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Filing date: **08/15/2008**

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

Proceeding	92042082
Party	Defendant International Gold Star Trading Corp.
Correspondence Address	Roger S. Thompson Cohen, Pontani, Lieberman & Pavane LLP 551 Fifth Avenue Suite 1210 New York, NY 10176 UNITED STATES doCKET@cplplaw.com, rthompson@cplplaw.com
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Signature	/Roger S. Thompson/
Date	08/15/2008
Attachments	5060-2L Motion for Extension of Testimony Period.pdf (12 pages)(674704 bytes) 5060-2L Exh A - Motion for Extension.pdf (1 page)(30534 bytes) 5060-2L Exh B - Motion for Extension.pdf (2 pages)(72598 bytes) 5060-2L Exh C - Motion for Extension.pdf (2 pages)(105954 bytes) 5060-2L Exh D - Motion for Extension.pdf (3 pages)(207428 bytes) 5060-2L Exh E - Motion for Extension.pdf (4 pages)(297186 bytes) 5060-2L Exh F - Motion for Extension.pdf (5 pages)(340540 bytes) 5060-2L Exh G - Motion for Extension.pdf (3 pages)(194784 bytes)

I. BACKGROUND

On January 18, 2008, the Board re-set the dates for the testimony periods herein (Dkt. No. 48) as part of its grant of Gold Star's motion to quash Four Seasons' Notices of Deposition on Written Questions (Dkt. No. 46). That order set Four Seasons' testimony period to end on March 14, 2008.

On February 29, 2008, counsel for Petitioner telephoned the undersigned and asked for a first extension of the testimony period for thirty-five days, *i.e.*, until Friday, April 18, 2008 since his wife was expecting. The undersigned immediately agreed to the first extension and counsel for Petitioner filed a Stipulation for an extension of time on that day (Dkt. No. 49). Counsel for Four Seasons sent a copy of the extension to the undersigned, thanking counsel for the "courtesies" extended in consenting to the extension. (Exhibit A).

During that extended period, Four Seasons took and completed all but two of its scheduled testimony depositions. Those two uncompleted depositions were of third party witnesses who had not been subpoenaed. One of the witnesses, Leo Nigro, threw both counsel and the court reporter out of his offices at the insistence of his superior at his employer (the deposition was being held in his office), and the other, Natalie Walewitsch had cancelled a deposition a few hours before its scheduled commencement on April 16, 2008 due to an unspecified business matter. At the end of its testimony period, on April 18, 2008, counsel for Four Seasons sought a stipulation for an extension of time of Four Seasons' testimony period, to which the undersigned did not agree, on the grounds that the witnesses should have been issued subpoenas, and Four Seasons' failure to secure

those subpoenas to secure their attendance and the completion of the depositions meant that Four Seasons had failed to show good cause for the extension.

Four Seasons then moved for a second extension of its testimony period on April 18, 2008 (Dkt. No. 51), which motion was granted by the Board on April 23, 2008 (Dkt. No. 52), setting May 23, 2008 as the closing date for Four Seasons' extended testimony period.

Towards the end of the then-open twice-extended testimony period, some scheduling issues arose in relation to the two depositions (including the schedule of Mr. Nigro's counsel), and the parties agreed to a third extension of Four Seasons' testimony period until June 22, 2008 (Dkt. No. 55), although there was some minor quibbling over the precise language of the stipulation. That was the final extension of Four Seasons' testimony period (initially scheduled to open on December 12, 2007 – Dkt. No. 48), a period which ultimately lasted over six months. During that period, on one occasion as described, a brief delay was due to the Gold Star's scheduling issues. Gold Star otherwise freely gave extensions whenever asked.

Three times counsel for Four Seasons sought Gold Star's consent to extensions, and twice consent was freely given when requested. On one occasion, when Gold Star felt there was justification, consent was withheld. It is noted that Gold Star agreed in principal to the third extension *after* the second extension has been granted over Gold Star's opposition, so that Gold Star accepted the Board's ruling on the subpoena issue and worked with opposing counsel to negotiate workable schedules for the parties, counsel and the witnesses during Four Seasons' testimony period.

II. THE NEED FOR THE EXTENSION

It is believed that, for the reasons set forth in detail below, good cause exists for the requested extension.

One of the results of the third extension of Four Seasons' testimony period was that Gold Star's 30-day testimony period was set to expire on August 21, 2008. August is, of course, a difficult time to schedule business matters as many people are away for vacations. For example, counsel for the undersigned has a long-planned vacation set to begin on August 20, 2008 (returning to the office on September 2, 2008). In addition, it turns out that this period has also been unusually busy for the undersigned and Gold Star, as will be detailed presently.

