

ESTTA Tracking number: **ESTTA453700**

Filing date: **01/30/2012**

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

Proceeding	92052621
Party	Defendant American Cigarette Company, Inc.
Correspondence Address	ROBERT C KAIN JR KAIN & ASSOCIATES ATTORNEYS AT LAW PA 900 SOUTHEAST 3RD AVENUE, SUITE 205 FORT LAUDERDALE, FL 33316 UNITED STATES RKain@ComplexIP.com, dspielman@complexip.com
Submission	Motion to Extend
Filer's Name	Robert C. Kain, Jr.
Filer's e-mail	rkain@complexip.com, dspielman@complexip.com
Signature	/rck/
Date	01/30/2012
Attachments	mot-extend-time-SJ-90dy-ss.pdf (4 pages)(45918 bytes) mot-extend-time-Decl-R-Kain-ss-w-Exh.pdf (16 pages)(463603 bytes)

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

In the matter of application Serial No. 76/415,303 and 76/415,305

Mark: “UNION GOLD” and “U-UNION and Design”

American Cigarette Company, Inc.

Opposer/Plaintiff,

v.

Opposition Nos. 91185261

91186841

Cancellation No. 92052621

(Consolidated)

N.V. Sumatra Tobacco Trading Company

Applicant/Defendant.

Opposer’s Motion for Extension of Time

Opposer/Respondent, American Cigarette Co., Inc. (“ACC”), seeks a 90 day extension of time to respond to Applicant/Petitioner, N.V. Sumatra’s (“NV”), motion for summary judgment relative to its petition to cancel ACC’s registration 2972594 for UNION. In summary, the enclosed declaration by ACC’s counsel, Robert C. Kain, Jr., Esq, shows that, due to press to other business, good cause exists to extend the time to respond to NV’s motion for 90 days.

TBMP 509 invokes Fed. R. Civ. P. 6(b) relative to extension of time. “When an act may or must be done within a specified time, the court may, for good cause, extend the time: (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires.” Fed. R. Civ. P. 6(b). TBMP 509.01(a) states “A motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension; mere

conclusory allegations lacking in factual detail are not sufficient. Moreover, a party moving to extend time 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. The Board will 'scrutinize carefully' any motion to extend time, to determine whether the requisite good cause has been shown."

The TTAB has recognized that the press of other business on counsel for the movant may establish good cause to extend time deadlines. Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducali SCRL, 59 USPQ2d 1383, (TTAB 2001) ("Opposer's counsel, in his declaration, has set forth the facts relating to his other litigation matters in sufficient detail to warrant a finding that good cause exists for at least a limited extension of opposer's testimony period").

Kain's Declaration, attached, establishes good cause for this 90 day extension. In summary, the Declaration provides that: (a) ACC's counsel is a small, IP law firm; (b) due to the unusual concurrence of three different federal court trials over the next 90 days, ACC seeks to extend the time to file its opposition to NV's motion for summary judgment up to and including April 30, 2012; (c) ACC's counsel must prepare for three (3) different federal court trials over then next 90 days, including the 4 day Aldar trial with over 16 witnesses and 124 defense documents, the 28 design copyright Avid trial in California, and a trademark infringement trial in New York City.

To show that there is no prejudice to NV, Kain's Declaration explains that the present TTAB action has involved three (3) years of discovery, all without motions obstructing or

compelling discovery, and has involved the production by ACC to NV of over 4,000 pages of documents and answers by ACC to four (4) different sets of interrogatories by NV.

NV has no license or certificate to sell its brand of cigarettes in the U.S. due to regulatory problems and therefore a delay does not commercially adversely effect NV.

The 90 day extension of time to respond to NV's motion for summary judgment is not unreasonable in light of the press of business and obligations of Kain & Associates to its other clients and to the federal court system.

The requested 90 day extension is not due to a lack of diligence by ACC. The initial, agreed 30 day extension of time to January 30, 2012 was needed because the last two weeks of the initial four week response period included the Christmas and New Years holidays. During the month of January, Kain traveled to California on three different occasions for the Avid case. Spielman, the other attorney in Kain & Associates, has traveled to Las Vegas and to New York for the Lebewohl case. This travel from Kain & Associates office in Fort Lauderdale, Florida was caused by an "end of discovery" rush in the Avid and Lebewohl cases.

Additionally, NV's motion includes affidavits from previously unidentified persons which require further investigation by ACC.

