

February 5, 2011

77/767,477

To the USPTO:

I have been trying to file the following document (a response to a motion by the opposer) in proceeding 91194772 ("Cannery V. Shellef"). I've been receiving two different messages when trying to file my response through ESSTA. I have attempted with no success to contact the Trademark Assistance Center for help. Please file the following motion for the defendant in proceeding 91194772

Sincerely,

Omri Shellef

Defendant, individual.



02-09-2011

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

In the matter of Serial No. 77/767677

Mark: EAST SIDE SOCIAL CLUB

CANNERY CASINO RESORTS, LLC, a Nevada limited liability company, Opposer  v.  OMRI S. SHELLEF, an individual, Applicant.	Proceeding No.: 91194772
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**Response to Opposer's Motion for an Extension**

The applicant, Omri Shellef, ("defendant") opposes the Motion for Extension of Case Management Deadlines ("Motion") that was filed by the opposition, Cannery Casino Resorts, LLC ("CCR", "Opposer") and asks the TTAB deny any further extensions.

The CCR opposition has been on-going since January 5, 2010. The opposition was granted two (2) extensions during the opposition period for examination. Since then, the Opposer has had many opportunities to negotiate a settlement. The Opposer had ample time to request and to obtain documents from the defendant as well as depose Mr. Shellef during the Discovery period. The opposer has no need for an extension of ninety (90) days and has failed to give any reason for which it is needed. The Discovery is completed and this Motion should be denied.

**Response to allegations and accusations made by the Opposer in the Motion:**

**1. On the Initial Disclosures and the Request for Initial Disclosures Deadlines:**

CCR mentions in its Motion that a deadline was created during the Discovery Conference that took place on July 13, 2010. It fails to go into details of the deadline and misrepresents the deadline to make itself look favorable and negotiating *in good faith*. The deadline was for (a) each to request what it would like from the other for its Initial Disclosure -- a sort of formal request for Initial Disclosure -- and (b) a settlement agreement to be drafted by the opposer and served unto the defendant: both were to be delivered by July 16, 2010 by electronic mail.

- The Opposer incorrectly call this "Initial Disclosures deadline" while also admitting that its Initial Disclosures were delivered to the defendant in August and not on July 16, 2010.

- The opposition states that it sent both "only four days after the Discovery Conference" (Section B, Motion for Extension of Case Management Deadlines) on July 17, 2010 -- after the agreed upon deadline. The defendant received no documents on July 16, 2010 from the opposer

and had no knowledge of these documents at the time they were delivered.

- The defendant sent requests to the Opposer on the July 16, 2010 deadline. These were never fulfilled nor acknowledged by the Opposer.

## **2. On Settlement Negotiations:**

Settlement negotiations between the two parties began before CCR filed its opposition and not as late as the Opposer claims. The Defendant willingly commenced settlement negotiations before an Opposition was filed by CCR.

- The Opposer promised a first draft of an agreement will be delivered to the defendant prior to the filing of the opposition. This was never drafted or delivered by the Opposer.

- Numerous subsequent promises were made by the Opposer of the same nature regarding a settlement agreement. None were ever delivered.

- Despite these settlement negotiations prior to July 2010, the Opposer states in its Motion that "at that time [in July 2010]... the parties entered into good faith settlement negotiations".

- The Defendant had recognized that the parties were in good faith negotiations since the first phone conversation before the Opposition was ever filed and that the opposition had missed its last deadline to show that they are not negotiating *in good faith*.

- The Opposer implies that it corresponded or attempted to correspond with the defendant after the Discovery Conference. No correspondence was initiated by the Opposer between July 13, 2010 and October 12, 2010. The Opposer contacted the defendant to make a request for initial disclosures past the deadline of July 16, 2010. The defendant in good faith sent the Opposer its initial disclosures immediately on (and not "about" as stated by the Opposer) October 15, 2010.

## **3. Opposers' delay tactics and intentional misrepresentations:**

The Opposer's disregard for the deadlines the parties agreed to has caused all delays, not unwillingness by the defendant to cooperate.

- The Initial Disclosures served by the Opposer in August 2010 were intentionally misleading by stating the "person most knowledgeable" is the entire corporation "Cannery Casino Resorts, LLC".

