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

Proceeding	91194772
Party	Plaintiff Cannery Casino Resorts, LLC
Correspondence Address	JAMES D. BOYLE, ESQ. SANTORO, DRIGGS, WALCH, KEARNEY, HOLLEY & THOMPSON 400 SOUTH FOURTH STREET, THIRD FLOOR LAS VEGAS, NV 89101 UNITED STATES tip@nevadafirm.com
Submission	Motion to Extend
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Date	12/30/2010
Attachments	91194772 Opposer's Motion for Extension.pdf ( 13 pages )(462850 bytes )

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Joy A. Jones

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

Cannery Casino Resorts, LLC,

Opposer,

vs.

Omri S. Shellef,

Applicant.

Mark:

EAST SIDE SOCIAL CLUB,  
Serial No. 77/767677

Opposition No.: 91194772

**OPPOSER'S MOTION FOR EXTENSION OF  
CASE MANAGEMENT DEADLINES**

Opposer Cannery Casino Resorts, LLC (“CCR”), by and through its undersigned counsel of record, respectfully requests the Trademark Trial and Appeal Board (the “Board”) for an order extending the case management deadlines by ninety (90) days and the resetting of dates pursuant to Fed. R. Civ. P. 6(b) and Trademark Trial and Appeal Board Manual of Procedure (“TBMP”) § 509. This Motion for Extension of Case Management Deadlines (“Motion to Extend”) is based upon the records and pleadings on file herein, the memorandum of points and authorities set for below, the Declaration of Bryce K. Earl, Esq. In Support of Opposer’s Motion for Extension of Case Management Deadlines (“Earl Decl.”), attached hereto and incorporated herein by this reference as Exhibit A, and good cause shown.

**I. MEMORANDUM OF POINTS AND AUTHORITIES**

**A. Introduction**

CCR offers and markets a wide variety of goods and services, including, without limitation, entertainment services, hotel services and restaurant, bar, and catering services, in

association with the mark EASTSIDE CANNERY and various other marks incorporating the text "EASTSIDE". Applicant Omri S. Shellef ("Applicant") filed an application for registration of the mark EAST SIDE SOCIAL CLUB in International Classes 41 and 43 (the "Infringing Mark"). CCR is the owner of various federally registered trademarks and service marks incorporating the text "EASTSIDE", including registrations in International Classes 41 and 43. CCR believes that it will be damaged by the registration of the Infringing Mark. Accordingly, CCR filed an opposition to registration of the Infringing Mark. Shortly after Applicant served his Answer on CCR, CCR began good faith settlement negotiations with Applicant that ultimately resulted in CCR sending Applicant a draft agreement.

Up until three (3) days ago, CCR believed that Applicant was also negotiating in good faith. However, based upon Applicant's recent filing of Applicant's Request to Expedite Trademark Registration, it has become apparent that Applicant has been misleading CCR into believing that Applicant was negotiating in good faith when, in fact, he has and had no intention of settling the matter.

While Applicant has been misleading CCR, CCR has been extending every professional courtesy to Applicant in part because Applicant is pro se. In fact, CCR has forgone certain adversarial postures and instead gone out of its way to work with Applicant regarding his obligations under the rules. For example, CCR did not object when Applicant served his Answer on CCR one month after the Answer was due and, in fact, made numerous attempts to contact Applicant when CCR noticed that an Answer was filed but not served. Similarly, CCR did not file a motion to compel when Applicant failed to produce his Initial Disclosures when due, but instead contacted Applicant via email and telephone to inform him of the missed deadline.

Unfortunately, CCR's courtesy and non-adversarial posture has only proven detrimental to CCR. Applicant has not only repeatedly missed deadlines thereby pushing the discovery process further back toward the end of the discovery period, but he has reversed his position on settlement less than two weeks before the end of the discovery period, while at the same time refusing to consent to an extension of the discovery period. Pursuant to the Scheduling Order, discovery closes on January 10, 2011. Solely through the misleading acts of Applicant, CCR is now placed in the untenable position of seeking discovery in the last remaining days of the discovery period.

#### **B. Procedural Overview**

CCR filed its Notice of Opposition to Applicant's application on or about May 5, 2010. See Earl Decl., at ¶ 3. Applicant filed his Answer on or about June 16, 2010. See Earl Decl., at ¶ 4. Applicant failed, however, to serve his Answer on CCR. See Earl Decl., at ¶ 4. Given Applicant's pro se status, CCR made several efforts to contact Applicant. See Earl Decl., at ¶ 5. Applicant finally served his Answer on CCR one month later, to wit on or about July 13, 2010. See Earl Decl., at ¶ 6.