A. *Other litigation*

Specifically, as to the undersigned, I have been involved as lead counsel in a patent litigation in the Southern District of New York since 2002 (*Hypoxico, Inc. v. Colorado Altitude Training, et al.*; 02 Civ 6191 (JGK)). In January, 2008, we completed briefing on a motion for summary judgment (and a related motion to strike). On July 30, 2008, at 5:25 in the evening (while the undersigned was traveling to Washington, D.C. for a deposition in another case – discussed below), the Court in the *Hypoxico* case sent an e-mail setting Friday, August 22, 2008 as the date on which a hearing on the pending motions would be held. As mentioned, that was a date on which the undersigned is scheduled to be on vacation. On returning to the office, the undersigned sent a letter to the Court seeking an adjournment of the hearing date, and received a telephone call from Chambers moving the date of the hearing *forward* to August 19, 2008. In addition to appearing at the actual hearing, there is a great deal of preparation required for that

hearing, to review the massive amount of papers involved that were filed over six months ago on technical issues relating to the validity and enforceability of two patents and the infringement of those patents and a third patent. This unexpected and unavoidable obligation has seriously impaired Gold Star's ability to schedule witnesses for testimony in the scheduled testimony period and is a significant contributing factor in the need for an extension.

A second case being handled by the undersigned has also impacted on Gold Star's ability to schedule testimony, *Newport News Holdings Corp. v. Virtual City Visions, Inc.* (4:08cv19 – E.D. Va.). We represent the plaintiff in that trademark action, and I have been acting as the lead counsel in that case, as well. The *NNHC* case, filed on February 21, 2008, had a Rule 26(f) Pre-Trial Order issue on April 21, 2008, in which the Court directed the parties to negotiate a discovery plan that would conclude all discovery by September 9, 2008. On May 13, 2008, however, the Court set the close of plaintiff's discovery at August 27, 2008, shortening the time our client had for discovery by nearly two weeks and, in light of the above-referenced vacation, effectively cut our discovery period to August 20, 2008, significantly overlapping Gold Star's testimony period in this proceeding.

The Court in which the *NNHC* case is pending, the Eastern District of Virginia, is known colloquially as the "Rocket Docket" for the speed with which it processes litigation, and also for its reluctance to extend deadlines, such as a discovery cutoff, once set. By way of example, the defendants changed counsel during discovery on July 29, 2008. New counsel moved for an extension of discovery on an "emergency" basis, but the Court has yet to rule on that motion (we have opposed it).

As a result of the Court-ordered (and non-extendable) deadline for discovery in the *NNHC* case, the undersigned has been compelled to take the deposition of the defendants on two separate occasions. The first deposition, of the corporate defendant's president as a 30(b)(6) witness, was in Arlington, Virginia (July 31, 2008), to accommodate the new defense counsel, and the second deposition, of the same witness in his individual capacity, was in Pensacola, Florida (August 13, 2008), to accommodate the witness. Both depositions required much preparation, since the defendants only produced documents at the time of the depositions – including after lunch the second day of deposition (remaining documents are overdue) and the change in counsel caused re-scheduling of the first deposition and a change in travel plans (the deposition was originally set for Richmond, Virginia at the offices of the former counsel).

The additional work to take *two* depositions was not expected, and the needless complications resulting from the last-minute change in counsel and non-production of documents cost a great deal of time spent in negotiating deposition dates, times and places, making suitable travel arrangements, seeking the production of documents and other matters.

All of this additional work was in addition to the usual heavy workload of the undersigned.

B. Gold Star has participated in a criminal investigation of two employees who stole from it.

Furthermore, the extraordinary workload of this period was shared by Gold Star itself, for a completely unrelated matter. Gold Star had discovered that two of its employees had been stealing from it, and there was a covert investigation by the

authorities, in which investigation my contacts at Gold Star were involved. This investigation resulted (I understand) in the arrest of the two (now former) employees.

This investigation took up quite a bit of time for Gold Star, including that of the individuals at Gold Star I would call as witnesses during its testimony period, and, due to the covert nature of the investigation, it could not be made public.

For all these reasons, the period set by the Board in the third extension granted to Four Seasons was insufficient to enable the undersigned to arrange and co-ordinate Gold Star's testimony period, and so good cause exists for the requested extension.

