvd.
Los Angeles, California 90064-1614

Re: US Chamber v. US Hispanic Chamber, Opposition No. 91/156,321

Enclosed please find copies of *Notices of Depositions* for Chrissi Jones of the Chamber of Commerce of the United States of America and for the Hispanic Association on Corporate Responsibility (HACR), both of which have been scheduled for April 28, 2008, in Washington. Also enclosed is a copy of the subpoena being served on HACR and/or its agent.

These depositions relate directly to the testimony provided yesterday by Daniel Ramos and are being sought merely for the purpose of authenticating two documents.

Specifically, Ms. Jones works in the mailroom of the U.S. Chamber and will testify that she personally received and reviewed the letter (USCC 57204 – 57208) sent by Mr. Ramos, and that because the letter was not addressed to anyone at the U.S. Chamber and referenced a legal matter, she directed that the letter be forwarded to the legal department by making a handwritten notation on the envelope. As this testimony would seem not to be controversial, we submit that the need for this deposition could be avoided by having Ms. Jones submit a declaration as to those facts, subject to you having the right to call her during your reply period for cross-examination if you thought it was necessary after reviewing her written testimony.

Separately, as Andrew is aware, Mr. Ramos testified yesterday that he identified Mr. Barrera as a person to whom copies of the correspondence in question should be sent because Mr. Barrera was listed on the HACR website as a Board member, and that Mr. Barrera's listing also included his organizational affiliation. Unfortunately, however, the HACR website was updated recently to reflect the current Board, and now includes the following listing:

Augustine Martinez, President and CEO
United States Hispanic Chamber of Commerce

(See <http://www.hacr.org/alliance/>) (attached)



We believe that it cannot be disputed that Mr. Barrera was similarly listed on the 2007 version of the HACR website. To that end, please find attached a copy of the webpage in question that we downloaded from an archive site. As you can see, the listing is similar:

Michael L. Barrera, President and CEO
United States Hispanic Chamber of Commerce

So as to obviate the need for a representative of HACR to be deposed for the limited purpose of confirming this information, we would ask that you stipulate that Mr. Barrera was previously listed on the HACR website in the manner shown in the attached exhibit, up until the point when the Board of Directors for HACR was changed (presumably in January 2008). As your client is a coalition member of HACR, we would presume that you can speak directly with the organization to the extent that you have any concerns as to the accuracy of the stipulation, but we believe that the evidence is fairly clear and that it should not be controversial.

Please let us know if Applicant will be willing to work with us on these two minor evidentiary points which should avoid the need to take these additional depositions. Otherwise, we plan to proceed with both deposition this Monday, April 28, 2008.

Regards,

KENYON & KENYON LLP

A handwritten signature in cursive script that reads "Erik C. Kane".

Erik C. Kane

ECK

Enclosures

Page 1 of 1

Kane, Erik

From: Kane, Erik
Sent: Friday, April 25, 2008 3:19 PM
To: 'Eliseev, Andrew'
Cc: Merone, William
Subject: Chrissi Jones
Importance: High

Andrew,

I got your message. Could you please confirm in writing the fact that Applicant will stipulate to Opposer authenticating receipt of the Ramos letter by declaration? If so I will cancel the court reporter. Also, please confirm as soon as you can regarding the Hispanic Association on Corporate Responsibility deposition.

Thanks,
Erik

Erik C. Kane
Kenyon & Kenyon LLP
1500 K Street, NW | Washington, DC 20005-1257
202.220.4294 Phone | 202.220.4201 Fax
ekane@kenyon.com | www.kenyon.com

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Exhibit C

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

----- X

THE CHAMBER OF COMMERCE OF)
 THE UNITED STATES OF)
 AMERICA,) Cancellation
 Petitioner,) No. 92-045876
 vs.) Reg. No.
 UNITED STATES HISPANIC) 2,886,207
 CHAMBER OF COMMERCE,)
 Respondent.)

----- X

Deposition of RIMA K. MATSUMOTO, a witness herein,
at the offices of Kenyon & Kenyon, 1500 K Street,
N.W., Washington, D.C. commencing at 9:59 a.m. on
Friday, May 2, 2008, and the proceedings being
taken down by Stenotype and transcribed by Deborah
Larson Hommer, RPR, CLR, and Notary Public in and
for the District of Columbia.

