

ESTTA Tracking number: **ESTTA558761**

Filing date: **09/10/2013**

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

Proceeding	91200575
Party	Defendant Kenneth B. Wiesen
Correspondence Address	KENNETH B WIESEN 1 OLD COUNTRY ROAD, SUITE 360B CARLE PLACE, NY 11514 UNITED STATES wiesenlaw@gmail.com
Submission	Motion to Extend
Filer's Name	Kenneth B. Wiesen
Filer's e-mail	wiesenlaw@gmail.com
Signature	/Kenneth B. Wiesen/
Date	09/10/2013
Attachments	APPLICANT'S MOTION 91200575.pdf(211338 bytes)

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

-----X
HERSHEY CHOCOLATE & CONFECTIONERY
CORPORATION and THE HERSHEY COMPANY,

MOTION TO EXTEND TIME
TO OPPOSE MOTION FOR
SUMMARY JUDGMENT

Opposers,

Opposition No.
91200575

v

KENNETH B. WIESEN,

Serial Nos.
85/221,585 & 85/210,942

Applicant.

ESTTA #:426994

-----X
KENNETH B. WIESEN, being duly sworn, I am the *pro se* litigant in the above matter. I hereby request an extension of time to file Opposition to Opposer's Motion for Summary Judgment in this matter and have the opposition filed 1hr. & 13 min. past the deadline be deemed timely filed.

Opposers filed a motion for Summary Judgment on July 22nd 2013. I mistakenly diaried the deadline for service and filing of my opposition papers for August 27th 2013. This occurred by my miscalculations that I had 1 month (rather than 30 days) plus statutory 5 days to file my opposition papers: (July 22nd + 1 month = August 22nd + 5 days = August 27th). I had been working on the papers for some time and decided that I would finish the night before the filing deadline so that I would have the full day on August 27th to file the opposition through the ESTTA electronic filing system. While completing the typing on the evening of August 26th at approximately 11pm, I realized my mathematical error. I frantically completed the papers and tried 3 or 4 times to file the Opposition through the ESTTA electronic filing system before midnight (when the deadline was set to occur). Despite all my best efforts I kept receiving an error message and I was unable to file before midnight.

Realizing I was not going to make the deadline, and just prior to the deadline, I emailed a copy of the Opposition papers to Oposers Counsel, see a copy of my email as Exhibit 1 and also posted to Opposers' Counsel the Opposing papers in the US mail. I immediately drove to my office where I was able to successfully scan and file my opposition papers in the ESTTA electronic filing system. A copy of receipt of filing the opposition demonstrating receipt of filing at 1:13 AM on August 27th 2013, (just 1 hr and 13 minutes past the deadline), is attached hereto as Exhibit 2.

Later that day I sent an email to Opposer's Counsel asking Opposer to consent to my barely past the deadline filing, a copy of that communication is attached as Exhibit 3. To date I have not received a response from Opposer's Counsel regarding this request.

Out of an abundance of caution I humbly file this application for an extension of time and to deem my filing on the 27th of August 2013 to be considered timely filed. Opposers have not been prejudiced by my minimal deadline error. I would respectfully ask this Board to allow my case to be considered on the merits rather than allow such an oversight to decide the outcome of my trademark dispute.

Dated: September 10, 2013

A handwritten signature in cursive script that reads "Kenneth B. Wiesen". The signature is written in black ink and is positioned above a horizontal line.

KENNETH B. WIESEN, Pro Se Applicant

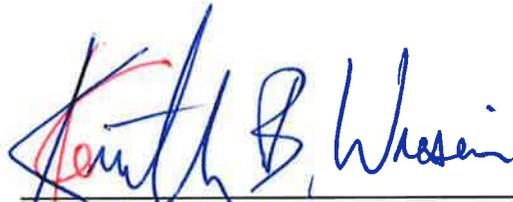
CERTIFICATE OF SERVICE

I certify that on September 10, 2013 I caused the foregoing Applicant's MOTION TO EXTEND TIME TO OPPOSE MOTION FOR SUMMARY JUDGMENT to be served by email and U.S.

First Class Mail, postage paid upon the following correspondant of receord:

Paul C. Llewellyn
Kaye Scholer, LLP
Park Ave New York, NY 10022
Tel; 212-836-8000

John P. Rynkiewicz
Kaye Scholer, LLP
The McPherson Building
901 Fifteenth Street
NW Washington, DC 20005



Kenneth B. Wiesen



Kenneth Wiesen <wiesenlaw@gmail.com>

Attached is my opposition to your motion for Summary Judgment

1 message

Kenneth Wiesen <wiesenlaw@gmail.com>
To: "Llewellyn, Paul" <Paul.Llewellyn@kayescholar.com>

Mon, Aug 26, 2013 at 11:59 PM

Opposition No 91200575

Kenneth Wiesen

 **Opposition to motion milkshake.pdf**
10011K

EXHIBIT I



**ESTTA. Opposition/Response to Motion confirmation receipt ID:
ESTTA556258**

1 message

estta-server@uspto.gov <estta-server@uspto.gov>
To: wiesenlaw@gmail.com

Tue, Aug 27, 2013 at 1:13 AM

Opposition No.: 91200575

Tracking No: ESTTA556258

ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt

We have received your Opposition No.: 91200575 submitted through the Trademark Trial and Appeal Board's ESTTA electronic filing system. This is the only receipt which will be sent for this paper. If the Board later determines that your submission is inappropriate and should not have been accepted through ESTTA, you will receive notification and appropriate action will be taken.

Please note:

Unless your submission fails to meet the minimum legal requirements for filing, the Board will not cancel the filing or refund any fee paid.

If you have a technical question, comment or concern about your ESTTA submission, call 571-272-8500 during business hours or e-mail at estta@uspto.gov.

The status of any Board proceeding may be checked using TTABVUE which is available at <http://ttabvue.uspto.gov> Complete information on Board proceedings is not available through the TESS or TARR databases. Please allow a minimum of 2 business days for TTABVUE to be updated with information on your submission.

The Board will consider and take appropriate action on your filing in due course.

Printable version of your request is attached to this e-mail

ESTTA server at <http://estta.uspto.gov>

ESTTA Tracking number: ESTTA556258
Filing date: 08/27/2013

EXHIBIT II



Kenneth Wiesen <wiesenlaw@gmail.com>

Request to stipulate to late filing Re Hersjhey v Wiesen 91200575

1 message

Kenneth Wiesen <wiesenlaw@gmail.com>
To: "Llewellyn, Paul" <Paul.Llewellyn@kayescholer.com>

Tue, Aug 27, 2013 at 1:52 AM

Dear Mr. Llewellyn,

As you may know on August 26 2013, the last day for me to file my papers I attempted to file an opposition to Opposers' motion for Summary Judgment. While I was at home ill completing the paperwork, I had, what I thought, was ample time to file the papers with the Board through electronic means. Despite my best efforts I could not successfully file the opposition papers. I kept on getting an error message. I tried increasing the resolution that was unsuccessful. I then tried removing the exhibits from the body of the Brief and make them as separate files. That too was unsuccessful. Finally with time running out I served the papers on you my email before the end of the day but was unable to successfully file the papers with the Board until approx when 1 hour later when I drove to my office and used the office scanner and computer.

In light of the fact that I was only 1 hr past the deadline I thought it best and appropriate to ask for opposes stipulation to extend my time. Kindly advise so that I can timely move for an extension pursuant to the rules.

Thank you for your consideration.

Kenneth Wiesen

EXHIBIT III