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

Proceeding	91159866
Party	Plaintiff THE SUNRIDER CORPORATION d/b/a Sunrider International
Correspondence Address	Christine L. Lofgren Jeffer, Mangels, Butler & Marmaro LLP 1900 Avenue of the Stars, 7th Floor LOS ANGELES, CA 90067 UNITED STATES trademarkdocket@jmbm.com, bwk@jmbm.com, byates@jmbm.com
Submission	Opposition/Response to Motion
Filer's Name	Brian W. Kasell
Filer's e-mail	bwk@jmbm.com, trademarkdocket@jmbm.com, ep2@jmbm.com
Signature	/Brian W. Kasell/
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Attachments	Opposer's Response to Applicant's Consent Motion for Extension re Discovery Requests.pdf (6 pages)(153887 bytes)

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

In the Matter of Application Serial No. 76/151,605
Filed: October 19, 2000
For the mark CALI 10
Published in the *Official Gazette* on November 12, 2002

THE SUNRIDER CORPORATION d.b.a.)	
SUNRIDER INTERNATIONAL,)	
)	
Opposer,)	
)	Opposition No. 91159866
v.)	
)	
SAN MIGUEL CORPORATION,)	
)	
Applicant.)	

**OPPOSER'S RESPONSE TO APPLICANT'S CONSENT MOTION FOR EXTENSION
OF TIME TO REPLY TO OPPOSER'S DISCOVERY REQUESTS**

On or about January 4, 2008, Applicant San Miguel Corporation ("Applicant") filed a consented Motion for Extension of Time to Reply to Opposer's Discovery Requests ("Motion"). Although Opposer The Sunrider Corporation ("Opposer") had already consented to the 30 day extension referred to in Applicant's Motion, Opposer nonetheless submits this Response to the Motion in order to address the inappropriate and misleading nature of Applicant's submission.

BACKGROUND

On January 3, 2008, Opposer granted Applicant a 30 day extension to respond to written discovery requests served on Applicant on December 6, 2007. The new due date for Applicant's discovery responses was therefore February 11, 2008. Simultaneously, and in light of the fact that Opposer's testimony period was scheduled to open on February 17, 2008, just a few days

after the new due date for Applicant's discovery responses, the parties agreed to a 60 day extension of the testimony periods. Opposer offered to file an appropriate consent motion to extend the testimony periods, and e-filed such a motion on January 4, 2008. Declaration of Brian W. Kasell ("Kasell Decl.") ¶ 2 (attached hereto).

At the time the parties reached the above agreements, counsel for Applicant stated that Applicant intended to file a consent motion for the 30 day discovery response extension granted by Opposer. Opposer's counsel responded that, although Opposer had no objection to such a filing, it was unnecessary (as well as a waste of both Applicant's and the Board's time and resources) because, under the applicable rules, the parties were free to agree, without Board approval, to extensions of discovery response due dates. Kasell Decl. ¶ 3. At the conclusion of the parties' communications regarding the above matters, Opposer was under the impression that Applicant would not be filing a consent motion directed to the 30 day extension granted by Opposer. *Id.*

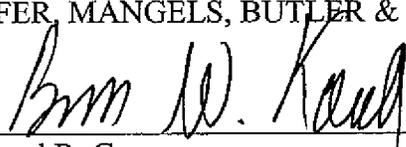
However, on January 8, 2008, Opposer's counsel, while checking on the status of the consent motion to extend the testimony periods, learned that Applicant had, in fact, filed its Motion. More importantly, Opposer learned that Applicant had recited in its Motion a litany of factual allegations that were never discussed with Opposer when Applicant sought Opposer's agreement to the 30 day extension. Kasell Decl. ¶ 4. In light of the contents of Applicant's Motion, Opposer feels compelled to submit this Response.

APPLICANT'S MOTION IS INAPPROPRIATE AND MISLEADING

To begin with, Opposer notes that Applicant's Motion is unnecessary and inappropriate. Opposer, at Applicant's request, has already granted the extension sought in the Motion. Accordingly, there was and is no need for the Board to take any action regarding the Motion. Simply put, Applicant's submission is a waste of the Board's time and resources, and should never have been filed.

More troubling, however, is the misleading nature of the submission. Specifically, Applicant has recited a variety of alleged and purported facts in its Motion, including, but not limited to, assertions that: "the records pertaining to Opposer's discovery requests are old"; "there are substantial delays in receiving documents from Applicant due to Applicant's location in the Philippines"; "[d]elays will inevitably result in incomplete responses to Opposer's discovery requests"; and "Applicant will have to continually supplement discovery responses leading to an inefficient process and a delayed discovery period." See Motion at 1-2. By making such broad assertions, and then immediately stating that Opposer has consented to the Motion, Applicant has created the misleading impression that Opposer has stipulated to, or in some way agrees with, such alleged facts (which is not the case). Opposer does not know whether Applicant intended to create such a misleading impression, or did so inadvertently. Either way, Opposer is compelled to respond.