C. Correspondence with Counsel for Four Seasons to seek Consent to the Extension

After receiving conducting the first deposition in *NNHC* and receiving word of the *Hypoxico* hearing, it was clear that Gold Star's testimony period was completely overbooked, and had become unmanageable. The undersigned therefore sent an e-mail to Four Seasons' counsel on Monday, August 4, 2008 (Exhibit B), seeking consent to an extension of Gold Star's testimony period. Based on the willingness I had exhibited to the extensions requested by Four Season, resisting only once for what was believed to be good cause, and implications of reciprocity. I had hoped to secure Four Seasons' consent to an extension. I also asked for counsel's schedule for the extended periods so that I could establish a reasonable schedule for all concerned to have the testimony depositions in an orderly fashion, without undue burden on any party or witness.

Counsel responded August 5 (Exhibit C) after 8:00 in the evening, expressing no position on the extension, but asking for a reason for the extension which he would discuss with his client. Counsel also referenced the one time I had refused to consent to an extension, without mentioning the extensions to which I did consent, or the fact that

the second extension was necessitated not by his medical condition (which is how he characterized it in his August 5 e-mail) or the birth of his daughter (which was the reason given for the first extension to which I consented immediately upon being asked.).

Still being in the office, I responded to the April 5 e-mail (Exhibit D) at close to 9:00, expressing surprise at counsel's characterization of the reason needed for the second extension, and reminding him of the consent I had granted to the other extensions. I also explained, in more truncated form, the reasons set forth in detail above for the request for an extension and sought his consent again.

On August 6, 2008 (Exhibit E), counsel responded in a lengthy diatribe about what he perceived to have been my failings in consenting to the second extension, but concluding that it was his usual practice to agree to extensions. He also asked for a list of the witnesses Gold Star intended to call to assist in his evaluation of the requested stipulation.

I responded the following day – August 7, 2008 (Exhibit F) with a full list of the ten witnesses Gold Star presently intends to call. I also reminded counsel that I would be filing an application with the Board for a determination of the admissibility of Ms. Walewitsch's deposition.

Counsel responded on August 12, 2008, at approximately 11:00 in the morning (Exhibit G), by stating that the request for an extension would be opposed, with no reason stated. I had to leave for airport to catch a plane for the August 13, 2008 deposition in the *NNHC* case less than two hours later, and did not return to the office until Thursday, August 14, 2008 (landing at nearly midnight that evening). The instant motion was prepared as quickly as possible after my return, and as quickly as I could after receiving

counsel's final reply – over a week after consent had been requested, and when it was impossible to get the instant motion prepared any earlier.

III. STANDARDS

In evaluating Four Seasons' second extension request, the Board noted (Dkt. No. 52) that extensions are "liberal[ly]" granted (p. 2), provided that they are sought prior to the expiration of the period sought to be extended, "upon a showing of good cause, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extension has not been abused." Further, T.B.M.P. § 509.01 provides that "a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor." Gold Star has met these requirements.

First, Gold Star has set forth the reasons for the extension in detail above, and does not rely on conclusory or unsupported allegations of the need for the extension (T.B.M.P. § 509.01). Those reasons are, primarily, the press of other litigation and matters that have legitimately diverted the attention of counsel and client herein. The press of other litigation may constitute good cause for an extension of time, provided that the explanation of the other litigation is provided in detail and the extension sought is limited in nature. *Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL*, 59 USPQ2D 1383, 1384 (TTAB 2001)

The litigation matters that have taken up counsel's attention, particularly the unexpected scheduling of the long-ago briefed motion for argument in the *Hypoxico* case,

were completely beyond counsel's control, and could not have been reasonably foreseen or accounted for in Gold Star's preparation for its testimony period.

It is also noted that this is the first request for an extension of Gold Star's testimony period, and that Gold Star has been accommodating to requests made by Four Seasons for extensions of time, whether for personal or logistical reasons. It is particularly noted that counsel for Gold Star has always responded to requests for extensions by Four Seasons immediately, whether consenting or not, and that the one time an extension was opposed, consent was withheld for a stated reason that Gold Star believed justified the refusal to consent, even though the Board ultimately ruled otherwise. The sole delay in bringing this motion is the delay caused by Four Seasons' delaying over a week to indicate opposition, stringing Gold Star along with vague assurances that counsel would "prefer" to follow "usual" practices of accommodating opposing counsel.

Gold Star, and its counsel, therefore assert that they have been diligent, and neither negligent nor dilatory, in bringing this motion, and that good cause has been shown for the requested extension.

