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

Proceeding	92043017
Party	Defendant Cuzcatlan Beverages, Inc. Cuzcatlan Beverages, Inc. 13015 S.W 89 Place., No. 225 Miami, FL 33176
Correspondence Address	Cheryl Meide Meide Law Firm, P.A. 6622 Southpoint Drive South, Suite 150 Jacksonville, FL 32216
Submission	Opposition/Response to Motion
Filer's Name	Cheryl Meide, Esquire
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Signature	/cheryl meide/
Date	12/09/2005
Attachments	CBI.013 Registrant's in Opposition to Petitioners' Request for Third Testimony Period.pdf (7 pages) Exhibit A FormerCounsel motion to withdraw.pdf (4 pages)

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

George Contos and Neil Pryor, Petitioners v. C.B.I. International, Inc. F/N/A Cuzcatlan Beverages, Inc., Registrant	In the matter of Trademark Registration No. 2,375,219 For the mark: CUZCATLAN COLA CHAMPAGNE and Design International Class 32 Trademark Registration No. 2,396,051 For the mark: CUZCATLAN and Design International Class 32 Trademark Registration No. 2,423,027 For the mark: CUZCATLAN and Design International Class 32 Trademark Registration No. 2,433,109 For the mark: CUZCATLAN ROJITA and Design International Class 32 Trademark Registration No. 2,463,527 For the mark: CUZCATLAN COLA CHAMPAGNE and Design International Class 32 Cancellation No.: 92,043,017 REGISTRANT'S MEMORANDUM IN OPPOSITION TO MOTION TO EXTEND 30-DAY TESTIMONY PERIOD FOR PARTY IN POSITION OF PLAINTIFF TO CLOSE

CBI.0101

REGISTRANT'S MEMORANDUM IN OPPOSITION TO MOTION TO EXTEND 30-DAY TESTIMONY PERIOD FOR PARTY IN POSITION OF PLAINTIFF TO CLOSE

This memorandum is submitted in opposition to Petitioners' Motion to Extend 30-Day Testimony Period For Party In Position Of Plaintiff To Close ("Petitioners' Motion For A Third Testimony Period"). Petitioners' Motion For A Third Testimony Period should be denied as Petitioners have failed to show with particularity any facts said to constitute good cause for the requested extension and Petitioners have exhibited a lack of good faith.

THE FACTS

In addition to Petitioners' former Counsel, the Petitioners themselves are attorneys. Petitioners initiated this case in February of 2004. Registrant initially gave consent to Petitioners' multiple requests to extend Petitioners' time to respond to discovery requests. On November 15, 2004, Petitioners filed a contested motion to receive additional time to respond to discovery requests. The Board granted such motion. On December 15, 2004, Petitioners filed a second contested motion to receive further time to respond to discovery requests. The Board granted such motion. On December 23, 2004, Petitioners' Testimony Period expired without Petitioners' submission of any testimony. Registrant filed a Motion to Dismiss. In response, Petitioners filed a motion to reopen their Testimony Period on December 30, 2004. The Board granted Petitioners' motion to reopen Petitioners' Testimony Period. On November 29, 2005, Petitioners requested Registrant's consent to a second extension of the Testimony Period, essentially a third Testimony Period, without providing any explanation. On November 30, 2005 Registrant notified Petitioners that Registrant would not provide consent. On November 30, 2005, Petitioners' last day of its second Testimony Period, Petitioners filed the present motion to receive a third Testimony Period.

On May 19, 2005, Petitioners' Counsel filed a motion to withdrawal from this case ("Motion to Withdrawal") citing among other things: (1) "irreconcilable differences" that prohibit Petitioners' Counsel to "continue to represent Petitioners in this matter under the Ethics Rules of the Florida Bar;" (2) "Petitioners' conduct has made it unreasonably difficult to the [attorney] to carry out the employment effectively"; (3) the Firm has been unable to contact the

Petitioners for several months; and (4) Petitioners failed to respond to the Firm's advisement that the Firm intended to withdraw from this case. [See Exhibit A]. In the Motion to Withdrawal, Petitioner's former Counsel stated that simultaneously with the filing of the Motion to Withdrawal, Petitioner's former Counsel mailed to Petitioners all papers relating to this matter. [See Exhibit A].