Specifically, none of the allegations recited in Applicant's Motion were ever mentioned to or discussed with Opposer. Kasell Decl. ¶ 4. To the contrary, Applicant gave no reason for its request for a 30 day extension, other than the simple statement that it needed more time. *Id.* Moreover, Opposer, as a courtesy, granted the extension without ever asking for anything further from Applicant (other than Applicant's consent to an extension of the testimony periods). *Id.* Thus, to the extent Applicant's Motion creates the impression that Opposer stipulated or agreed to the allegations recited in the Motion, Opposer hereby refutes any such conclusion.

Dated: January 9, 2008	Respectfully submitted, JEFFER, MANGELS, BUTLER & MARMARO LLP  _____ Bernard R. Gans Brian W. Kasell Brian M. Yates Attorneys for Opposer The Sunrider Corporation, d.b.a. Sunrider International
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DECLARATION OF BRIAN W. KASELL

I, Brian W. Kasell, declare as follows:

1. I am an attorney duly licensed to practice law in the state of California. I am a partner of the law firm of Jeffer, Mangels, Butler & Marmaro LLP and counsel of record for Opposer The Sunrider Corporation, d.b.a. Sunrider International ("Opposer"). I have personal knowledge of the facts set forth herein and, if called as a witness, could and would competently testify thereto. I submit this Declaration in support of Opposer's Response to Applicant's Motion for Extension of Time to Reply to Opposer's Discovery Requests.

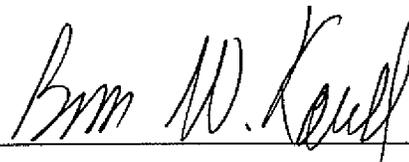
2. On January 3, 2008, Opposer granted Applicant San Miguel Corporation ("Applicant") a 30 day extension to respond to written discovery requests served on Applicant on December 6, 2007. The new due date for Applicant's discovery responses was therefore February 11, 2008. Simultaneously, and in light of the fact that Opposer's testimony period was scheduled to open on February 17, 2008, just a few days after the new due date for Applicant's discovery responses, the parties agreed to a 60 day extension of the testimony periods. Opposer offered to file an appropriate consent motion to extend the testimony periods, and I e-filed such a motion on January 4, 2008.

3. At the time the parties reached the above agreements, MyLynda Moore, counsel for Applicant, stated that Applicant intended to file a consent motion for the 30 day discovery response extension granted by Opposer. I responded that, although Opposer had no objection to such a filing, it was unnecessary (as well as a waste of both Applicant's and the Board's time and resources) because, under the applicable rules, the parties were free to agree, without Board approval, to extensions of discovery response due dates. At the conclusion of the parties' communications regarding the above matters, I was under the impression that Applicant would not be filing a consent motion directed to the 30 day extension granted by Opposer.

4. However, on January 8, 2008, while checking on the status of the consent motion to extend the testimony periods, I learned that Applicant had, in fact, filed its Motion. I also learned that Applicant had recited in its Motion a litany of factual allegations that were never

discussed with me or mentioned to me when Applicant sought Opposer's agreement to the 30 day extension. To the contrary, Applicant gave no reason for its request for a 30 day extension, other than the simple statement that it needed more time. Moreover, Opposer, as a courtesy, granted the extension without ever asking for anything further from Applicant (other than Applicant's consent to an extension of the testimony periods).

I declare under penalty of perjury under the laws of the United States of America and the State of California that the foregoing is true and correct and that this declaration was executed on January 9, 2008.

A handwritten signature in cursive script, reading "Brian W. Kasell", written in black ink over a horizontal line.

BRIAN W. KASELL

CERTIFICATE OF SERVICE

It is hereby certified that on January 9, 2008, a copy of the foregoing OPPOSER'S RESPONSE TO APPLICANT'S MOTION FOR EXTENSION OF TIME TO REPLY TO OPPOSER'S DISCOVERY REQUESTS has been sent by first class mail, postage prepaid to the attorney of record for Applicant:

Elliott C. Bankendorf, Esq.
MyLynda Moore, Esq.
Welsh & Katz, Ltd.
120 South Riverside Plaza, 22nd Floor
Chicago, IL 60606

Dated: January 9, 2008


Etlin P. Perrion