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

Proceeding	91164764
Party	Defendant The Brinkmann Corporation
Correspondence Address	GARY A CLARK SHEPPARD MULLIN RICHTER & HAMPTON LLP 333 SOUTH HOPE STREET, 43RD FLOOR LOS ANGELES, CA 90071 UNITED STATES gclark@sheppardmullin.com, shwang@sheppardmullin.com
Submission	Opposition/Response to Motion
Filer's Name	Susan Hwang
Filer's e-mail	shwang@sheppardmullin.com, gclark@sheppardmullin.com
Signature	/Susan Hwang/
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE  
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BRINK'S NETWORK, INCORPORATED,

Opposer,

v.

THE BRINKMANN CORPORATION,

Applicant.

Opposition No. 91164764

**APPLICANT BRINKMANN'S OPPOSITION TO OPPOSER'S MOTION TO EXTEND  
THE DISCOVERY CUT-OFF DATE AND THE PARTIES' TESTIMONY PERIODS**

Applicant The Brinkmann Corporation ("Brinkmann") respectfully submits this opposition to the motion to extend the discovery cut-off date and the parties' testimony periods filed by Opposer Brink's Network, Incorporated ("Brink's Network"). None of the excuses set forth by Opposer, nor the length of time requested, are valid. Opposer's lack of justification for the requested extension warrants denial of Opposer's motion to extend.

**I.**

**STATEMENT OF FACTS**

Since initiating the present proceeding more than seven years ago, Opposer has filed 13 substantive motions and discovery motions, prompting multiple suspensions and resumptions of the discovery and trial dates.

On November 18, 2010, the Board issued an Order setting the then-discovery cut-

off as January 21, 2011.

On January 2, 2011, Opposer served Opposer's FOURTH SET OF INTERROGATORIES and THIRD SET OF REQUESTS FOR DOCUMENTS by mail on Applicant.

On January 5, 2011, Opposer filed its MOTION FOR SUMMARY JUDGMENT DISMISSING APPLICANT'S PRIOR REGISTRATION DEFENSE.

On January 7, 2011, the Board suspended proceedings.

On May 21, 2012, the Board issued an Order denying Opposer's motion. The Order set the discovery cut-off as June 15, 2012.

On June 8, 2012, Opposer asked whether Applicant would consent to an extension of the discovery cut-off date and trial dates. In subsequent correspondence, Opposer stated that the reasons for the requested extension were (1) the opportunity for Opposer to take additional discovery, (2) Applicant's opportunity to take additional discovery and (3) accommodation of scheduling conflicts of Opposer's counsel.

On June 15, 2012, Applicant advised Opposer that Applicant was willing to accommodate counsel's scheduling conflicts and to reschedule Opposer's testimony period, but believed that an extension of the discovery cut-off was unnecessary.

Thereafter, on the same day, Opposer filed the present motion to extend the discovery cut-off and other trial dates by sixty (60) days,

## II.

### ARGUMENT

#### A. An Extension of the Discovery Cut-Off Date and Trial Dates is Unwarranted and Unnecessary

##### 1. **Opposer is Not Entitled to Take Any Additional Discovery**

Opposer's first reason for requesting an extension is that it is "necessary to take

some additional discovery directed to Applicant's discovery responses served on February 22, 2011 and other areas where discovery had not been completed as of January 7, 2011 when proceedings were suspended." *Opposer's Memorandum* at p. 2. However, Opposer should not be granted additional time that it was not entitled to in the first place. Prior to the most recent suspension of proceedings, the Board's November 18, 2010 Order had set the discovery cut-off date as January 21, 2011. Opposer then waited until January 2, 2011 to serve Opposer's FOURTH SET OF INTERROGATORIES and THIRD SET OF REQUESTS FOR DOCUMENTS on Applicant, by mail. Applicant's responses, therefore, were due *after* the then-discovery cut-off of January 21, 2011. If the proceeding had run its course without Opposer's filing of its January 5, 2011 MOTION FOR SUMMARY JUDGMENT DISMISSING APPLICANT'S PRIOR REGISTRATION DEFENSE, Opposer would not be entitled to take any additional discovery. Opposer should not be allowed, through this motion, to seek discovery it was not diligent in seeking in the first place.

Furthermore, Opposer offers no reason why it would be entitled to take discovery "in other areas where discovery had not been completed" as of the date when Opposer filed its MOTION FOR SUMMARY JUDGMENT. If Opposer believed it needed additional discovery, it should have sought discovery in a timely manner.

