

ESTTA Tracking number: **ESTTA675436**

Filing date: **06/01/2015**

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

Proceeding	91207862
Party	Plaintiff Boca's Best Locksmith, Inc.
Correspondence Address	ALI WEINBERG 49 SOMERSET DRIVE SOUTH GREAT NECK, NY 11020 UNITED STATES ali@amoslegal.com
Submission	Motion to Reopen
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Filer's e-mail	ali@amoslegal.com
Signature	/Ali Weinberg/
Date	06/01/2015
Attachments	Motion to reopen.pdf(300769 bytes ) Ex A Def Attny Letters.pdf(132470 bytes ) Ex B TTAB Schedule.pdf(7330 bytes ) Ex C TTAB Schedule.pdf(5738 bytes ) Ex D Go.pdf(54077 bytes ) Ex E Keyless.pdf(35176 bytes )

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

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Boca's Best Locksmith, Inc.	x	Opposition No. 91207862
	x	
Plaintiff-Opposer,	x	Serial No. 85497305
	x	
v.	x	Mark: GOKEYLESS
	x	
21st Century Solutions, Ltd.	x	
	x	
Defendant-Applicant.	x	

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**OPPOSER’S MOTION TO REOPEN THE TIME TO FILE ITS NOTICE OF  
RELIANCE OR DEEM THE NOTICE OF RELIANCE TIMELY AND  
OPPOSITION TO APPLICANT’S MOTION TO DISMISS**

INTRODUCTION

Boca's Best Locksmith, Inc. (“Opposer”) commenced the instant opposition proceeding on November 6, 2012 (the “Proceeding”). Prior to having commenced the Proceeding, in December of 2011, 21st Century Solutions, Ltd (“Applicant”) caused two letters to be sent to the attention of Opposer’s president, the first of which accused Opposer’s use of the term JUST GO KEYLESS on his website and in Opposer’s domain, justgokeyless.com, of constituting trademark infringement of Applicant’s alleged trademark GOKEYLESS, and the second which informed Opposer that if he wished to avoid litigation, he should review Applicant’s letter with his attorney (Exhibit A).

After counsel for the parties held their discovery conference and exchanged their respective discovery, from approximately July 23, 2013 to December 22, 2014, the parties continuously stipulated to suspend the Proceeding, having engaged in ongoing settlement negotiations. The Proceeding dates were further extended on February 3, 2015, upon

motion by Opposer, on consent. Each time the Proceeding was suspended or the filing deadlines extended, I personally entered the new deadlines into my office's calendar. Pursuant to the first Motion for Suspension for Settlement with Consent, Opposer's 30-day trial period ended on April 10, 2014 (Exhibit B). Pursuant to plaintiff's consent motion for an extension, Opposer's 30-day trial period ended on April 5, 2015 (Exhibit C). When calendaring the most recent set of deadlines, I confused the deadline for Opposer to submit its notice of reliance with the deadline established in 2014, as the dates were extremely close together. The first I was made aware of this devastating error was on May 19, 2015, via email from ESTTA, which notified me of the order suspending the Proceeding pending determination of Applicant's motion to strike and dismiss. Despite the fact that the certificate of mailing on Applicant's motion is dated April 20, 2015, I did not receive a copy of same via mail.

For the reasons stated above and as further explained herein, Opposer respectfully requests that the inadvertent error of filing its notice of reliance 5 days late be deemed excusable neglect pursuant to Fed. R. Civ. P. 6(b)(1)(B), made applicable to Board proceedings by Trademark Rule 2.116(a), and that Opposer's motion to reopen the time to file its brief, or to deem the notice of reliance timely, be granted. Opposer further respectfully requests that Applicant's motion to dismiss be denied.

#### ARGUMENT

#### THE INADVERTENT ERROR OF FILING OPPOSER'S NOTICE OF RELIANCE 5 DAYS LATE SHOULD BE DEEMED EXCUSABLE NEGLIGENCE

The standard for determining whether a party's failure to take required action was the result of "excusable neglect" under Fed. R. Civ. P. 6(b) has been liberalized as a result of the decision of the U.S. Supreme Court in *Pioneer Invest. Servs. Co. v. Brunswick*

*Assoc. Ltd. P'ship*, 507 U.S. 380, 395 (1993). Under *Pioneer*, the determination of excusable neglect depends on all of the circumstances of the case, including (1) any prejudice to the other party; (2) the length of the delay and its effect on this case or others; (3) the reason for the delay; and (4) whether the movant acted in good faith. The court in *Pioneer* further held that the determination of whether a party's neglect is excusable is an equitable one which takes into account all relevant circumstances surrounding the party's delay or omission.

