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

Proceeding	92042132
Party	Plaintiff DIVA DESIGNS / BIMBO ,
Correspondence Address	PAUL C. RAPP COHEN DAX & KOENIG PC 90 STATE STREET ALBANY, NY 12207
Submission	Motion to Reopen
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Date	11/23/2004
Attachments	Boy Beater motion.txt (2 pages)

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

Diva Designs / Bimbo)
Petitioner,)
)
v.)
) Cancellation No.: 92042132
Troy Dendekker)
Registrant.)
)
_____)

MOTION TO REOPEN TIME

Petitioner herein moves for an order extending and/or reopen (1) the discovery period up to and including May 1, 2005; (2) the testimony period for the Petitioner up to and including September 1, 2005; (3) the testimony period for the Registrant up to and including November 1, 2005; (4) and the rebuttal period for the Petitioner up to and including January 15, 2006.

Petitioner has good cause for seeking this extension/ reopening and/or can show that its failure to act in the allotted time was the result of excusable neglect. The undersigned, Petitioner's counsel through the entirety of this proceeding, did not receive a notice or scheduling order from the Patent and Trademark Office after the institution of this proceeding. Counsel therefore received no notice of any deadlines in this proceeding, and calendared no deadlines, and received no communications with regard to this proceeding from anyone until being served with the 30-day notice dated October 27, 2004 from Andrew Baxley, Interlocutory Attorney for the Patent and Trademark Office.

This motion should be granted, because Petitioner meets the test for excusable neglect articulated in Pioneer Investment Services v. Brunswick Associates, 507 US 380 (1993), adopted by the TTAB in Pumpkin Ltd v. The Seed Corps, 43 USPQ2d 1582 (TTAB 1997). First, the delay will not prejudice the Registrant. (Indeed, it is unclear whether Registrant is even using the mark at present.) Second, the delay will impact no judicial proceedings, as there are no judicial proceedings to impact. Third, the delay was occasioned by the failure of the scheduling notice to reach Counsel for the movant, something not within the reasonable control of the movant. Finally, the movant is acting in good faith, and not for reasons of strategic delay.

Petitioner believes it has good and valid reasons for bringing this cancellation proceeding, and looks forward to presenting such reasons to the TTAB. Notwithstanding the proposed schedule requested above, Petitioner would agree to an expedited amended scheduling order, as Petitioner believes that this is a simple and straightforward proceeding with few issues and little required discovery and evidence. Please notice that Counsel's address has changed. A change of address form has been submitted in this proceeding.

For the reasons provided herein, Petitioner respectfully requests that its motion for an extension of all deadlines in this proceeding be granted.

Respectfully submitted,

/paul c rapp/

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CERTIFICATE OF SERVICE

I certify that a copy of this paper was sent by first-class mail, this 23rd day of November, 2004, postage prepaid, to the last known address of the attorney of record for each of the parties to this action.

/paul c rapp/