**2. Opposer Has No Need to Take Any Additional Discovery**

Even if Opposer were somehow entitled from a timing standpoint to seek additional discovery, the issues on which it seeks discovery are nevertheless unnecessary or can be easily dealt with through supplementation or during the testimony periods. Although Opposer states that an extension is warranted "[g]iven the complexity of the issues presented in this opposition," the discovery that Opposer is seeking basically boils down to Applicant's use or purported misuse of the federal ® symbol on Applicant's packaging. Applicant has already produced representative

samples of Applicant's packaging to Opposer in the course of discovery. On June 15, 2012, Applicant advised Opposer that Applicant would supplement its document production with any revised packaging and that Opposer could ask questions of Applicant during its testimony period. While Applicant understands that supplementation of existing discovery requests is proper, Opposer has no basis for seeking *untimely* and *additional* discovery on an issue that is, in reality, ancillary to Opposer's main contentions of likelihood of confusion and dilution.

**3. Opposer's Purported Accommodation of Applicant's Discovery Needs is Unnecessary**

Opposer's second reason for requesting an extension is, of all things, a magnanimous attempt to accommodate *Applicant's* own discovery efforts, namely, Applicant's opportunity to take additional discovery of Opposer's licensee Hampton in light of Opposer's supplemental production of documents on June 13, 2012 related to Hampton's misuse of the registration symbol ® on its packaging. However, Applicant advised Opposer on June 15, 2012 (prior to Opposer's filing of its motion) that there were no outstanding issues that could not be dealt with through supplementation or during the testimony period, including testimony from Hampton. Applicant reiterates that, to date, Applicant should be able to elicit any information it needs from Hampton during Hampton's testimony deposition, with no need for a duplicative discovery deposition.

**B. An Extension of Sixty Days is Both Unreasonable and Moot**

Opposer's third reason for an extension of time is because counsel for Opposer has conflicts arising from due dates and prior commitments in other contested proceedings and civil actions. Applicant notes that by the time this motion is heard by the Board, Opposer's counsel's conflicts will presumably have passed. Applicant also advised Opposer on June 15, 2012 that although an extension of the discovery cut-off was unnecessary, Applicant would

certainly be willing to accommodate an extension of Opposer's testimony period in light of counsel's scheduling conflicts.

The Board only sets 180 days for the discovery period. *See* 37 C.F.R. § 2.120(a)(2). Opposer should not be allowed to extend the discovery period by a full third of the decreed period, merely to seek discovery that is both unjustified and unnecessary.

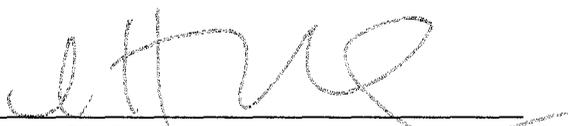
The Board set the discovery cut-off as June 15, 2012. Opposer's present motion is the *13th* motion it has filed in this proceeding, which has been pending for over *seven* years. Applicant believes that for the sake of orderly justice and judicial economy, Opposer should be precluded from delaying this proceeding even further and the parties should proceed to the testimony periods.

### III.

#### CONCLUSION

For all of the foregoing reasons, Applicant Brinkmann has demonstrated that Opposer has no need for an extension of the discovery cut-off date and the parties' testimony periods. Accordingly, Applicant Brinkmann respectfully requests that the Board deny Opposer's motion to extend.

Dated: July 5, 2012



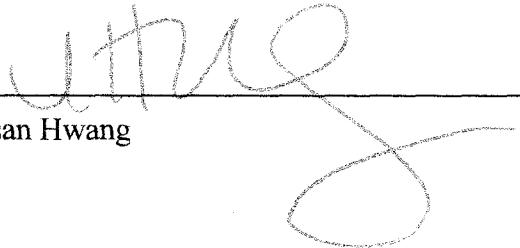
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Gary A. Clark  
Susan Hwang  
SHEPPARD, MULLIN, RICHTER & HAMPTON LLP  
333 South Hope Street, 48<sup>th</sup> Floor  
Los Angeles, California 90071  
Tel.: (213) 620-1780  
Fax: (213) 620-1398  
Attorneys for Applicant  
THE BRINKMANN CORPORATION

CERTIFICATE OF SERVICE

This is to certify that I have this day, July 5, 2012, caused to be served a copy of the foregoing APPLICANT BRINKMANN'S OPPOSITION TO OPPOSER'S MOTION TO EXTEND THE DISCOVERY CUT-OFF DATE AND THE PARTIES' TESTIMONY PERIODS by placing a copy in the United States Mail, postage pre-paid, addressed to counsel for Opposer as follows:

ALAN S. COOPER, ESQ.  
WILEY REIN LLP  
1776 K STREET NW  
WASHINGTON, DC 20006

  
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Susan Hwang