Here, after completing discovery, the parties engaged in ongoing, good faith, settlement negotiations for almost a year and a half and further consented to extend the filing deadlines by two months, thereafter. The 5 day delay could therefore not have caused prejudice to Applicant. Furthermore, since the Proceeding is now suspended and it is within the Board's discretion to extend the time for Applicant to submit its pretrial disclosures and evidence, Applicant cannot be harmed by the relief sought herein. For the same reasons that Applicant is not prejudiced, Opposer's service of its notice of reliance 5 days after the deadline has not substantially impacted this Proceeding.

As detailed above, the reason for the delay was the result of confusion that occurred between the deadlines set in April 2014 as opposed to April 2015, which were 5 days apart. When serving and filing Opposer's notice of reliance on April 10, 2015, I believed I was in compliance with the Board's deadlines, and was quite devastated to learn, upon receipt of Applicant's motion, that I had incorrectly calendared the deadline by 5 days. Opposer, having prosecuted this case diligently through discovery, and having engaged in numerous discussions with Applicant to reach a resolution, has acted in good faith in this Proceeding. Moreover, the outcome of this Proceeding is extremely important to

Opposer's business, having used the website "justgokeyless.com" since 2007, and having been threatened with litigation by Applicant.

OPPOSER HAS SUBMITTED ADEQUATE EVIDENCE TO SHOW THAT  
APPLICANT'S MARK IS MERELY DESCRIPTIVE

Applicant alleges, in conclusory manner, that Opposer has not met its burden of showing that Applicant's mark is merely descriptive. Applicant seeks to register the mark GOKEYLESS under International Class 035, in connection with "on-line store services featuring keyless locks, keyless lock systems, intercoms, cameras, monitors, control panels, lockboxes, safes, security equipment and components of and accessories for the foregoing; \*\*\* retail store services featuring keyless locks, keyless lock systems, intercoms, cameras, monitors, control panels, lockboxes, safes, security equipment and components of and accessories for the foregoing."

Opposer is also in the business of selling keyless locks, including electronic locks, digital locks, safe locks, and lock accessories, via online store services and retail store services. Since 2007, Opposer has operated its on-line store through its website justgokeyless.com, and has used the slogan "Just Go Keyless."

A mark is merely descriptive if it describes an ingredient, quality, characteristic, function, feature, purpose or use of the specified goods and/or services. U.S.C. §1052(e)(1); *see* TMEP §§1209.01(b), 1209.03 *et seq.* The determination of whether a mark is merely descriptive is considered in relation to the identified goods and/or services, not in the abstract. *In re Abcor Dev. Corp.*, 588 F.2d 811, 814, 200 USPQ 215, 218 (C.C.P.A. 1978); TMEP §1209.01(b); *see, e.g., In re Polo Int'l Inc.*, 51 USPQ2d 1061 (TTAB 1999) (finding DOC in DOC-CONTROL would be understood to refer to the

“documents” managed by applicant’s software, not “doctor” as shown in dictionary definition); *In re Digital Research Inc.*, 4 USPQ2d 1242 (TTAB 1987) (finding CONCURRENT PC-DOS merely descriptive of “computer programs recorded on disk” where relevant trade used the denomination “concurrent” as a descriptor of a particular type of operating system).

“A mark may be merely descriptive even if it does not describe the ‘full scope and extent’ of the applicant’s goods or services.” *In re Oppedahl & Larson LLP*, 373 F.3d 1171, 1173, 71 USPQ2d 1370, 1371 (Fed. Cir. 2004) (citing *In re Dial-A-Mattress Operating Corp.*, 240 F.3d 1341, 1346, 57 USPQ2d 1807, 1812 (Fed. Cir. 2001)); TMEP §1209.01(b). It is enough if the term describes only one significant function, attribute or property. *In re Oppedahl*, 373 F.3d at 1173, 71 USPQ2d at 1371; TMEP §1209.01(b).

Applicant’s mark, GOKEYLESS, consists solely of merely descriptive terms and should therefore not be registrable. TMEP §1209.03(d); *see, e.g., In re King Koil Licensing Co. Inc.*, 79 USPQ2d 1048, 1052 (TTAB 2006) (holding THE BREATHABLE MATTRESS merely descriptive of beds, mattresses, box springs and pillows where the evidence showed that the term “BREATHABLE” retained its ordinary dictionary meaning when combined with the term “MATTRESS” and the resulting combination was used in the relevant industry in a descriptive sense); *In re Associated Theatre Clubs Co.*, 9 USPQ2d 1660, 1663 (TTAB 1988) (holding GROUP SALES BOX OFFICE merely descriptive of theater ticket sales services because such wording “is nothing more than a combination of the two common descriptive terms most applicable to applicant's services which in combination achieve no different status but remain a common descriptive compound expression”).