Meet and Confer

Counsel ACC requested that NV approve this motion for extension of time but NV has not agreed to the extension and will oppose such motion.

WHEREFORE, ACC requests that the TTAB grant it a 90 day extension of time, up to and including April 30, 2012, to respond to NV's motion for summary judgment.

Jan. 30, 2012.

/RobertKain/_____

Robert C. Kain, Jr.

Fla. Bar. 266760

Darren Spielman

Kain & Associates, Attorneys at Law, P.A.

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Ft. Lauderdale, Florida 33316

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rkain@ComplexIP.com

Attorneys for Opposer/Plaintiff

CERTIFICATE OF SERVICE

The undersigned hereby certifies that on this 30 day of Jan 2012, a true copy of the foregoing Motion for Extension of Time was served via email to the following:

Tara Vold
J. Paul Williamson
Fulbright & Jaworski L.L.P.
801 Pennsylvania Avenue, N.W.
Washington, D.C. 20004
Tel: 202-662-0200
Fax: 202-662-4643

/RobertKain/

Robert C. Kain, Jr.

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

In the matter of application Serial No. 76/415,303 and 76/415,305

Mark: "UNION GOLD" and "U-UNION and Design"

American Cigarette Company, Inc.

Opposer/Plaintiff,

v.

Opposition Nos. 91185261
91186841
Cancellation No. 92052621
(Consolidated)

N.V. Sumatra Tobacco Trading Company

Applicant/Defendant.

Declaration of Robert C. Kain, Jr., Esq.

I, Robert C. Kain, Jr., Esq, Fla. Bar No. 266,760, hereby make the following declaration in support of American Cigarette Co., Inc.'s motion for extension of time to file its opposition brief responsive to N.V. Sumatra's motion for summary judgment:

1. I am lead trial counsel for our two-man law firm, Kain & Associates, Attorneys at Law, P.A., located in Fort Lauderdale, Florida. Kain & Associates only employs two lawyers, myself and Darren Spielman, Esq. See the Firms' website at www.ComplexIP.com. Kain & Associates represents ACC in the captioned matter.
2. On or about December 1, 2011, N.V. Sumatra ("NV") filed its motion for summary judgment seeking to cancel American Cigarette Co., Inc.'s (herein "ACC") registration 2972594 for UNION.
3. Upon the request of ACC, NV agreed to extend the time to respond to the summary judgment until January 30, 2012.
4. Due to the unusual concurrence of three different federal court trials over the next 90 days, ACC seeks to extend the time to file its opposition to NV's motion for summary

judgment for 90 days, up to and including April 30, 2012. ACC and Kain seek this extension due to the press of federal court litigation.

5. As shown in the attached exhibits, Kain and Kain & Associates must prepare for three (3) federal court trials over the next 90 days.
6. Exhibit A provides data for Aldar Tobacco Group, LLC. et al. v. American Cigarette Co., Inc. and Battah, Case: 08-CV-62018-Jordan-O'Sullivan, U.S. District Court, Southern District of Florida. Judge Jordan has set trial for March 26, 2012. Excerpts from the joint pretrial stipulation shows that plaintiffs list 16 witnesses, defendants list 12 witnesses, and the parties anticipate a 4 day jury trial. The trial exhibit list includes 124 defense documents. Plaintiffs' case alleges copyright and trademark violations and defendants allege breach of two contracts, a declaration that they did not misappropriate Aldar's trade secrets, declarations that these contracts and I.P. enforcement actions are illegal restraints of trade under Florida law, and common law unfair competition.
7. Exhibit B provides data for Advanced Visual Image Design (AVID) v. Exist, Inc. And Ross Stores, Inc., U.S. District Court, C.D. Cal., Case no. 10-9383. The docket sheet for the Avid v Exist matter lists the deadlines for the pretrial stip, the motions in limine and the trial date (April 4, 2012). This copyright case involves 28 different dress designs. Plaintiff alleges damages in excess of \$5,000,000.
8. Exhibit C provides data for Lebewohl and Uncle Abbies v. HAG, U.S. District Court, S.D. N.Y., Case no. 11-CIV-3153-PAE. The docket sheet for this case shows the pretrial stipulation is due February 13 and the pretrial conference is set for February 24, 2012. In this case, plaintiffs seek a declaratory judgment that there is no trademark infringement in New York City and defendants seek declaratory relief limiting plaintiffs' use of the contested mark to certain regions in New York City and to limit the manner and mode of use of the contested mark by plaintiffs (defendants own a federally registered mark nearly identical to the accused mark used by plaintiffs). Kain & Associates anticipate a 1 - 2 day trial in New York.
9. Based upon the foregoing, Kain & Associates must spend considerable hours to prepare for these three (3) federal court trials over the next 3 months.
10. In contrast, the present TTAB action has involved three (3) years of discovery, all without motions obstructing discovery, and has involved the production by ACC to NV of over 4,000 pages of documents. NV propounded and ACC answered four (4) sets of interrogatories.
11. NV has no license or certificate to sell its brand of cigarettes in the U.S. due to regulatory problems.