ARGUMENT

Petitioners' Motion to Extend Time Is Not Based On Good Cause

Pursuant to Fed. R. Civ. P. 6(b) and 37 CFR §2.116(a), the Board may grant a motion for extension based on good cause. Petitioners' Motion For A Third Testimony Period fails to show good cause as to why Petitioners should receive a second extension of their Testimony Period and essentially three testimony periods. Petitioners have had all papers relating to this matter for at least six months and Petitioners have had a year to prepare testimony. Instead, Petitioners during this time chose to ignore these proceedings.

Petitioners' claim that Petitioners have had difficulty in obtaining all the relevant information and work prepared on their behalf from former Counsel is false. Petitioners provide no evidence whatsoever to support their claim. In reality, Petitioners have had all papers relating to this matter for at least six months. On May 18, 2005, Petitioners' former counsel stated in its Motion to Withdrawal that former counsel mailed to Petitioners all papers relating to this matter to Petitioners' last known address, which has not changed. [See Exhibit A].

Petitioners' Testimony Period first expired on December 23, 2004 nearly one year ago. Since Petitioners' Testimony Period first expired, Petitioners have had essentially a year to prepare testimony. During the time in which Petitioners could have prepared for its Testimony Period, Petitioners instead chose to ignore its own Counsel's attempts to contact Petitioners over

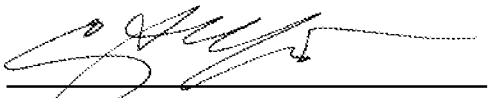
a period of several months. Petitioners also ignored its Counsel's subsequent advisement that the Firm intended to withdraw from this case. [SEE EXHIBIT A] Petitioner's conduct, at minimum, exhibits a significant lack of good faith and a lack of respect for the rules of the Trademark Trial and Appeal Board. Petitioners cannot ignore these proceedings, including its own Testimony Periods, and then receive a third Testimony Period.

A party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party's own lack of due diligence or unreasonable delay in taking the required action during the time previously allotted therefore. TMBP § 509.01(a). *See Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1851 (TTAB 2000). Petitioners have failed to show that the extension request at hand is not necessitated by Petitioners' own lack of due diligence or unreasonable delay. Petitioners have affirmatively exhibited a lack of due diligence and unreasonable delay during these proceedings and specifically during the time period of Petitioners' First and Second Testimony Periods. Petitioners ignored their own Counsel's repeated attempts to deal with these proceedings for several months. Then, on their own, Petitioners ignored their second Testimony Period.

CONCLUSION

Petitioners' Motion For A Third Testimony Period should be denied as Petitioners have failed to show with particularity any facts said to constitute good cause for the requested extension and Petitioners have exhibited a lack of good faith. Accordingly, Registrant respectfully requests that the Board deny Petitioners' motion in its entirety and issue any other order deemed appropriate by the Board.

Respectfully submitted,



December 9, 2005

Cheryl Meide
Attorney for Registrant
Florida Bar No. 0064173

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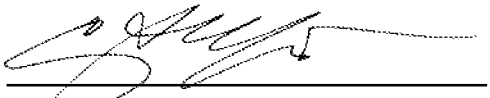
Date

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Registrant's Memorandum In Opposition To Motion to Extend 30-day Testimony Period For Party In Position of Plaintiff to Close was deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to George Contos, 500 East 83rd Street, New York, NY 10028 on the date set forth below.



December 9, 2005

Cheryl Meide
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Date

CERTIFICATE OF ESTTA SUBMISSION

Date of Deposit December 9, 2005

Signature

Name: Cheryl Meide, Esquire

I hereby certify that this correspondence to the Trademark Trial and Appeal board is being submitted via the Electronic System for Trademark Trials and Appeals ("ESTTA") on the dated noted above.

EXHIBIT A

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

In the Matter of:
Trademark Registration No. 2,375,219
For: CUZCATLAN COLA CHAMPAGNE and Design
International Class: 32
and
Trademark Registration No. 2,396,051
For: CUZCATLAN and Design
International Class: 32
and
Trademark Registration No. 2,423,027
For: CUZCATLAN and Design
International Class: 32
and
Trademark Registration No. 2,433,109
For: CUZCATLAN ROJITA and Design
International Class: 32
and
Trademark Registration No. 2,463,527
For: CUZCATLAN COLA CHAMPAGNE and Design
International Class: 32

GEORGE CONTOS and NEIL PRYOR	)	
Petitioners	)	
vs.	)	Cancellation No. 92043017
C.B.I. INTERNATIONAL, INC. F/K/A CUZCATLAN BEVERAGES, INC.	))	
Registrant.	)	
	)	