On or about July 13, 2010, the Discovery Conference was held between the parties via telephone pursuant to Fed. R. Civ. P. 26(f). See Earl Decl., at ¶ 7. During the Discovery Conference the parties discussed, among other things, the Initial Disclosures deadline and possible settlement. See Earl Decl., at ¶ 7. At that time, Applicant expressed an interest in negotiating a settlement agreement. Accordingly, the parties entered into good faith settlement negotiations. See Earl Decl., at ¶ 7.

Only four (4) days after the Discovery Conference, on July 17, 2010, CCR provided Applicant with a draft of an agreement for Applicant's review and consideration to further settlement negotiations. See Earl Decl., at ¶ 8.

In the interim, on or about July 16, 2010, Applicant filed through the Board's Electronic System for Trademark Trials and Appeals ("ESTTA") a letter to CCR making various requests for information and documents. See Earl Decl., at ¶ 9. Again, given Applicant's pro se status and as a courtesy to Applicant, on or about July 17, 2010, CCR sent an email to Applicant enumerating the four types of information Applicant is required to disclose in Applicant's Initial Disclosures pursuant to Fed. R. Civ. P. 26(a)(1). Furthermore, CCR informed Applicant that the initial disclosures need only be disclosed to CCR and not to the Board. See Earl Decl., at ¶ 10.

On or about August 12, 2010, CCR served its Initial Disclosures on Applicant. See Earl Decl., at ¶ 11. Applicant did not timely serve his Initial Disclosures on CCR.

On or about October 12, 2010, as a continuing courtesy to Applicant and in light of the on-going settlement negotiations and pending agreement, CCR sent a letter to Applicant via electronic mail and U.S. mail requesting Applicant's Initial Disclosures. See Earl Decl., at ¶ 12. In a further attempt to reach Applicant, on or about October 15, 2010, CCR left a message for Applicant requesting his Initial Disclosures. See Earl Decl., at ¶ 13. Applicant finally forwarded what he designated as his Initial Disclosures to CCR on or about October 15, 2010. See Earl Decl., at ¶ 14. CCR thereafter attempted to contact Applicant to discuss the status of this matter, but received no response from Applicant. See Earl Decl., at ¶ 15.

On or about December 21, 2010, CCR proposed the parties consent to extend the discovery period in light of the upcoming holiday season and the fact that the discovery period ends shortly thereafter. See Earl Decl., at ¶ 16.

After receiving no response from Applicant, on or about December 23, 2010, CCR sent a letter to Applicant via electronic mail and U.S. mail giving Applicant notice of CCR's intent to

take his deposition and requesting Applicant provide a date at his convenience. See Earl Decl., at ¶ 17.

On or about December 27, 2010, Applicant sent CCR an email rejecting CCR's request for consent to extend the discovery period. See Earl Decl., at ¶ 18. Furthermore, on or about December 27, 2010, Applicant filed through ESTTA Applicant's Request to Expedite Trademark Registration ("Request to Expedite"). CCR believes the Request to Expedite is a clear repudiation by Applicant of the parties' ongoing settlement negotiations including the draft agreement. After review of the Request to Expedite, CCR further believes that Applicant misled CCR to believe that Applicant was negotiating in good faith when, in fact, Applicant has no and had no intention of settling the matter. See Earl Decl., at ¶ 19.

Within two (2) days of notice of Applicant's repudiation of settlement negotiations, on or about December 29, 2010, CCR served its discovery requests on Applicant, including Opposer's First Set of Interrogatories, Opposer's First Set of Requests for Admission, and Opposer's First Set of Requests for Production of Documents and Things. See Earl Decl., at ¶ 20. Furthermore, CCR has secured a date to take the deposition of Applicant. See Earl Decl., at ¶ 21.

Despite CCR's good faith settlement negotiations with Applicant and the multitude of courtesies it has extended to Applicant, CCR has been blindsided by Applicant's last minute repudiation of settlement negotiations. See Earl Decl., at ¶ 24.

CCR needs an additional ninety (90) days to complete discovery, including the exchange of documents and preparation of follow-up discovery as necessary, in order to prepare this matter for the testimony period. See Earl Decl., at ¶ 25. This is CCR's first request for extension of a deadline in this opposition proceeding. See Earl Decl., at ¶ 23.