IV. THE LENGTH OF THE REQUESTED EXTENSION

Gold Star also asserts that a sixty (60) day extension is reasonable, although at first blush it might seem excessive. The bases for this assertion are as follows:

1. As stated, counsel for Gold Star is scheduled for a vacation until September 2, 2008.
2. Counsel for Four Seasons has indicated that he has commitments for the first two weeks of September and on September 19 as well as being "very busy" during the month of September (Exhibit F).

3. The Jewish holiday of Rosh Hashanah begins the evening of September 29, and concludes at sunset on October 1. Yom Kippur begins the evening of October 8, and ends at sunset on October 9. Counsel for Four Seasons is observant, as are many of the witnesses to be called by Gold Star (including the principals of Gold Star and, it is believed, the principals of Four Seasons who are among the witnesses Gold Star intends to call during its testimony period).

Thus, the sixty (60) day period is believed to be reasonable to accommodate the various schedules and religious observances of the witnesses and counsel, including those of counsel for Four Seasons.

If the Requested relief is granted, the remaining testimony period would be re-set as follows:

Expiration of Registrant's Testimony Period	October 20, 2008
Expiration of Petitioner's rebuttal testimony period	December 4, 2008

V. CONCLUSION

For all of the reasons set forth above, early and favorable action on this Motion is therefore respectfully solicited. Gold Star has demonstrated good cause for the extension, the length of time is necessary for accommodating all concerned (not simply counsel for Gold Star), and Gold Star has been neither dilatory nor negligent in seeking this relief.

Respectfully submitted,
COHEN, PONTANI, LIEBERMAN & PAVANE

By


Roger S. Thompson
551 Fifth Avenue
New York, New York 10176
(212) 687-2770

Dated: August 15, 2008

Attorneys for Registrant,
International Gold Star Trading Corp.

CERTIFICATE OF SERVICE

I hereby certify that on the date set forth below, a true and correct copy of the foregoing Registrant's Motion for an Extension of its Testimony Period was served by first-class mail, postage pre-paid, and by e-mail on counsel for petitioner, addressed as follows:

Samuel Friedman, Esq.
samfriedman@verizon.net
225 Broadway, Suite 1804
New York, New York 10007



Roger S. Thompson
Counsel for Registrant

August 15, 2008
Date

Roger S. Thompson

From: Sam Friedman [samfriedman@verizon.net]
Sent: Friday, February 29, 2008 4:00 PM
To: Roger S. Thompson
Subject: Four Seasons v Int'l Gold Star, Canc. No. 92042082

Roger:

Please see attached copy of consent motion filed on ESTTA pursuant to our conversation today.
Thank you for your courtesies.

Samuel Friedman
Attorney at Law
225 Broadway, Suite 1804
New York, New York 10007
Tel (212) 267-2900
Fax (212) 587-0570

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Roger S. Thompson

From: Roger S. Thompson
Sent: Monday, August 04, 2008 7:49 PM
To: 'Sam Friedman'
Cc: Wanda Mason
Subject: Four Seasons Dairy Inc. v Int'l Gold Star Trading Corp., TTAB Canc. No. 92042082

Tracking: Recipient Delivery
 'Sam Friedman'
 Wanda Mason Delivered: 8/4/2008 7:49 PM

Sam:

I plan on setting up depositions for a number of witnesses during my testimony period, and would like to get some idea of your schedule so that I can conduct the testimony period smoothly. I will be away from August 20 through Labor Day, so that period is out (I am planning on seeking an extension regardless so that we can get all depositions done).

Can you let me know the following:

- 1) Do you have an objection in principle to a 30-day extension of time to conduct my testimony period (bearing in mind I will also be writing to the Board about Ms. Wallewitsch's deposition), presuming we can get all of the depositions set during that period.
- 2) If you have any periods when you are unavailable between now and the expiry of the proposed 30 day extension (presuming you have no problem with it), so I can make a tentative deposition schedule that works for you.
- 3) I would plan on taking the deposition of your client, as well, so I would like to know if there are dates on which Alex and Oleg are unavailable.
- 4) I understand that the Holidays start at the end of September this year, so I don't think that would interfere with the scheduling, unless I find we need to go past 30 days. I will, of course, make any accommodation for religious observances should that be an issue.
- 5) I would plan on having no more than two depositions during any given week, to allow for the conduct of other business.

Please let me know how this works for you and, in particular if you assent to the requested extension.