The term “GO” means “to move on a course” or “to take a certain course or follow a certain procedure” or “to begin an action or motion.” See Exhibit D, enclosed. The term “KEYLESS” means “lacking or not requiring a key.” See Exhibit E, enclosed. Therefore, the term “GOKEYLESS” merely describes a characteristic or feature of the Applicant’s goods and services, namely, to begin using a lock that doesn’t require a key. Such wording is nothing more than a combination of two common descriptive terms most applicable to applicant's goods, which in combination achieves no different status but remains a common descriptive compound expression. Applicant’s mark creates an instant association with the use of keyless locks. No imagination, whatsoever, is required by the consumer to determine the type of goods Applicant provides.

The evidence submitted within Opposer’s notice of reliance, printed publications found on the internet, demonstrates that the term “go keyless” is very commonly used by the public to describe the act of switching from a lock with a key to a lock without a key, or simply using a lock without a key. The internet publications are admissible. *Safer Inc. v. OMS Investments, Inc.*, 94 USPQ2d 1031 (TTAB 2010) (“[I]f a document obtained from the Internet identifies its date of publication or date that it was accessed and printed, and its source (e.g., the URL), it may be admitted into evidence pursuant to a notice of reliance in the same manner as a printed publication in general circulation in accordance with Trademark Rule 2.122(e). Cf. MPEP §2128 (‘An electronic publication, including an on-line database or Internet publication, is considered to be a ‘printed publication’ within the meaning of 35 U.S.C. §102(a) and (b) provided the publication was accessible to persons concerned with the art to which the document relates’).”

The evidence submitted by Opposer further demonstrated that Applicant has not established that GOKEYLESS has acquired secondary meaning, and that GOKEYLESS has not become distinctive of Defendant's goods in commerce.

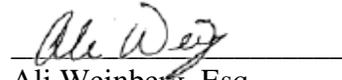
Accordingly, Applicant's motion to dismiss should be denied.

CONCLUSION

Applicant respectfully requests that its motion to reopen the time to file its notice of reliance, or deem the notice of reliance timely, be granted and that Applicant's motion to dismiss be denied.

Dated: June 1, 2015

Respectfully submitted this 1<sup>st</sup> day of June, 2015.



Ali Weinberg, Esq.  
Law Office of Amos Weinberg  
Counsel for Plaintiff  
49 Somerset Drive South  
Great Neck NY 11020-1821  
Phone: (516) 829-3900  
Email: ali@AmosLegal.com

**CERTIFICATE OF SERVICE**

The undersigned hereby certifies that on this 1<sup>st</sup> day of June, 2015, a true and correct copy of the foregoing Motion to Reopen and Opposition was directed to be served on Defendant's attorney by first class, United States mail, postage prepaid to:

B. Joseph Schaeff  
Dinsmore & Shohl LLP  
Fifth Third Center  
One South Main Street, Suite 1300  
Dayton, OH 45402



---

Ali Weinberg  
Attorney for Plaintiff/Opposer



Leg Counsel

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B. Joseph Schaeff  
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Via Courier

Mr. Larry Winococr  
Builder Facilitators, Inc.  
dba JustGoKeyless  
10343 Coventry Court  
Boca Raton FL 33428

Re: Just Go Keyless; JustGoKeyless.com; Infringement of GOKEYLESS Trademark

Dear Mr. Winocoor:

I am writing on behalf of our client, 21st Century Solutions, Ltd. Our client has been selling keyless locks and security systems under the trademark GOKEYLESS and through its web site <gokeyless.com> since at least as early as 2003.

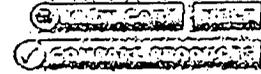
Recently, our client discovered that you are using the designation JUST GO KEYLESS on your web site, <justgokeyless.com>. Printouts from your web site are enclosed. I note also that you filed an intent-to-use trademark application in 2007 for JUST GO KEYLESS in connection with "retail and on-line retail store services featuring locks." I understand that you abandoned the application 2009.

Your use of JUST GO KEYLESS on your web site and in the <justgokeyless.com> domain name constitutes trademark infringement and unfair competition under state and federal law. Your continued use of JUST GO KEYLESS is likely to lead to customer confusion.