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### C. Argument

Pursuant to Fed. R. Civ. P. 6(b) made applicable to Board proceedings by 37 CFR § 2.116(a), Opposer requests that the deadlines set forth in the current case management schedule be extended ninety (90) days. Pursuant to the Board's Order dated May 5, 2010, the current Case Management Schedule sets the following deadlines:

Discovery Closes	01/10/2011
Plaintiff's (Opposer's) Pretrial Disclosures	02/24/2011
Plaintiff's (Opposer's) 30-day Trial Period ends	04/10/2011
Defendant's (Applicant's) Pretrial Disclosures	04/25/2011
Defendant's (Applicant's) 30-day Trial Period Ends	06/09/2011
Plaintiff's (Opposer's) Rebuttal Disclosures	06/24/2011
Plaintiff's (Opposer's) 15-day Rebuttal Period Ends	07/24/2011

Opposer respectfully requests that the Board extend each of the deadlines set forth above for a period of ninety (90) days, such that the amended Case Management Schedule would reflect the following deadlines:

Discovery Closes	04/11/2011
Plaintiff's (Opposer's) Pretrial Disclosures	05/25/2011
Plaintiff's (Opposer's) 30-day Trial Period ends	07/11/2011
Defendant's (Applicant's) Pretrial Disclosures	07/25/2011
Defendant's (Applicant's) 30-day Trial Period Ends	09/07/2011
Plaintiff's (Opposer's) Rebuttal Disclosures	09/22/2011
Plaintiff's (Opposer's) 15-day Rebuttal Period Ends	10/24/2011

A request for an extension of time made prior to the expiration of the term may be granted for good cause. Fed. R. Civ. P. 6(b) and TBMP § 509. Further, generally, the granting of an extension of time is liberally given when the term has not expired, and the moving party is "not guilty of negligence or bad faith and the privilege of extensions is not abused." *National*

*Football League, NFL Properties LLC v. DNH Management, LLC*, (TTAB 01/28/2008 pgs. 3 – 4).

CCR has timely filed its Motion to Extend. CCR's Motion to Extend is made prior to the expiration of the discovery period of January 10, 2010.

CCR makes its Motion to Extend in good faith and not for purposes of delay. Further, at all times during this opposition proceeding, CCR has acted in good faith in its conduct toward Applicant and the Board. Furthermore, CCR has acted responsibly toward its own obligations under this opposition proceeding and has also attempted to work with Applicant in identifying Applicant's obligations as well. Thus, CCR is not guilty of negligence or bad faith.

CCR has not made any previous requests to extend any deadline in this opposition proceeding and therefore has not abused the privilege of extensions.

Through no fault of its own, CCR has been blindsided by Applicant's last minute repudiation of settlement negotiations and CCR requests for good cause an additional ninety (90) days to complete discovery, including the exchange of documents and preparation of follow-up discovery as necessary, in order to prepare this matter for the testimony period.

**D. Conclusion**

For the foregoing reasons, CCR respectfully requests that the Board enter an order extending the discovery period and resetting all dates by ninety (90) days.

SANTORO, DRIGGS, WALCH, KEARNEY,  
HOLLEY & THOMPSON

Dated: December 30, 2010

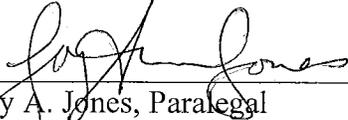


Bryce K. Earl, Esq.  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: (702)791-0308  
*Attorney for Opposer,*  
*Cannery Casino Resorts, LLC*

**CERTIFICATE OF SERVICE**

I certify that a true and accurate copy of the foregoing Motion for Extension of Case Management Deadlines was served via First Class Mail, postage prepaid, and via electronic mail on this 30<sup>th</sup> day of December, 2010, upon:

Mr. Omri S. Shellef  
135 Station Rd  
Great Neck, NY 11023-1721  
Email: [tkomri@soulpushernyc.com](mailto:tkomri@soulpushernyc.com)

  
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Joy A. Jones, Paralegal  
SANTORO, DRIGGS, WALCH,  
KEARNEY, HOLLEY & THOMPSON  
400 South Fourth Street, Third Floor  
Las Vegas, Nevada 89101  
Telephone: (702) 791-0308

**EXHIBIT A**

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

Cannery Casino Resorts, LLC,

Opposer,

vs.

Omri S. Shellef,

Applicant.