Roger

Roger S. Thompson
COHEN PONTANI LIEBERMAN & PAVANE LLP
551 Fifth Avenue
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(212) 687-2770 - p
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8/15/2008

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Roger S. Thompson

From: Sam Friedman [samfriedman@verizon.net]
Sent: Tuesday, August 05, 2008 8:12 PM
To: Roger S. Thompson
Subject: RE: Four Seasons Dairy Inc. v Int'l Gold Star Trading Corp., TTAB Canc. No. 92042082

Roger:

As you know, I am a sole practitioner. I requested your consent to an extension made necessary by the birth of my daughter combined with my having contracted a serious illness -- and you refused. Please set forth the reason, if any, for your request for an extension and I will discuss the matter with my client.

Samuel Friedman
Attorney at Law
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Cc: Wanda Mason
Subject: Four Seasons Dairy Inc. v Int'l Gold Star Trading Corp., TTAB Canc. No. 92042082

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8/15/2008

- 3) I would plan on taking the deposition of your client, as well, so I would like to know if there are dates on which Alex and Oleg are unavailable.
- 4) I understand that the Holidays start at the end of September this year, so I don't think that would interfere with the scheduling, unless I find we need to go past 30 days. I will, of course, make any accommodation for religious observances should that be an issue.
- 5) I would plan on having no more than two depositions during any given week, to allow for the conduct of other business.

Please let me know how this works for you and, in particular if you assent to the requested extension.

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Roger S. Thompson

From: Roger S. Thompson
Sent: Tuesday, August 05, 2008 8:52 PM
To: 'Sam Friedman'
Cc: Wanda Mason
Subject: RE: Four Seasons Dairy Inc. v Int'l Gold Star Trading Corp., TTAB Canc. No. 92042082

Tracking: Recipient Delivery
'Sam Friedman'
Wanda Mason Delivered: 8/5/2008 8:52 PM

Sam:

I am afraid your recollection of my opposition to your request for an extension is not correct. On February 29, 2008 you put in a stipulated request for an extension of time to conclude your testimony period due to your wife's pregnancy. See the stipulated extension attached. My recollection of the telephone exchange was that you asked for the extension due to your wife's pregnancy and your medical condition. I asked how much time you needed, and made sure that the period you asked for would be sufficient, even offering to go further out if you needed it. In your e-mail to me sending me a copy of the stipulated extension as filed you thanked me "for [my] courtesies". In sum, I gave you that extension on the spot without hesitation or reservation, and am, frankly, shocked that your recollection differs.

The time I opposed your extension was when your non-subpoena-ed third party witnesses either threw us out (Nigro's boss) or refused to show up (Wallewitsch). My opposition was based solely on your failure to secure subpoenas, which would have saved my client the expense of the second visit to Oasis Foods, and my time for most of a day for the second appearance, as well as the needless delay in waiting for Ms. Wallewitsch's agreement to show up. She then, of course, walked out during my cross-examination, leaving me with no recourse since, again, she was not under subpoena. I'll take that up with the Board shortly.

In terms of your asking for an adjournment for medical or family reasons, I NEVER hesitated to agree to your request based on your wife's condition and your condition (without even consulting my client), and I am quite surprised that your recollection differs. Please take another look at the attached stipulation and your correspondence of February 29, 2008, and see if your recollection is refreshed. If you wish, you can refer to the record of extensions before the TTAB on TTABVUE.

Additionally, when you asked for an extension of time to conclude the two depositions, I consented, and agreed to a period to allow the two depositions to be taken (see my e-mail correspondence of May 21, 2008). My sole reservation there was whether we needed an entire month to conclude the two short depositions.

I am seeking to extend out my testimony period to allow for the facts that 1) I have had a long-scheduled vacation at the tail end of the testimony period (starting August 20 through Labor Day), and the latest extension you secured moved my testimony period back into the vacation I had already scheduled; 2) I have just had Judge Koeltl of the Southern District set a hearing on a summary judgment motion for August 19, on a set of motions that were fully briefed in January, and I will need some time to prepare; 3) several of my witnesses are third party witnesses from out of town, and I need to accommodate their travel schedules over the busy vacation month of August due, again, to the fact that we had to accommodate your witnesses and the lengthy testimony period you enjoyed (starting in January and ending in May); 4) I have a client due to come in from out of town for a few days right before the hearing before Judge Koeltl; and 5) I am attempting to set up a deposition in a case in the Eastern District of Virginia to continue a deposition where my opponent has failed to produce documents in a timely fashion for me to review before the deposition I took last week.