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P R O C E E D I N G S

Thereupon,

RIMA MATSUMOTO,

the Witness, called for examination by counsel for the Petitioner, and, after having been sworn by the notary, was examined and testified as follows:

EXAMINATION BY COUNSEL FOR THE PETITIONER

BY MR. KANE:

Q. Good morning.

A. Good morning.

Q. For the record, can you please state your name?

A. Rima Matsumoto.

Q. And who are you currently employed with?

A. With the Hispanic Association on Corporate Responsibility.

Q. And what is your position within that organization?

A. Executive director.

Q. Ms. Matsumoto, I am going to hand you what I am going to premark as Matsumoto Exhibit 1.

1 (Deposition Exhibit No. 1 was marked
2 for identification.)

3 BY MR. KANE:

4 Q. I ask you if you can identify this
5 document.

6 A. It's a subpoena in a civil case issued
7 by the United States District Court. Do you want
8 me to continue reading more?

9 Q. Have you seen this document before?

10 A. Yes.

11 Q. If you could, please turn to the third
12 page of the subpoena that says Schedule A.

13 A. All right.

14 Q. Now, the schedule lists three topics.
15 Has your organization designated you to speak on
16 behalf of these topics in this proceedings today?

17 A. Yes, they have.

18 Q. And you are prepared to speak as to all
19 three?

20 A. Absolutely.

21 Q. Let me hand you what has been premarked
22 as Matsumoto Exhibit 2.

1 (Deposition Exhibit No. 2 was marked
2 for identification.)

3 BY MR. KANE:

4 Q. I am going to ask you -- can you
5 identify this document?

6 A. Yes. It's one of our pages in our
7 website.

8 Q. And can you briefly describe what's on
9 this page?

10 A. Sure. It lists our -- what we call our
11 HACR Alliance, which is pretty much our HACR board
12 of directors. HACR, that's the acronym of the
13 organization.

14 Q. And you're familiar with this
15 particular page of your organization's website?

16 A. Yes, I am.

17 Q. Let me ask you to turn back to the
18 subpoena, Exhibit 1, and flip past Schedule A to
19 the exhibit that's attached to the subpoena.

20 Now, I am going to ask you, have you
21 seen this exhibit before?

22 A. Yes, I have.

1 Q. And can you describe what this exhibit
2 is?

3 A. It's actually the same page that we
4 just described, except this was for the 2007 --
5 the listing of the 2007 board of directors.

6 Q. And do you recognize this as the 2007
7 version of the HACR Alliance web page?

8 A. Yes, it is.

9 Q. How are you familiar with this version
10 of the web page?

11 A. How am I familiar? Well, every year
12 the board of directors changed, so as soon as they
13 change, we always make sure to update the list.

14 Q. Have you seen this version -- prior to
15 seeing this exhibit and the subpoena, have you
16 seen this version of the website before?

17 A. Yes, I have.

18 Q. And does this exhibit accurately
19 reflect what was on the website in 2007?

20 A. Yes, it does.

21 Q. Okay. And the board of directors
22 listed, those are all accurately depicted on the

1 2007 version?

2 A. Yes, they are.

3 MR. KANE: No further questions.

4 EXAMINATION BY COUNSEL FOR THE RESPONDENT

5 BY MR. NEAL:

6 Q. Good morning. Can you pronounce your
7 name for me again?

8 A. Sure. Rima Matsumoto.

9 Q. Matsumoto.

10 A. That's correct.

11 Q. Ms. Matsumoto, my name is Steve Neal,
12 and I represent the Hispanic -- United States
13 Hispanic Chamber of Commerce, and I will have a
14 few question as well.

15 You will note -- whether you look at
16 what's attached to the subpoena as the exhibit,
17 which you identified as the 2007 board of
18 directors, or the 2008 version, Number 2, it does
19 not contain the address of the United States
20 Hispanic Chamber of Commerce, does it?

21 A. That's correct, it does not.

22 Q. And on the 2007 version -- again,

1 attached to Exhibit 1 -- there is a name on there
2 named Michael Barrera. Do you see that, ma'am?

3 A. Yes, I do.

4 Q. Do you know who that is?

5 A. He was the former president and CEO of
6 the United States Hispanic Chamber of Commerce.

7 Q. And is he presently a board member?

8 A. He is not.

9 Q. And under his name there is no address,
10 is there?

11 A. That's correct.

12 Q. On either version of -- Exhibit 1 or
13 Exhibit 2?

14 A. That's correct.

15 Q. Does the HACR board of directors have
16 any members who are employed at the United States
17 Hispanic Chamber of Commerce Foundation?