RUDEN, MCCLOSKY, SMITH, SCHUSTER & RUSSELL, P.A.'S, MOTION TO WITHDRAW AS COUNSEL

Pursuant to 37 CFR §2.19 and 37 CFR §10.40, the law firm of Ruden, McClosky, Smith, Schuster & Russell, P.A. (the "Firm"), hereby moves to withdraw as counsel for Petitioners,

GEORGE CONTOS and NEIL PRYOR (collectively, "Petitioners"), in this proceeding and states as follows:

1. The undersigned Firm was retained to represent Petitioners, Mr. Contos and Mr. Pryor, in this matter.

2. Petitioners were clients of a former partner of this Firm, Robert Schwartz, who left the Firm in February 2005 and has not expressed an interest in taking over the handling of this matter.

3. Irreconcilable differences have developed between this Firm and Petitioners. As a result of these differences, this Firm cannot continue to represent Petitioners in this matter under the Ethics Rules of the Florida Bar.

4. Pursuant to 37 C.F.R. 10.40(c)(1)(iv), Petitioners' conduct has made it "unreasonably difficult to the [attorney] to carry out the employment effectively." Specifically, the Firm has been unable to contact Petitioners for several months. The Firm sent Petitioners the Board's April 21, 2005 Order, along with correspondence asking them how they would like to proceed, but Petitioners have not responded. Therefore, the Firm cannot even determine whether Petitioners are still interested in pursuing this matter.

5. Additionally, pursuant to 10.40(c)(1)(vi), undersigned counsel should be permitted to withdraw because Petitioners have failed to pay the Firm's past due invoices.

6. The Firm notified Petitioners by letter to their last known address advising them of its intent to withdraw, and providing them a reasonable time to respond; however, they have not done so.

7. Simultaneous with the filing of this Motion, the Firm is mailing to Petitioners (at their last known address) all papers relating to this matter.

8. No unearned attorney's fees have been paid to the Firm by Petitioners.

9. This Motion is not being filed as a subterfuge to obtain an extension or reopening of time that Petitioners would not otherwise be entitled to. In fact, the Board's April 21, 2005 Order reopened Petitioners' testimony period so that it closes August 15, 2005.

10. This matter is not set for an administrative hearing and there will be no prejudice to any party by the withdrawal of the undersigned.

11. If the Board grants this Motion, the Firm requests it afford Petitioners a reasonable period of time to engage a new attorney or representative.

WHEREFORE, the law firm of Ruden, McClosky, Smith, Schuster & Russell, P.A., respectfully requests that this Board enter an Order permitting counsel to withdraw as attorneys for Petitioners, Mr. Contos and Mr. Pryor, in this proceeding, and relieving the Firm of any further responsibility for the representation of Petitioners, Mr. Contos and Mr. Pryor, in this matter, afford Petitioners a reasonable period of time to engage a new attorney or representative, and grant such other and further relief as this Board deems just, equitable and proper.

Dated: May 18, 2005

Respectfully submitted,

Matthew S. Nelles, Esq.
RUDEN McCLOSKY SMITH
SCHUSTER & RUSSELL P.A.
200 E. Broward Boulevard – 14th FL
Fort Lauderdale, FL 33301
Telephone: (954) 527-2492
Facsimile: (954) 333-4092
Attorney for Petitioners

CERTIFICATE OF MAILING BY "EXPRESS MAIL"

"Express Mail" mailing label number EL577421754US

Date of Deposit_____May 19, 2005_____

I hereby certify that this paper or fee is being deposited with the United States Postal Service "Express Mail Post Office to Addressee" service under 37 CFR 1.10 on the date indicated above and is addressed to: Assistant Commissioner for Trademarks, Attn: Trademark Trial and Appeal Board, P.O. Box 1451, Alexandria, Virginia 22313-1451.

MATTHEW S. NELLES_____(Typed or printed name of person mailing paper or fee)

_____
(Signature of person mailing paper or fee)

MATTHEW S. NELLES, ESQ.

CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Cheryl Meide, Esq., Meide Law Firm, P.A., Attorney for Registrant, 6622 Southpoint Drive South, Suite 150, Jacksonville, Florida 32216 on this 19th day of May, 2005.

MATTHEW S. NELLES, ESQ.