I hope that you find these reasons sufficient to justify assent to my request for an extension of my testimony period. I would like to have some idea of your availability, as well, so that I may set up an orderly schedule for the period, whenever it is.

8/15/2008

I look forward to hearing back from you.

Roger

Roger S. Thompson
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-----Original Message-----

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Roger S. Thompson

From: Sam Friedman [samfriedman@verizon.net]
Sent: Wednesday, August 06, 2008 1:24 PM
To: Roger S. Thompson
Subject: RE: Four Seasons Dairy Inc. v Int'l Gold Star Trading Corp., TTAB Canc. No. 92042082

Roger:

Quite frankly, I'm shocked that your recollection is so badly in need of refreshment. I was diagnosed with shingles on or about March 13, 2008, after the birth of my daughter and after the stipulated extension of February 29, 2008. You refused my request for an extension even after I informed you of that fact, necessitating my contested motion of April 18, 2008. I take umbrage at having been required by your lack of courtesy to set forth in the public record matters of a private and personal nature merely to obtain an extension. Such behavior on your part detracts from the dignity of the profession – as does your high-decibel yelling and table pounding during deposition.

You have also conveniently forgotten your numerous extension requests that I agreed to on account of your stated medical issues.

Moreover, your self-serving efforts to rewrite the history of events with Ms. Walewitsch (whose deposition you contested on meritless grounds) mysteriously omits the fact that Ms. Walewitsch and I extended to you the courtesy of agreeing to your request to postpone her deposition, only to have your client, Galina Pinchow, appear at the deposition and quite literally spoon-feed you questions to ask of the witness that clearly have no bearing on this case. Moreover, Ms. Walewitsch never refused to show up for deposition. Rather, the first time her deposition was scheduled she encountered a business emergency and you were duly notified in advance of the deposition that she would not be able to attend.

Your testimony period opened on July 22, 2008 and closes on August 21, 2008. Therefore, your August 20 to Labor Day vacation plans are of little if any relevance.

I left time available in my schedule in late July and August to accommodate your testimony period. Currently, I am available August 13 and 15, as well as August 18 – 20. My month of September is very busy; and at this point the first two weeks of September are entirely booked, as is September 19, 2008; and the Jewish New Year commences September 29, 2008.

Please provide a comprehensive list identifying all witnesses that you intend to depose so I can better evaluate your request. My general policy is to extend courtesies to my adversaries and I would prefer not to deviate from this policy. However, I will not consent to have my client suffer prejudice as the result of what is, after all, clearly your failure to subpoena witnesses to testify during your testimony period.

Samuel Friedman
Attorney at Law
225 Broadway, Suite 1804
New York, New York 10007
Tel (212) 267-2900
Fax (212) 587-0570

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8/15/2008

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From: Roger S. Thompson [mailto:RThompson@cplplaw.com]
Sent: Tuesday, August 05, 2008 8:52 PM
To: Sam Friedman
Cc: Wanda Mason
Subject: RE: Four Seasons Dairy Inc. v Int'l Gold Star Trading Corp., TTAB Canc. No. 92042082

Sam:

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The time I opposed your extension was when your non-subpoena-ed third party witnesses either threw us out (Nigro's boss) or refused to show up (Wallewitsch). My opposition was based solely on your failure to secure subpoenas, which would have saved my client the expense of the second visit to Oasis Foods, and my time for most of a day for the second appearance, as well as the needless delay in waiting for Ms. Wallewitsch's agreement to show up. She then, of course, walked out during my cross-examination, leaving me with no recourse since, again, she was not under subpoena. I'll take that up with the Board shortly.

In terms of your asking for an adjournment for medical or family reasons, I NEVER hesitated to agree to your request based on your wife's condition and your condition (without even consulting my client), and I am quite surprised that your recollection differs. Please take another look at the attached stipulation and your correspondence of February 29, 2008, and see if your recollection is refreshed. If you wish, you can refer to the record of extensions before the TTAB on TTABVUE.

Additionally, when you asked for an extension of time to conclude the two depositions, I consented, and agreed to a period to allow the two depositions to be taken (see my e-mail correspondence of May 21, 2008). My sole reservation there was whether we needed an entire month to conclude the two short depositions.