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

MIAMI DIVISION

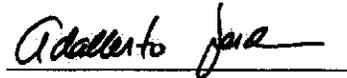
CASE NO. 08-62018-CIV-JORDAN

ALDAR TOBACCO GROUP, LLC, et al.,)
)
Plaintiffs)
)
vs.)
)
AMERICAN CIGARETTE CO., INC. and)
BASIL BATTAH,)
)
Defendants)
_____)

ORDER SETTING TRIAL DATE

This case is set for trial during the Court's two-week trial calendar beginning on March 26, 2012. Calendar call will be held at 9 A.M. on March 20, 2012. No pre-trial conference will be held unless a party requests one no later than 30 days prior to the calendar call or the Court determines that one is necessary.

DONE and ORDERED in chambers in Miami, Florida, this 4TH day of January, 2012.



Adalberto Jordan
United States District Judge

Copies to: All counsel of record

Exh. A
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**UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA
(FORT LAUDERDALE DIVISION)
CASE NO.: 08-CV-62018-JORDAN/McALILEY**

**ALDAR TOBACCO GROUP, LLC,
a Florida Limited Liability Company;
DAVID GIELCHINSKY, individually;
and PHOENIX TOBACCO INC., a Florida
Corporation**

Plaintiffs/Counter Defendants,

v.

**AMERICAN CIGARETTE COMPANY, INC.,
a Florida Corporation, and
BASIL E. BATTAH, individually
Defendants/Counter Plaintiffs**

v.

**ROBERT GIELCHINSKY, individually
Third Party Defendant**

JOINT PRETRIAL STIPULATION

Plaintiffs, Aldar Tobacco Group, LLC, David Gielchinsky, Phoenix Tobacco Group, LLC and Third Party Defendant, Robert Gielchinsky, (herein collectively "ALDAR," and sometimes Robert Gielchinsky referred to as "R. GIELCHINSKY"), and Defendant-Third Party Plaintiffs, American Cigarette Co. Inc., and Basil E. Battah (collectively "ACC") hereby file this joint pretrial stipulation pursuant to this Court's Order DE 116 dated August 9, 2010, as amended DE 121 (Order setting trial for June 6, 2011), requiring the parties to file the Joint Pretrial Stipulation on March 28, 2011.

Both Parties hereby request a four (4) day JURY trial.

1.0 CONCISE STATEMENT OF THE CASE.

A. ALDAR's Concise Statement of the Case:

Despite Plaintiffs' counsel's recent request of Robert Kain (Counsel for Defendants) inviting a meeting to stipulate to the vast majority of facts in this case, Mr. Kain responded that the only thing that he would stipulate to are two executed contracts among the parties (The July 2008 Manufacturing Agreement between Plaintiff Aldar and Defendant ACC and an associated Non-Circumvent Agreement). This is unfortunate because the jury hardly needs to hear testimony and review written exhibits concerning matters that are not in dispute. Defendants' refusal to agree to obviously undisputed facts will lengthen the trial and require resolution of a number of objections the parties will have to the evidence. Needless to say, the flat out refusal to stipulate to undisputed facts will also result in additional fees and costs to the parties.

Accordingly this "Unagreed" Concise Statement of the Facts by Plaintiff's Aldar, technical Plaintiffs David Gielchinsky and Phoenix Tobacco; Defendants ACC and Battah; and Third-Party Defendant Robert Gielchinsky follows:

In approximately 2003, R. GIELCHINSKY met BASIL BATTAH. BATTAH's company ACC manufactured cigarettes and was also involved in the distribution of ACC tobacco products. ACC had a storage facility in Miami that had extra space and R. GIELCHINSKY arranged to rent storage space at the facility. R. GIELCHINSKY needed space to store cigarettes-manufactured by others-that were part of inventory available for distribution to tobacco wholesalers in Florida and other states.