- The dates the opposition has been using to determine when a letter, form, or any correspondence was served unto them by the defendant have been the date in which they were received by mail or electronic mail (which ever date serves their purpose). Using the Opposer's method of dating when something has been served, the defendant can conclude that a completely amended Initial Disclosures was served by the Opposer after the closing of the Discovery Period on January 12, 2010. The Opposer is using tactics to mislead, harm and delay the defendant.

- Immediately after receiving the Opposer's Requests, the Defendant asked that a definition of a term in the Requests be. This was never amended. It is the Opposer's own inaction that has caused the delay of a response from the Defendant.

## **4. On the Accusation of the Defendant's "Repudiation" and "blind-siding":**

The Opposer has allegations of the defendant's "repudiation of settlement negotiations" and that the defendant has "blind-sided" the Opposer by reversing his position on settlement negotiations. Mr. Shellef has stated a number of times in correspondences with the Opposer and during the deposition on January 10, 2010 that his position has not changed and that he is still willing to settle the matters of the opposition and trademark registration with the Opposer, CCR.

- During a December 27, 2010 correspondence, Mr. Bryce Earl, representing the

Opposer, asked Mr. Shellef where he stands on settling with CCR. Mr. Shellef responded that he is "not against settling and [has] not changed [his] position on reaching an agreement".

- There has not been a "repudiation of settlement negotiations" by the Defendant. The Defendant has not "blind-sided" anyone. The Opposer has cast the defendant out of negotiations.

**Conclusion:**

The Opposer's request is not to extend good faith negotiations with the defendant. It is for its own benefit. The defendant's request to expedite the registration of its trademark is not, as the opposition implies, a "repudiation of settlement negotiations". The defense strongly believes that negotiations can proceed even if the process of its trademark registration is expedited. The two actions are not mutually exclusive and are not seen by the defense to be so, but in case negotiations do not resolve the matter, the defense sees that in this case it is in its own best interest if the process is expedited.

The opposition has been granted, twice, an extended period. The full force of a large law firm should not need another extended period to organize its frivolous opposition to the defendant's trademark - an opposition that is based on two words that not the opposition nor any other body should have the legal exclusivity over in any classification.

Date: 1 February 2011

By: \_\_\_\_\_



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*Individual, Applicant*

**Certificate of Service**

The undersigned hereby certifies that a true and correct copy of the foregoing **Response to Opposer's Motion for an Extension** (together with a copy of this Certificate) was served on Opposer, Cannery Casino Resorts, LLC, on February 1, 2011, by delivery via Federal Express and via e-mail to the address specified by Opposer as follows:

Bryce Earl, Esq

Santoro, Driggs, Walch, Kearney  
Holley & Thompson  
400 South Fourth Street, Suite 300  
Las Vegas, Nevada 89101

bearl@nevadafirm.com

Date: 1 February 2011

By:  \_\_\_\_\_

Omri Shellef  
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[Print](#)

Subject: **RE: Problems with ESTTA**  
From: [uccmail@uspto.gov](mailto:uccmail@uspto.gov)  
Sent: **Tuesday, February 01, 2011 3:21:42 PM**  
To: [tkomri@soulpushernyc.com](mailto:tkomri@soulpushernyc.com)

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Thank you for contacting the USPTO Contact Center.

We've forwarded your e-mail inquiry to the Trademark Assistance Center (TAC) for further assistance. If you wish to contact the TAC directly you may do so by calling 571-272-9250 or 1-800-786-9199 or by sending an email to [TrademarkAssistanceCenter@uspto.gov](mailto:TrademarkAssistanceCenter@uspto.gov). The TAC is available Monday through Friday from 8:30 a.m. - 8:00 p.m. Eastern Time.

If you have any further questions or if you require additional information, please call the USPTO Contact Center at 1-800-786-9199 or (571) 272-1000 and reference the following Service Request number: 1-182295022.

[THREAD ID:1-30J5R3]

-----Original Message-----

From: [tkomri@soulpushernyc.com](mailto:tkomri@soulpushernyc.com)  
Sent: 2/1/2011 02:59:38 PM  
To: USPTO Info <[usptoInfo@uspto.gov](mailto:usptoInfo@uspto.gov)>  
Subject: Problems with ESTTA

Hello,

I am having issues filing the attached document through ESTTA.

i am receiving the following message when I click "attach":

What does this mean? What should I do? What am I doing wrong?

Please help.

Thank you,

Omri Shellef

Proceeding No.: 91194772  
Serial No.:77767677