18 A. No.

19 MR. KANE: Objection. Outside the
20 scope.

21 MR. NEAL: Objection is noted.

22 MR. VEVE: Answer.

1 THE WITNESS: No.

2 BY MR. NEAL:

3 Q. Let me show you what I will mark -- I
4 guess I will have the court reporter mark as
5 Exhibit 3.

6 (Deposition Exhibit No. 3 was marked
7 for identification.)

8 BY MR. VEVE:

9 Q. The court reporter has put before you
10 what has been marked as Exhibit 3. In the middle
11 of the page there is a mark, or a trademark. Have
12 you ever seen this before, ma'am?

13 A. Yes, I have.

14 Q. And where have you seen it?

15 A. At functions that are part of the U.S.
16 Hispanic Chamber of Commerce Foundation.

17 Q. Right. Now, do you -- does this mark
18 appear anywhere on your website, whether in 2007
19 or 2008?

20 A. No, it does not.

21 MR. KANE: I am going to object. This
22 is completely outside the scope of direct, and

1 also this does not pertain to this proceeding,
2 which is the cancellation proceeding.

3 MR. NEAL: Thank you. Your objection
4 is noted.

5 BY MR. NEAL:

6 Q. Has your organization ever featured
7 this particular mark identified on Exhibit 3 on
8 your website?

9 A. No, not on our website.

10 Q. How about on any piece of paper or any
11 document that is part of HACR's business records,
12 has this mark ever appeared?

13 A. Not to my knowledge.

14 Q. Let me show you -- let the court
15 reporter show you what we will mark as Exhibit 4.

16 (Deposition Exhibit No. 4 was marked
17 for identification.)

18 BY MR. NEAL:

19 Q. Ma'am, the court reporter has put
20 before you what has been marked as Exhibit 4.
21 And, again, in the middle of the page there is a
22 trademark. Have you ever seen that mark before,

1 ma'am?

2 A. Yes, I have.

3 Q. And where have you seen that?

4 A. Again, in all sorts of materials that
5 have come from the U.S. Hispanic Chamber of
6 Commerce.

7 MR. KANE: I am making the same
8 objection as a standing objection.

9 MR. NEAL: You can have just a
10 continuing objection, and we will move this along.

11 BY MR. NEAL:

12 Q. In the 2007 website which is, again,
13 attached as an exhibit to your subpoena, which has
14 been marked Exhibit 1, that trademark does not
15 appear, does it?

16 A. No, it does not.

17 Q. Okay. And the same would be true for
18 Exhibit 2, the 2008 --

19 A. That's correct.

20 Q. -- website?

21 A. Uh-huh.

22 Q. And, again, have you ever seen this

1 trademark on any document or correspondence or
2 e-mail that was a business record of your
3 organization?

4 A. No.

5 Q. Do you recall -- and you're sitting
6 here as a corporate designee, which means you have
7 been identified as the person most knowledgeable
8 with respect to the topics at issue in Mr. Kane's
9 subpoena, correct?

10 A. Yes.

11 Q. In that capacity, do you recall
12 receiving any phone calls regarding Mr. Barrera
13 over the last year or two?

14 A. Yes. He was a board member of ours.

15 Q. Okay. And what were those -- do you
16 know what the context of those conversations --
17 the purpose of those conversations?

18 A. All of them actually were related to
19 HACR, to our organization.

20 Q. They were not related, I take it then,
21 to the United States Hispanic Chamber of Commerce;
22 is that correct?

1 A. That's correct.

2 Q. In the last, let's say, two years, if I
3 can, do you recall receiving any correspondence
4 that was directed to Mr. Barrera?

5 A. No.

6 Q. You don't recall that at all.

7 During the last two years, has your
8 organization received any e-mails regarding
9 Mr. Barrera?

10 A. We do receive e-mails from -- yes, from
11 him as well, again, but most of them had to do
12 with our board meetings or HACR-related business.

13 Q. Did any of those e-mails have anything
14 to do with the United States Hispanic Chamber of
15 Commerce?

16 A. They do send -- what do you call it? --
17 like a weekly electronic -- you know, where it
18 tells you, like, what they're doing, so we're part
19 of that database as well that they send out. I
20 think it's weekly -- some sort of communication
21 that the Chamber sends.