I am seeking to extend out my testimony period to allow for the facts that 1) I have had a long-scheduled vacation at the tail end of the testimony period (starting August 20 through Labor Day), and the latest extension you secured moved my testimony period back into the vacation I had already scheduled; 2) I have just had Judge Koeltl of the Southern District set a hearing on a summary judgment motion for August 19, on a set of motions that were fully briefed in January, and I will need some time to prepare; 3) several of my witnesses are third party witnesses from out of town, and I need to accommodate their travel schedules over the busy vacation month of August due, again, to the fact that we had to accommodate your witnesses and the lengthy testimony period you enjoyed (starting in January and ending in May); 4) I have a client due to come in from out of town for a few days right before the hearing before Judge Koeltl; and 5) I am attempting to set up a deposition in a case in the Eastern District of Virginia to continue a deposition where my opponent has failed to produce documents in a timely fashion for me to review before the deposition I took last week.

I hope that you find these reasons sufficient to justify assent to my request for an extension of my testimony period. I would like to have some idea of your availability, as well, so that I may set up an orderly schedule for the period, whenever it is.

I look forward to hearing back from you.

8/15/2008

Roger

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

From: Sam Friedman [mailto:samfriedman@verizon.net]
Sent: Tuesday, August 05, 2008 8:12 PM
To: Roger S. Thompson
Subject: RE: Four Seasons Dairy Inc. v Int'l Gold Star Trading Corp., TTAB Canc. No. 92042082

Roger:

As you know, I am a sole practitioner. I requested your consent to an extension made necessary by the birth of my daughter combined with my having contracted a serious illness -- and you refused. Please set forth the reason, if any, for your request for an extension and I will discuss the matter with my client.

Samuel Friedman
Attorney at Law
225 Broadway, Suite 1804
New York, New York 10007
Tel (212) 267-2900
Fax (212) 587-0570

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From: Roger S. Thompson [mailto:RThompson@cplplaw.com]
Sent: Monday, August 04, 2008 7:49 PM
To: Sam Friedman
Cc: Wanda Mason
Subject: Four Seasons Dairy Inc. v Int'l Gold Star Trading Corp., TTAB Canc. No. 92042082

Sam:

I plan on setting up depositions for a number of witnesses during my testimony period, and would

8/15/2008

like to get some idea of your schedule so that I can conduct the testimony period smoothly. I will be away from August 20 through Labor Day, so that period is out (I am planning on seeking an extension regardless so that we can get all depositions done).

Can you let me know the following:

- 1) Do you have an objection in principle to a 30-day extension of time to conduct my testimony period (bearing in mind I will also be writing to the Board about Ms. Wallewitsch's deposition), presuming we can get all of the depositions set during that period.
- 2) If you have any periods when you are unavailable between now and the expiry of the proposed 30 day extension (presuming you have no problem with it), so I can make a tentative deposition schedule that works for you.
- 3) I would plan on taking the deposition of your client, as well, so I would like to know if there are dates on which Alex and Oleg are unavailable.
- 4) I understand that the Holidays start at the end of September this year, so I don't think that would interfere with the scheduling, unless I find we need to go past 30 days. I will, of course, make any accommodation for religious observances should that be an issue.
- 5) I would plan on having no more than two depositions during any given week, to allow for the conduct of other business.

Please let me know how this works for you and, in particular if you assent to the requested extension.

Roger

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Roger S. Thompson

From: Roger S. Thompson
Sent: Thursday, August 07, 2008 6:30 PM
To: 'Sam Friedman'
Cc: Wanda Mason
Subject: RE: Four Seasons Dairy Inc. v Int'l Gold Star Trading Corp., TTAB Canc. No. 92042082

Tracking: **Recipient** **Delivery**
 'Sam Friedman'
 Wanda Mason Delivered: 8/7/2008 6:30 PM

Sam:

I would rather not engage in a back and forth on the propriety of any actions taken thus far. To the extent necessary, I believe that the record will support my recollection. In addition, I am writing to the Board for a determination of how to resolve the situation with respect to Ms. Wallewitsch.

As to your request for a list of the witnesses we intend to call to enable you to evaluate our request for an extension, here is the list, as it stands now. So far as I am aware it is complete and comprehensive.

Galina Pincow
Robert Pincow
Aleksander Bekker
Oleg Kessler
Dimitri Lerner
Igor Zagranichniy
Jacob Krungal
Lewis ("Butch") P. Miller
Lisa Troyer
Irina Lubinskaya
Daniel Bartolomeo

Please let me know if this information is sufficient to enable you to evaluate our request for a stipulated extension.