One of the cigarette products that R. GIELCHINSKY inventoried was a lower-shelf brand known as "Victory" cigarettes. Packaging and labeling was developed (created) by R. GIELCHINSKY's brother, DAVID GIELCHINSKY, a graphics designer. One of ALDAR'S

infringement and others. ALDAR never sent ACC a default letter and never engaged in the contractually required pre-litigation mediation per the MFA. MFA ¶16.14.

ACC filed two motions to dismiss. The Court forced ALDAR to join IP rights owners Phoenix Tobacco Group, LLC (the current BRAVADO trademark owner) and David Gielchinsky (BRAVADO and VICTORY copyright owner) and ultimately ALDAR voluntarily dropped its state law claims. ALDAR's current complaint DE 95 asserts: Federal Copyright Infringement for BRAVADO (Counts 4 and 5); Federal Trademark Infringement for BRAVADO (Counts 6 and 7); and Copyright Infringement for "Victory Cigarette" packaging (Count 24 and 25).

ACC answered, counterclaimed and asserted a third party claim against R. GIELCHINSKY. See DE 107.

ALDAR answered ACC's counterclaims on July 12, 2010. DE 112.

R. GIELCHINSKY answered ACC's third party complaint at DE 172 on January 10, 2011.

ACC propounded requests for production of documents, requests for admissions and set depositions but the Parties delayed discovery because the principals believed that settlement was close at hand. The Parties engaged in two (2) mediation sessions which did not resolve the issues.

1.1. SUMMARY OF CLAIMS AND DEFENSES

A. ALDAR's Counts:

1. Count 4: Federal Copyright Infringement – Bravado Cigarettes (Injunctive Relief)
2. Count 5: Federal Copyright Infringement – Bravado Cigarettes (Damages)
3. Count 6: Federal Trademark Infringement – Bravado Cigarettes (Injunctive Relief)
4. Count 7: Federal Trademark Infringement – Bravado Cigarettes (Damages)
5. Count 24: "Victory" cigarettes Copyright Infringement (Injunctive Relief)
6. Count 25: "Victory" cigarettes Copyright Infringement (Damages)

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¶11.1(iii) (freedom to distribute cigarettes), ¶11.1(vii) (no use of ACC's other trademarks) and ¶11.2(ix) (State compliance required), ¶16.8(c)(v) (ACC sells other cigarette brands) and ¶16.8(d)(v) (ACC sells other cigarette brands). As for ACC's payment of money to ALDAR member Scroggs based upon BRAVADO Florida sales, ALDAR waived their rights to complain by failing to demand that Scroggs return money to ALDAR. Also, ALDAR approved these payments to Scroggs.

7. De minimus Use: ACC's sales of BRAVADO in Florida were de minimus and ALDAR's damages, if any, are contractually provided for under the MFA. As for the VICTORY I.P. rights, the use of the V-chevron is de minimus.

8. Set Off: ALDAR owes ACC over \$238,000 for breach of contract damages and cigarette storage charges under the MFA. Any damage award due to BRAVADO Florida sales must be set off from monies owed by ALDAR to ACC.

9. Mitigation: ACC used commercially reasonable efforts to effect the sale of the 42,000 cartons of BRAVADO cigarettes under a proposed UCC sale and a proposed foreign export sale. ACC attempted to stop the accrual of storage charges for BRAVADOs.

10. Unclean Hands: As for the BRAVADO and the VICTORY I.P. rights, ALDAR's conduct was and is inequitable because: ALDAR knew of the UNION product for many years; damages are spurious; claims under the VICTORY V-chevron copyright are not proper; and the NCA restrictions are illegal restraints of trade.

C. ACC's Counterclaims:

1. In Counterclaim Count I (herein "CC-Count I"), ACC requests a declaration that it did not breach the MFA.

2. In CC-Count II, ACC claims that ALDAR breached the MFA. The grounds are too

numerous to summarize herein but the major reasons include: (a) ALDAR failed to pay ACC monies owed per the MFA ¶ 6.2 (ALDAR to pay for state compliance expenses), ¶ 7 (full payment required prior to delivery of BRAVADO goods), ¶ 9.1, ¶ 9.2, and ¶ 11.2(ix); (b) ALDAR guaranteed to purchase 9,000 master cases (540,000 cartons) of branded cigarettes "during the initial one-year term" of the contract, MFA ¶6.1; and (c) ACC produced and tendered partial delivery of the initial cigarette order (42,000 cartons) and ALDAR refused to pay for the same and refused delivery, MFA ¶ 6.1.

