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

Proceeding	91194772
Party	Defendant Omri S. Shellef
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Submission	Motion to Reopen
Filer's Name	Omri S. Shellef
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Date	02/15/2012
Attachments	SHELLEF-REQUEST-15022012.pdf (5 pages)(154543 bytes)

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

Cannery Casino Resorts, LLC, Opposer, Vs. Omri Shellef, Applicant	Marks: East Side Social Club, Serial No. 77/767677 Opposition No.: 91194772
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Applicant's Request to Reopen Time to Respond to Opposer's Motions

1. Background:

Omri Shellef filed an application to register the mark "East Side Social Club" in the USPTO on 24 June 2009. After failed attempts with the intention of reaching a settlement with the opposer, Cannery Casino Resorts ("Eastside Cannery") a suspension was lifted and the proceedings resumed. After months of no contact by the opposer, the applicant received a package through the United States Postal Office of three motions that the opposer filed with the TTAB including a Motion for Summary Judgment.

2. The Request:

The applicant files this request after a series of events that led to an 'excusable neglect'. The applicant asks of the TTAB to reopen the time to respond to the opposer's latest motions, including a motion for a Summary Judgment, that were filed on the 21st and 22nd of December, 2011.

3. Events outside the applicant's control:

Three events, outside the applicant's control led to excusable neglect in responding to the opposer's motions.

1. The applicant received the motions on the 28th, a week after the opposer's service via the United States Post Office.

2. Aware of his limited understanding of the proceedings, the applicant telephoned the TTAB help-line at 1-800-786-9199, as it appears on the USPTO website, USPTO.gov, on the 30th of December 2011 to confirm the time permitted by the USPTO to respond to the motions. Iris Nowden with the TTAB help desk responded that there is no set time and that the Interlocutory Attorney overseeing the proceeding would eventually respond with a date.

3. After the December 30th conversation, the applicant attempted numerous times to reach the Interlocutory Attorney, Elizabeth Winter, using the number available on the USPTO website, 1(571)272-9240 - these attempts included leaving two voice messages, the first on Thursday 12 January 2012 - to confirm whether the information received was correct. A phone call was returned to the applicant on the 1st of February 2012 - during the telephone conversation, the applicant found out that this was after the time respond had closed.

Should the court desire, phone records can be made available.

4. Application of the 'four-factor test':

Through application of guidelines in the board's decision in Pumpkin Ltd. v. The Seeds Corp., 43 USPQ2d 1582 (TTAB 1997), an adaption of the 'four-factor test', set by Pioneer Invest. Servs.

Co. v. Brunswick Assoc. Ltd., 507 U.S. 280 (1993), the applicant's request is a valid one. [1] The approval of the request will not endanger the process of prejudice against the opposer, rather, not allowing the applicant to respond is likely to result in a windfall victory for the opposer as one of the motions filed by the opposer includes a Motion for Summary Judgment. [2] The delay likely to occur from approving this request will not be of great significance to the proceeding, which has largely been delayed by a number of extensions given to the opposer. Further, the applicant is not seeking to vacate the motion of summary judgment in his response, but to dispute evidence and allegations brought forth by the opposer. [3] The reason for the delay was that outside the movant's control - he attempted, aware of his limited understanding of proceedings and federal regulations, to reach out for answers through channels provided by the USPTO to applicants (see 2 and 3 in the section above, titled "Events outside the applicant's control:") but was misinformed at first (#2 in "Events") and then left without a response until after the time to respond passed (#3 in "Events"). [4] Lastly, the movant has acted in good faith throughout the proceeding, consenting to the opposers numerous motions for extensions and attempting to reach a settlement with the opposer. The applicant attempted to reach the opposer's counsel for consent to file the responses late on 2 February 2012 and gave them time to respond. Over a week after the attempt was made, the opposer has continued to ignore the applicant's message and has not responded.

5. Conclusion:

The trademark process is one that does not demand applicants be represented by legal counsel and so it should not penalize those unable to afford representation from receiving a fair chance to register a mark. The applicant should be granted an opportunity to correct the opposer's misrepresentation, negate the opposer's allegations, expose the opposer's lies, and to dismantle

the facade the opposer has built through their counsel's skillful tactics and use of invalid evidence - including a deposition to which the opposer denied the applicant access on several occasions, a deposition the applicant saw for the first time through receipt of the opposer's motions. Refusal to reopen the applicant's time to respond will create a great and undeniable prejudice in favor of the opposer, especially in the case of a Summary Judgment, a Dispositive Motion. Allowing the proceedings to conclude through a Dispositive Motion without allowing the applicant the opportunity to respond would produce an extreme and unwarranted result considering the applicant's numerous attempts and efforts to comply with proceeding regulations [as shown in paragraph 3].

A photograph of a handwritten signature in dark ink on a light-colored surface. The signature is stylized and appears to read 'Omri Shellef'.

Omri Shellef
Applicant
135 Station Rd.
Great Neck, NY 11023
15 February 2012

Certificate of Service

I certify that a true and accurate copy of the Applicant's Request to Reopen Time to Respond to the Opposer's Motions was served by US Post Office this day 15th of February, 2012 upon Cannery Casino Resorts, LLC via counsel:

Mr. Bryce Earl
Santoro, Driggs, Walch, Kearney, Holley & Thompso
400 South Fourth Street, Third Floor
Las Vegas, Nevada 89101

A photograph of a handwritten signature in black ink on a light-colored surface. The signature is stylized and appears to read 'Omri Shellef'.

Omri Shellef
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Great Neck, NY 11023