Mark:

EAST SIDE SOCIAL CLUB,  
Serial No. 77/767677

Opposition No.: 91194772

**DECLARATION OF BRYCE K. EARL, ESQ. IN SUPPORT OF OPPOSER'S  
MOTION FOR EXTENSION OF CASE MANAGEMENT DEADLINES**

I, BRYCE K. EARL, ESQ., hereby declare the following:

1. I am an attorney licensed to practice law in the State of Nevada and am one of the attorneys representing Opposer Cannery Casino Resorts, LLC ("CCR") in this proceeding. I make this declaration based upon my personal knowledge and observations, and would be competent to testify to the matters set forth herein if called to testify.
2. I submit this Declaration in Support of Opposer's Motion For Extension of Case Management Deadlines (the "Motion").
3. CCR filed its Notice of Opposition to Applicant Omri S. Shellef's ("Applicant") application on or about May 5, 2010.
4. On or about June 16, 2010, Applicant filed his Answer with the Trademark Trial and Appeal Board (the "Board"). Applicant failed, however, to serve his Answer on CCR.
5. Given Applicant's pro se status, I made several efforts to contact Applicant regarding Applicant's deficient service of process.
6. Applicant finally served his Answer on CCR one month later, on or about July 13, 2010.

7. On or about July 13, 2010, the Discovery Conference was held between me and Applicant via telephone. During the Discovery Conference, we discussed, among other things, the August deadline for providing the Initial Disclosures and possible settlement of the matter. During our telephone call, Applicant expressed an interest in negotiating a settlement. Accordingly, the parties entered into good faith settlement negotiations.

8. Four days later, on or about July 17, 2010, I forwarded to Applicant via electronic mail a draft of an agreement for Applicant's review and consideration to further settlement negotiations.

9. In the interim, on or about July 16, 2010, Applicant filed through the Board's Electronic System for Trademark Trials and Appeals ("ESTTA") a letter to CCR making various requests for information and documents (the "Applicant Letter").

10. Again, given Applicant's pro se status and as a courtesy to Applicant, on or about July 17, 2010, I sent an email to Applicant enumerating the four types of information Applicant is required to disclose in Applicant's Initial Disclosures pursuant to Fed. R. Civ. P. 26(a)(1). Furthermore, I informed Applicant that the initial disclosures need only be disclosed to me and not the Board.

11. Initial Disclosures were due August 13, 2010. On or about August 12, 2010, CCR served its Initial Disclosures on Applicant.

12. On or about October 12, 2010, as a continuing courtesy to Applicant and in light of the on-going settlement negotiations and pending agreement, I sent a letter to Applicant via electronic mail and U.S. mail requesting Applicant's Initial Disclosures.

13. On or about October 15, 2010, I left a message for Applicant requesting his Initial Disclosures.

14. Applicant finally forwarded what he designated as his Initial Disclosures to CCR on or about October 15, 2010.

15. I thereafter attempted to contact Applicant to discuss the status of this matter, but received no response from Applicant.

16. Noting that the holiday season was upon us and that the discovery period ends in January, I left a message for and sent an email to Applicant on or about December 21, 2010, proposing the parties consent to extend the discovery period.

17. After receiving no response from Applicant, on or about December 23, 2010, I sent a letter to Applicant via electronic mail and U.S. mail giving him notice of CCR's intent to take his deposition and requesting Applicant provide a date at his convenience.

18. On or about December 27, 2010, Applicant sent me an email rejecting CCR's request for consent to extend the discovery period.

19. Furthermore, on or about December 27, 2010, Applicant filed through ESTTA Applicant's Request to Expedite Trademark Registration ("Request to Expedite"). CCR believes the Request to Expedite is a clear repudiation by Applicant of the parties' ongoing settlement negotiations including the draft agreement. Upon review of the Request to Expedite, CCR further believes that Applicant misled CCR to believe that Applicant was negotiating in good faith when, in fact, Applicant has no and had no intention of settling the matter.

20. Within two (2) days of notice of Applicant's repudiation of settlement negotiations, on or about December 29, 2010, CCR served its discovery requests on Applicant, including Opposer's First Set of Interrogatories, Opposer's First Set of Requests for Admission, and Opposer's First Set of Requests for Production of Documents and Things.

21. CCR has also secured a date to take the deposition of Applicant.

22. At all times during this opposition proceeding, CCR has acted in good faith in its conduct toward Applicant. Furthermore, CCR has acted responsibly toward its own obligations and has also attempted to work with Applicant in identifying Applicant's obligations under the rules as well.

23. CCR has not made any previous requests to extend any deadline in this opposition proceeding and therefore has not abused the privilege of extensions.

24. Despite CCR's good faith settlement negotiations with Applicant and the multitude of courtesies it has extended to Applicant, CCR has been blindsided by Applicant's last minute repudiation of settlement negotiations.

25. CCR needs additional time to complete discovery, including the exchange of documents and preparation of follow-up discovery as necessary, in order to prepare this matter for the testimony period.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on: December 30, 2010

  
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Bryce K. Earl, Esq.