The federal Trademark Act grants courts the power to issue preliminary and permanent injunctions, and to award monetary damages and the infringer's profits to the trademark owner. In appropriate cases, the courts may treble the award of damages and profits. The courts also have the power to order the infringer to pay the trademark owner's costs and attorney fees in trademark infringement litigation.

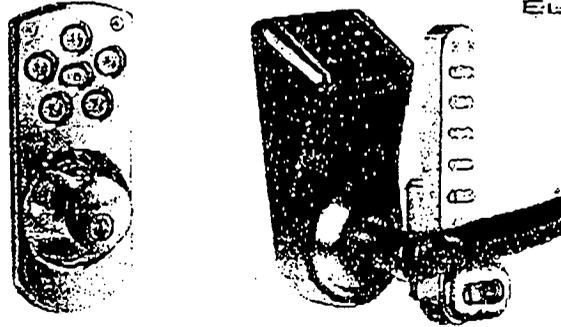
Our client insists that you cease using JUST GO KEYLESS as a trademark and in your domain name, and that you disable the <justgokeyless.com> web site. Our client is willing to grant you a reasonable period of time in which to phase out use of JUST GO KEYLESS and transition to a new name, but only if you commit to do so in the near future.





**WELCOME TO JUSTGOKEYLESS.COM**  
 THE BEST PLACE ON THE WEB TO SHOP AND DISCOVER  
 TOMORROW'S SECURITY... TODAY!  
 MECHANICAL: ELECTRONIC: BIOMETRIC LOCKS & MUCH MORE

**ELECTRONIC LOCKS**



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TO: Mr. Larry Winocoor December 21, 2011  
Builder Facilitators, Inc.  
dba JustGoKeyless  
10343 Coventry Court  
Boca Raton FL 33428

FAX NO.: 561-482-8826

RE: Just Go Keyless; JustGoKeyless.com; Infringement of GOKEYLESS Trademark

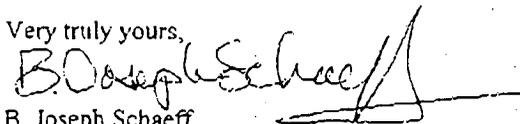
TOTAL NUMBER OF PAGES (INCLUDING COVER SHEET): 5

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Mr. Winocoor:

I refer to my letter of December 16, 2011, copy attached. I understand that you refused FedEx's attempt to deliver this letter to you. Accordingly, I am attempting delivery via fax and first class mail. If you wish to avoid litigation, I urge you to review this letter with your attorney at your earliest opportunity.

Very truly yours,



B. Joseph Schaeff  
BJS/sb/encls

cc: 21st Century Solutions, Ltd. w/encls.

cc: Builder Facilitators, Inc. w/encls.  
Via First Class Mail

cc: Builder Facilitators, Inc. w/encls.  
Attn. Shelly Stein  
1218 East 73rd Street  
Brooklyn NY 11234  
Via First Class Mail

ESTTA Tracking number: **ESTTA549842**

Filing date: **07/23/2013**

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

Proceeding.	91207862
Applicant	Defendant 21st Century Solutions, Ltd
Other Party	Plaintiff Boca's Best Locksmith, Inc.
Have the parties held their discovery conference as required under Trademark Rules 2.120(a)(1) and (a)(2)?	Yes

### Motion for Suspension for Settlement With Consent

The parties are actively engaged in negotiations for the settlement of this matter. 21st Century Solutions, Ltd requests that this proceeding be suspended for 180 days to allow the parties to continue their settlement efforts.

Time to Answer :	CLOSED
Deadline for Discovery Conference :	CLOSED
Discovery Opens :	CLOSED
Initial Disclosures Due :	CLOSED
Expert Disclosure Due :	CLOSED
Discovery Closes :	CLOSED
Plaintiff's Pretrial Disclosures :	02/24/2014
Plaintiff's 30-day Trial Period Ends :	04/10/2014
Defendant's Pretrial Disclosures :	04/25/2014
Defendant's 30-day Trial Period Ends :	06/09/2014
Plaintiff's Rebuttal Disclosures :	06/24/2014
Plaintiff's 15-day Rebuttal Period Ends :	07/24/2014

21st Century Solutions, Ltd has secured the express consent of all other parties to this proceeding for the suspension and resetting of dates requested herein.

21st Century Solutions, Ltd has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

### Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by First Class Mail on this date.