22 Q. Okay. So the United States Hispanic

1 Chamber of Commerce sends your organization an
2 e-mail; is that correct?

3 A. Yes.

4 Q. Do you recall any other e-mails
5 regarding the United States Hispanic Chamber of
6 Commerce?

7 A. No.

8 Q. Are you aware of any instances when the
9 United States Hispanic Chamber of Commerce has
10 been confused with the U.S. Chamber of Commerce?

11 A. Not in our organization.

12 Q. Are you aware of any instance in which
13 someone mistook Mr. Barrera's employment as being
14 that of the U.S. Chamber of Commerce?

15 A. No.

16 MR. NEAL: I have nothing further.

17 Pass the witness.

18 FURTHER EXAMINATION BY COUNSEL FOR THE PETITIONER

19 BY MR. KANE:

20 Q. Just one follow-up question.

21 A. Sure.

22 Q. If you can look back at Exhibit 1. Do

1 you see where it says Michael L. Barrera --

2 A. Yes.

3 Q. -- president and CEO?

4 Can you tell me, what is his title
5 listed under his name?

6 A. United States Hispanic Chamber of
7 Commerce.

8 Q. And in all your phone calls with
9 Mr. Barrera, has he ever indicated to you that
10 there was a mistake on the HACR Alliance web page
11 as to his affiliation?

12 A. No.

13 MR. KANE: No further questions.

14 (Discussion held off the record.)

15 MR. KANE: Will you stipulate to the
16 witness signing this outside the presence of a
17 notary?

18 MR. NEAL: Yes. One more thing, for
19 the record. I mean, we're here today -- I
20 understand that my colleagues in Los Angeles have
21 objected to this deposition. We are here pursuant
22 [sic] to that objection, but the Court will work

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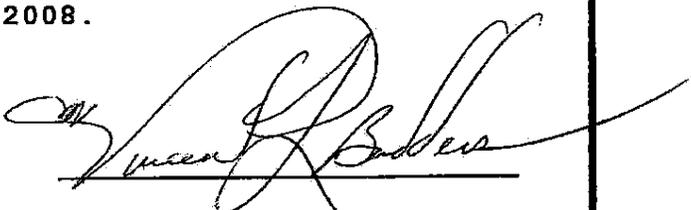
that out.

MR. KANE: And for the record, they objected on the basis of the opposition. This is the cancellation testimony in which the subpoena was served for which the testimony period is still opened. Nothing further.

(Whereupon, signature not having been waived, the taking of the deposition concluded at 10:12 a.m.)


RIMA K. MATSUMOTO

SUBSCRIBED and SWORN TO before me this 9 day of May, 2008.


NOTARY PUBLIC

My Commission expires:

VINCENT L. BAGGERS
NOTARY PUBLIC DISTRICT OF COLUMBIA
My Commission Expires August 14, 2009

Exhibit D

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

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THE CHAMBER OF COMMERCE OF THE :
 UNITED STATES OF AMERICA, :
 Opposer, :Opposition No.
 v. :91/156,321

UNITED STATES HISPANIC CHAMBER :
 OF COMMERCE FOUNDATION, :Serial No. 78/081,731
 Applicant. :

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Thursday, June 28, 2007
Washington, D.C.

Deposition of STEPHEN A. BOKAT, commencing at
10:09 a.m., held at the offices of Kenyon & Kenyon,
1500 K Street, N.W., Washington, D.C., before Keith
Wilkerson, a notary public in and for the District of
Columbia.

1 Chamber of Commerce, would indicate that they had a
2 question about whether or not another organization
3 was affiliated with the U.S. Chamber?

4 MS. PIETRINI: Objection. Leading.
5 Lacks foundation.

6 A. Certainly. You'd get those kinds of
7 questions, particularly if they had "U.S. Chamber"
8 in the name. We'd ask is this organization one of
9 yours, you know, or someone who's using our logo,
10 you know, is this a Chamber member, is this part of
11 the Chamber. Certainly those kinds of
12 circumstances arose with some frequency.

13 Q. Did some of those circumstances indicate that
14 the party being inquired about was not in fact
15 affiliated with the U.S. Chamber?

16 MS. PIETRINI: Objection. Leading.

17 A. Yes, certainly. That certainly arose with
18 the instant case. It arose with a group called the
19 U.S. Women's Chamber of Commerce. I'm trying to
20 think of others. The Chamber had sort of a
21 stylized eagle in a circle that said The Spirit of
22 Enterprise across the top. That phrase was abused.