3. In CC-Count III, ACC seeks a declaration that it did not breach the NCA.

4. In CC-Count IV, ACC seeks a declaration that ACC did not misappropriate ALDAR's trade secrets under Fla. Stat. 812.081 (misappropriation being an allegation made by ALDAR in its original complaint).

5. CC-Count V (Florida Antitrust Act) was voluntarily dismissed. See Notices of Dismissal DE 127 and 130; Order, DE 129.

6. In CC-Count VI, ACC seeks a declaration that the MFA and NCA is an illegal restraint of trade under Florida Law, Fla. Stat. 542.335. The major reasons are: (a) the NCA restrains ACC's production and sale of both UNION and BRAVADO goods, NCA ¶ 2 "sales, design [and] brand development;" and ¶ 4 "new sales [and] commissions for sales;" (b) ALDAR gains control of all new product development by ACC because the NCA prohibits ACC from "sales, design [and] brand development" (NCA ¶ 2) and this impacts ACC's new brand U.S. ONE; (c) ACC cannot seek additional corporate debt financing "without the written consent of ALDAR" (NCA, ¶ 3, 4); (d) ACC cannot seek corporate equity financing "without the written consent of ALDAR" (NCA, ¶ 4); and (e) ACC cannot "finalize any business or agreement without the expressed [sic] written consent of RG [R. GIELCHINSKY]" (NCA, ¶ 3).

7. In CC-Count VII, ACC asserts that ALDAR is engaged in acts of common law unfair competition because of the assertion of copyright and trademark rights is objectively baseless.

8. In CC-Count VIII, ACC asserts that ALDAR must indemnify ACC under the MFA due to the asserted trademark and copyright claims by D. GIELCHINSKY and PHOENIX.

D. ALDAR's Affirmative Defenses to the Counterclaims [DE 107] and other objections:

1. Failure to state a claim.
2. No supplementary jurisdiction of state claims.
3. Prior breach.
4. No forfeiture by Counter-Defendants commingling of paragraphs and counts.
5. D. Gielchinsky a nominal party.
6. Improper use of "informative and belief" allegations.
7. Breaches by ALDAR not material.
8. No subject matter jurisdiction.
9. Litigation privilege.
10. No indemnity (failure to state claim)
11. Set-off.
12. Unclean hands – misappropriation of funds.
13. ALDAR reserves the right to determine if ACC's defenses were plead.

D1. ACC objects to ALDAR's affirmative defenses 2 – 7 as not being earlier plead and requests that the Court exclude any testimony and evidence on these issues at trial. See ALDAR's pleading at DE 112.

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Case Tracking System
Reminder List

Date: January 10, 2012

Date Due	Who	What	Case No	Inventor	Case Title
12/30/2011	RCK	AVID depo of Jiny Kim 11 am - Calif - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
1/6/2012	RCK	AVID depo Ross Stores-Calif - 10 am - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
1/12/2012	RCK	XX Exist jury instructions - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
1/13/2012	RCK	XX Court hearing 10 am - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
1/13/2012	RCK	XX mediation end - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
1/26/2012	RCK	stip facts, exh, wtn, evid dispute, depo - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
1/26/2012	RCK	contention law and fact - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
1/26/2012	RCK	40 days before pretrial conf - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
1/26/2012	RCK	XX Rule 16 cont - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
1/27/2012	RCK	7 days to correct Shaul A depo - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
1/30/2012	RCK	Mot limine meet - confer - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
1/31/2012	RCK	XX ex-parte limine over 4 - sch ord - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
1/31/2012	RCK	XX rebuttal expert - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
2/3/2012	RCK	XX correct Shaul A depo	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
2/7/2012	RCK	XX Limine motions - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
2/14/2012	RCK	XX Fact and law contentions - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
2/14/2012	RCK	XX Joint Stmt case - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
2/14/2012	RCK	XX discovery motion hearing - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
2/14/2012	RCK	XX Joint Exhibit list - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
2/14/2012	RCK	XX expert disc end - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
2/14/2012	RCK	XX mot in limine - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
2/14/2012	RCK	XX pretrial stip - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
2/14/2012	RCK	XX pretrial conf order proposed - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
2/14/2012	RCK	XX voir dire - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
2/14/2012	RCK	XX settlement status rpt - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
2/14/2012	RCK	XX witness list and time - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
2/14/2012	RCK	XX jury instruct - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
2/21/2012	RCK	XX oppose mot in limine - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
3/6/2012	RCK	XX pretrial conference 2 PM - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
3/27/2012	RCK	XX Exist trial brief - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.
4/3/2012	RCK	XX jury trial (5-7 days) - USA	6937_0038		Advanced Visual Image Design, LLC (AVID) v. Exist, Inc. et al.