Respectfully submitted,  
/bjschaeff/  
B. Joseph Schaeff  
joseph.schaeff@dinsmore.com  
aweinberg05@gmail.com  
07/23/2013

ESTTA Tracking number: **ESTTA653760**

Filing date: **02/03/2015**

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

Proceeding.	91207862
Applicant	Plaintiff Boca's Best Locksmith, Inc.
Other Party	Defendant 21st Century Solutions, Ltd
Have the parties held their discovery conference as required under Trademark Rules 2.120(a)(1) and (a)(2)?	Yes

## Motion for an Extension of Answer or Discovery or Trial Periods With Consent

The Close of Plaintiff's Trial Period is currently set to close on 02/04/2015. Boca's Best Locksmith, Inc. requests that such date be extended for 60 days, or until 04/05/2015, and that all subsequent dates be reset accordingly.

Time to Answer :	CLOSED
Deadline for Discovery Conference :	CLOSED
Discovery Opens :	CLOSED
Initial Disclosures Due :	CLOSED
Expert Disclosure Due :	CLOSED
Discovery Closes :	CLOSED
Plaintiff's Pretrial Disclosures :	02/19/2015
Plaintiff's 30-day Trial Period Ends :	04/05/2015
Defendant's Pretrial Disclosures :	04/20/2015
Defendant's 30-day Trial Period Ends :	06/04/2015
Plaintiff's Rebuttal Disclosures :	06/19/2015
Plaintiff's 15-day Rebuttal Period Ends :	07/19/2015

The grounds for this request are as follows:

- *Parties are unable to complete discovery/testimony during assigned period*

Boca's Best Locksmith, Inc. has secured the express consent of all other parties to this proceeding for the extension and resetting of dates requested herein.

Boca's Best Locksmith, Inc. has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

## Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Respectfully submitted,

/Ali Weinberg/  
Ali Weinberg  
ali@amoslegal.com  
joseph.schaeff@dinsmore.com  
02/03/2015



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go



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Dictionary

<sup>1</sup>go

verb | \ˈɡoʊ\

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**went** | \ˈwent\ **gone** | \ˈɡɒn also ˈɡæn\ **go-ing** | \ˈɡoʊ-ɪŋ, ˈɡo(-)ɪŋ; "going to" in sense 13 is often ˈɡoʊ-nə or ˈɡo-nə or ˈɡə-nəl **goes** | \ˈɡoʊz\

Definition of GO

*intransitive verb*

- 1 : to move on a course : PROCEED <go slow> <went by train> — compare STOP
- 2 : to move out of or away from a place expressed or implied : LEAVE, DEPART <went from school to the party> <going away for vacation>

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- 3 **a** : to take a certain course or follow a certain procedure <reports go through channels to the president>
- b** : to pass by means of a process like journeying <the message went by wire>
- c** : to proceed without delay and often in a thoughtless or reckless manner —used especially to intensify a complementary verb <why did you go and spoil it> <go jump in a lake>
- d** (1) : to extend from point to point or in a certain direction <the road goes to the lake> (2) : to give access : LEAD <that door goes to the cellar>
- 4 *obsolete* : WALK
- 5 : to be habitually in a certain state or condition <go bareheaded>
- 6 **a** : to become lost, consumed, or spent <our time has gone>
- b** : DIE
- c** : to slip away : ELAPSE <the evening went quickly>
- d** : to come to be given up or discarded <these slums have to go>
- e** : to pass by sale <went for a good price>
- f** : to become impaired or weakened <his hearing started to go>
- g** : to give way especially under great force or pressure : BREAK <the roof went>
- 7 **a** : to move along in a specified manner : FARE <everything was going well>
- b** : to be in general or on an average <cheap, as yachts go>

Words at Play



The Olympics of Language



How to Use Lay and Lie

Word of the Day

JUNE 01, 2015

phreaker 

one who illegally uses a telephone system

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# keyless - definition of keyless by The Free Dictionary

http://www.thefreedictionary.com/keyless

## keyless

Also found in: **Medical, Legal, Encyclopedia, Wikipedia.**

**adj.** 1. lacking or not requiring a key; as, a keyless lock operated by a series of pushbuttons. Opposite of keyed.

Webster's Revised Unabridged Dictionary, published 1913 by C. & G. Merriam Co.

## Thesaurus

Legend:  Synonyms  Related Words  Antonyms

**Adj.** 1. **keyless** - lacking or not requiring a key; "a keyless lock operated by a series of pushbuttons"

**≠ keyed** - fitted with or secured by a key; "a keyed instrument"; "the locks have not yet been keyed"

Based on WordNet 3.0, Farlex clipart collection. © 2003-2012 Princeton University, Farlex Inc.

## Translations

Select a language:

▼ ----- ▼

 German / Deutsch

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