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

Proceeding	91167219
Party	Plaintiff CYI, Inc. CYI, Inc. CYI, Inc. 9314 Eton Avenue Chatsworth, CA 91311 UNITED STATES
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Submission	Motion to Reopen
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Date	02/26/2007
Attachments	TTAB - motion to reset dates.pdf (5 pages)(18269 bytes)

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

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CYI, Inc. :
 :
 : Opposition No.
 Petitioner, : 91167219
 : (S.N. 78/447,127)
 - against - :
 :
 GARY AHLERT :
 :
 Applicant. :
-----X

MOTION TO REOPEN DISCOVERY PERIOD AND TO RESET THE TRIAL DATES

Petitioner, CYI, Inc. (“CYI”), through and by its attorneys, hereby submits this Motion to Reopen Discovery Period and to Reset the Trial Dates, pursuant to Rule 6 of the Federal Rules of Civil Procedure.

Petitioner filed its Opposition to Applicant’s application for registration of the mark “MEGAZOOKA” on October 11, 2005. On October 31, 2005, the Board notified Applicant of the pending Opposition. However, Applicant’s answer, filed on November 15, 2005, did not comply with Rule 8(b) of the Federal Rules of Civil Procedure, made applicable by Trademark Rule 2.116(a). On May 27, 2006, the Board issued an order requiring Applicant to file a proper answer and allowed Applicant thirty (30) days to file an amended answer. Applicant did not comply with the Board’s order and did not file any amended answer.

On August 30, 2006, the Board issued a notice of default and allowed Applicant thirty (30) days to show cause why judgment by default should not be entered against Applicant. On September 8, 2006, Applicant responded to the Board’s notice of default by asserting that the Applicant never received the Board’s order dated May 27, 2006. On October 4, 2006, the Board

set aside the notice of default, and allowed Applicant thirty (30) days to provide a proper answer. Once again, Applicant filed an improper answer, which was not in compliance with Rule 8(b) of the Federal Rules of Civil Procedure. In addition to this failure of Applicant to comply with the Board's order to submit a proper answer, Applicant's answer continued his libelous attacks on Petitioner's counsel. On October 25, 2006, Petitioner filed a motion arguing that the libelous communication from Applicant should be stricken from the record. On February 1, 2007, the Board allowed the improper answer to stand, but granted Petitioner's motion to strike the impertinent and scandalous matters. The Board also noted that the dates remain as set in the Board's October 4, 2006 order, as follows:

Discovery Period to Close:	December 3, 2006.
30-day testimony period for party in position of plaintiff to close	March 3, 2007
30 day testimony period for party in position of defendant to close	May 2, 2007
15-day rebuttal testimony period for party in position of plaintiff to close	June 16, 2007

Rule 6(b) of the Federal Rules of Civil Procedure, made applicable to the Trademark Trial and Appeal Board proceedings by 37 C.F.R. §2.116(a), allows for the enlargement of time periods. The issues to be considered in granting a motion to reopen time include: (1) the danger of prejudice to the nonmovant, (2) the length of the delay and its potential impact on judicial proceedings, (3) the reason for the delay, including whether it was within the reasonable control of the movant, and (4) whether the movant acted in good faith. See Pioneer Investment

Services Company v. Brunswick Associates Ltd. Partnership, 507 U.S. 380 (1993), adopted by the Board in Pumpkin Ltd. v. The Seed Corps., 43 USPQ2d 1582 (TTAB 1997).

First, there is no danger of prejudice to Applicant, the nonmovant. This motion is based on the fact that at time of the Board's acceptance of Applicant's answer, the previously set discovery period had already closed. In view of the fact that both Applicant and Petitioner have not conducted any discovery, both parties will benefit from the reopening of the discovery period and resetting the trial dates.

Second, the length of delay is negligible in comparison to the amount of time that this opposition proceeding has been delayed by Applicant's attacks rather than following the Rules. It appears Applicant is more interested in attacking Petitioner's counsel, than in moving the case forward, and hence has repeatedly failed to comply with the Federal Rules of Civil Procedure and the Board's rules. This failure has resulted in nearly a one year delay in the proceeding. Petitioner is requesting the reopening of the discovery period and resetting of the trial dates, in order to properly proceed with this Opposition. The Board accepted Applicant's answer on February 1, 2007, but did not reset the discovery period and the trial dates. If this motion is not granted, Petitioner will not have a fair opportunity to conduct discovery, through no fault of it.

Third, the reason for the delay is Applicant's failure to file a timely and proper answer. The date of the Board's acceptance of the answer was after the previously set date for the closing of the discovery period. Due to the fact that until February 1, 2007, Applicant's answer had not been entered into the record, the parties did not and could not proceed with discovery and other related procedures.

Finally, throughout this proceeding, Petitioner has acted in good faith, despite Applicant's lack of compliance with the Federal Rules of Civil Procedure and the Trademark

Trial and Appeal Board Procedures. Furthermore, Applicant has repeatedly made scandalous and libelous statements against Petitioner's counsel, attempting to enter such false allegations into the record. When one has no facts to support his position, he attempts to divert attention away from the merits and tries to bait counsel in making this a personal dispute. This motion to reopen the discovery period and reset the trial dates is submitted in good faith, in order to properly proceed with the opposition, now that the Board has finally accepted Applicant's abbreviated answer.

Therefore, having shown good cause, Petitioner CYI respectfully requests the Trademark Trial and Appeal Board to reopen the discovery period and to reset the trial dates.

Dated: February 26, 2007

New York, New York

_____/hcm/_____

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CERTIFICATE OF SERVICE

I hereby certify that on February 26, 2007, a copy of the foregoing MOTION TO REOPEN DISCOVERY PERIOD AND TO RESET THE TRIAL DATES was served upon Applicant by first class mail, postage prepaid, at the address listed below:

Gary Ahlert
Creative Marketing Group LLC
400 Main Street, Suite 210
Stamford, CT 06901

By: /yp/
Yasmin Pooyan