Exh. B
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UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA

Advanced Visual Image Design, LLC,	}	CASE NO. CV10-9383-DMG (AJWx)
Plaintiff(s),		SCHEDULING AND CASE
v.		MANAGEMENT ORDER FOR JURY
Exist, Inc. et al.,		TRIAL
Defendant(s).		

PLEASE READ THIS ORDER CAREFULLY. IT DIFFERS IN SOME RESPECTS FROM THE LOCAL RULES.

SEE THE LAST PAGE OF THIS ORDER FOR THE SCHEDULED DATES.

The term "Counsel," as used in this Order, includes parties appearing *in propria persona*.

The Court has scheduled the dates set forth on the last page of this Order after review of the parties' Joint Scheduling Conference Report. Therefore, the Court deems a Scheduling Conference unnecessary and hereby vacates the hearing. The dates and requirements set forth in this Order are firm. The Court is unlikely to grant continuances, even if stipulated by the parties, unless the parties establish good cause through a proper showing.

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Reminder List

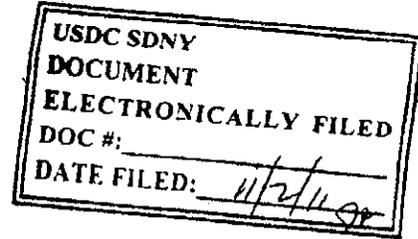
Date: November 17, 2011

Date Due	Who	What	Case No	Inventor	Case Title
11/4/2011	RCK	XX HAG answer - USA	5087_0023		Lebewohl and Uncle Abies v. HAG
11/7/2011	RCK	XX Deli response to HAG RTA - USA	5087_0023		Lebewohl and Uncle Abies v. HAG
11/12/201	RCK	60 days to disc end - USA	5087_0023		Lebewohl and Uncle Abies v. HAG
11/16/201	RCK	XX Depo Medra 5 PM - USA	5087_0023		Lebewohl and Uncle Abies v. HAG
11/16/201	RCK	XX 2nd Ave Deli Disc due - USA	5087_0023		Lebewohl and Uncle Abies v. HAG
12/12/201	RCK	30 days to discovery end - USA	5087_0023		Lebewohl and Uncle Abies v. HAG
1/13/2012	RCK	XX Discovery ends - USA	5087_0023		Lebewohl and Uncle Abies v. HAG
1/18/2012	RCK	XX Mediation 1:30 NYC Court	5087_0023		Lebewohl and Uncle Abies v. HAG
1/20/2012	RCK	7 days to SJ ltr - USA	5087_0023		Lebewohl and Uncle Abies v. HAG
1/27/2012	RCK	XX mediation ends - USA	5087_0023		Lebewohl and Uncle Abies v. HAG
1/27/2012	RCK	XX SJ letter motion - USA	5087_0023		Lebewohl and Uncle Abies v. HAG
1/30/2012	RCK	14 day to pre-trial order - USA	5087_0023		Lebewohl and Uncle Abies v. HAG
2/13/2012	RCK	XX motion limine end - USA	5087_0023		Lebewohl and Uncle Abies v. HAG
2/13/2012	RCK	XX jury instruct - USA	5087_0023		Lebewohl and Uncle Abies v. HAG
2/13/2012	RCK	XX pre-trial order - USA	5087_0023		Lebewohl and Uncle Abies v. HAG
2/13/2012	RCK	XX voir dire questions - USA	5087_0023		Lebewohl and Uncle Abies v. HAG
2/24/2012	RCK	XX court hearing 10:30 - USA	5087_0023		Lebewohl and Uncle Abies v. HAG