Roger

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8/15/2008

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From: Roger S. Thompson [mailto:RThompson@cplplaw.com]
Sent: Monday, August 04, 2008 7:49 PM
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Cc: Wanda Mason
Subject: Four Seasons Dairy Inc. v Int'l Gold Star Trading Corp., TTAB Canc. No. 92042082

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Please let me know how this works for you and, in particular if you assent to the requested extension.

Roger

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Roger S. Thompson

From: Sam Friedman [samfriedman@verizon.net]
Sent: Tuesday, August 12, 2008 10:51 AM
To: Roger S. Thompson
Subject: RE: Four Seasons Dairy Inc. v Int'l Gold Star Trading Corp., TTAB Canc. No. 92042082

Roger:

Interlocutory Attorney Andrew Baxley previously ruled during a teleconference in this proceeding that parties may attend depositions.

Petitioner noticed the deposition of Natalie Walewitsch for May 30, 2008. However, as a courtesy I consented to your request to reschedule the deposition to June 4, 2008 to enable your client to attend.

Upon the return of the transcript, Petitioner elected to designate transcript as Commercially Sensitive/Trade Secret. This designation was elected as to the entire transcript for reasons including those stated in my email to you of August 6, 2008.

Respondent International Gold Star, your client, is bound by the Protective Order in this action.

You now argue that the designation of Trade Secret/Commercially Sensitive should be removed because your client was present during the deposition. Thus, you seek to take advantage of the very courtesy extended to you to argue that the Trade Secret designation is void. You further argue that Galina Pincow, an officer, director and shareholder of Respondent International Gold Star is not bound by the Protective Order.

Your arguments are specious and self-serving. You and your client will be held fully accountable for filing Trade Secret material in the public record. I note that as of the date and time of this email, the transcript of Ms. Walewitsch has not been removed from public viewing on ESTTA.

Additionally, please note that your request for an extension of Respondent's testimony period is opposed.

Samuel Friedman
Attorney at Law
225 Broadway, Suite 1804
New York, New York 10007
Tel (212) 267-2900
Fax (212) 587-0570

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Sent: Monday, August 11, 2008 8:47 PM
To: Sam Friedman
Subject: RE: Four Seasons Dairy Inc. v Int'l Gold Star Trading Corp., TTAB Canc. No. 92042082

Sam:

I will take all steps required to remove the deposition transcript from the public record as you requested. I will point out, however, that Ms. Pincow, an officer of the registrant, was present during the entire deposition without objection, and she is not authorized to have access to "Trade Secret/Commercially Sensitive" material under the Protective Order. Thus, it is not clear to what extent there is any truly confidential material contained in the transcript.

Nonetheless, I shall take steps to remove the transcript immediately. I will ask, in the meantime, if you consider the entire transcript to be confidential, or only portions of it. Since I will also move for a lifting of the designation, I wanted to confer with you to determine what Ms. Walewitsch considers to be "Trade Secret/Commercially Sensitive" material in the transcript since nothing was stated on the record as being confidential.

Last, I ask if you have reached a determination on my request for an extension, since I would like to file an omnibus motion tomorrow asking for the extension and would like to indicate your position on the motion.

I look forward to hearing from you.

Roger S. Thompson
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Sent: Monday, August 11, 2008 5:57 PM
To: Roger S. Thompson
Subject: RE: Four Seasons Dairy Inc. v Int'l Gold Star Trading Corp., TTAB Canc. No. 92042082

Roger:

In violation of the Protective Order in this matter you have filed in the public record materials marked TRADE SECRET/ COMMERCIALY SENSITIVE by filing them on ESTTA. You must immediately cause the transcript of testimony of Natalie Walewitsch to be removed from the public record. Breach of the Protective Order constitutes both contempt and breach of contract for which you and your client International Gold Star will be held fully responsible.

Samuel Friedman

8/15/2008

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Sent: Monday, August 11, 2008 4:29 PM
To: Sam Friedman
Cc: Wanda Mason
Subject: RE: Four Seasons Dairy Inc. v Int'l Gold Star Trading Corp., TTAB Canc. No. 92042082

Dear Sam:

As I have mentioned that I would, I have this date sent to the Board a Motion to Strike the deposition of Ms. Walewitsch, and enclose a copy of the letter and attachment as sent to the Board today.

I also await your final word regarding consent to the requested stipulated extension of the registrant's testimony period. I will have to make a Motion for that extension, and thus I ask for your answer so that I may indicate that the Motion is stipulated, contested, or filed with no response. I look forward to hearing from you.

Roger

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