Exh. C
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Engel

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF NEW YORK



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JEREMY LEBEWOHL, UNCLE ABIES DELI INC.
d/b/a 2nd AVE DELI, UNCLE ABIES DELI ON FIRST
INC., UNCLE ABIES DELI SANDWICH TRADEMARKS
LLC, AND JACK LEBEWOHL,

Plaintiffs,

Index No. 11-cv-3153 (PAE)

-against-

HEART ATTACK GRILL LLC, HAG LLC,
JON BASSO, DIET CENTER LLC (TEXAS), AND
DIET CENTER LLC (DELAWARE),

Defendants.
-----X

CONSENT SCHEDULING ORDER

1. This Civil Case Management Plan (the "Plan") is submitted by the parties in accordance with Fed. R. Civ. P. 26(f)(3).
2. All parties do not consent to conducting all further proceedings before a Magistrate Judge, including motions and trial. 28 U.S.C. § 636(c). The parties are free to withhold consent without adverse substantive consequences.
3. This case is to be tried to a jury.
4. Plaintiffs will amend their complaints to add Diet Center LLC (Texas) and Diet Center LLC (Delaware) by October 28, 2011. Defendants will amend their pleadings solely to respond to the addition of the new parties by November 4, 2011. After these dates, amended pleadings may not be filed and additional parties may not be joined except with leave of the Court.
5. All fact discovery shall be completed no later than January 13, 2012.
6. The parties are to conduct discovery in accordance with the Federal Rules of Civil Procedure and the Local Rules of the Southern District of New York. The following interim deadlines may be extended by the written consent of all parties without application to the Court, provided that all fact discovery is completed by the date set forth in paragraph 5 above.
 - a. Depositions to be completed by January 13, 2012.
7. The Parties will not call expert witnesses in this case.

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8. All motions and applications shall be governed by the Court's Individual Rules and Practices, including the requirement of a pre-motion conference before a motion for summary judgment is filed. Pursuant to the authority of Fed. R. Civ. P. 16(c)(2), any motion for summary judgment will be deemed untimely unless a request for a pre-motion conference relating thereto is made in writing by January 27, 2012, i.e., within fourteen (14) days of the close of fact discovery.
9. All counsel and Parties to this litigation must meet face-to-face for at least one hour to discuss settlement by January 27, 2012, i.e., within fourteen (14) days following the close of fact discovery.
10. Counsel for the parties will participate in the District's Mediation Program before Magistrate Judge James C. Francis. Counsel for the parties recommend that the alternate dispute resolution mechanism be employed by the end of fact discovery. The use of any alternative dispute resolution mechanism does not stay or modify any date in this Order.
11. The Final Pretrial Order date is February 13, 2012, thirty (30) days following the close of fact discovery. By the Final Pretrial Order date, the parties shall submit a Joint Pretrial Order prepared in accordance with the undersigned's Individual Rules and Practices and Fed. R. Civ. P. 26(a)(3). Any motions in limine shall be filed after the close of discovery on or before the Final Pretrial Order date. If this action is to be tried before a jury, proposed voir dire, jury instructions and verdict form shall also be filed on or before the Final Pretrial Order date. Counsel are required to meet and confer on a joint submission of proposed jury instructions and verdict form, noting any points of disagreement in the joint submission. Jury instructions may not be submitted after the Final Pretrial Order date, unless they meet the standard of Fed. R. Civ. P. 51(a)(2)(A). If this action is to be tried to the Court, proposed findings of fact and conclusions of law should be submitted on or before the Final Pretrial Order date.
12. Counsel for the parties have conferred and their present best estimate of the length of trial is two days.

TO BE COMPLETED BY THE COURT:

The Plan has been reviewed by the Court and, except as modified, is adopted as the Scheduling Order of this Court in accordance with Fed. R. Civ. P. 16(b).

14. [Other]

15. The next Case Management Conference is scheduled for 2/24/2012 at 10:30am. This ORDER may not be modified or the dates herein extended, except by further Order of this Court for good cause shown. Any application to modify or extend the dates herein (except as noted in paragraph 6) shall be made in a written application in accordance with paragraph 1.E of the Court's Individual Rules and Practices and shall be made no less than two (2) business days prior to the expiration of the date sought to be extended.

Paul A. Engelmayer

Hon. Paul A. Engelmayer
United States District Judge

Dated: New York, New York
November 2, 2011

[Handwritten mark]