

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.)

_____)



11-29-2004

U.S. Patent & TMO/TM Mail Rcpt Dt. #11

PETITIONERS' MOTION TO EXTEND TIME FOR
PETITIONERS TO RESPOND TO REGISTRANT'S DISCOVERY

Petitioners by and through counsel hereby move this Board for a one (1) month extension of time for Petitioners to respond to Registrant's First Set of Interrogatories,

and Registrant's First Set of Requests for Production of Documents and Things. This motion is made pursuant to *Fed. R. Civ. P.6(b)*.

This motion is filed prior to the expiration of the period responses are due, is made based on good cause and is not made to delay these proceedings.

Registrant served its First Set of Interrogatories to Petitioners on September 23, 2004. Registrant served its First Set of Requests for Production of Documents and Things on September 23, 2004. On or about October 25, 2004 the parties agreed between themselves to mutually extend the period of time for Petitioners to Respond to Registrant's said discovery and for Registrant to respond to Petitioners' discovery. A copy of correspondence dated October 25, 2004 and additional exchange of e-mails between counsel are attached hereto as composite Exhibit A, supporting said agreement. As a result, Petitioners had until November 15, 2004 to respond to discovery.

One of the principals of Petitioner is George Contos. Mr. Contos is and has been coordinating the instant Petition for this matter and the discovery efforts. As stated in correspondence referenced above, Mr. Contos' father was checked into Sloan-Kettering Hospital on Friday, October 22, 2004. This illness resulted in Petitioners'

request for the first extension of time worked out between counsel. During the present extension of time, on or about November 10, 2004, Mr. Contos' father passed away. This fact was communicated to counsel for Registrant on November 11, 2004 with a request for a further extension of time to respond to discovery. Registrant's counsel responded promptly of her request to her client (the Registrant). However, as of this date, the last date to respond to discovery, November 15, 2004, no agreement has been reached to stipulate to a further extension of time. In view thereof, Petitioners make this present request for an extension of one month to respond to said outstanding discovery requests submitted by Registrant.

Petitioners' counsel attempted to resolve this matter between counsel, see attached faxes, composite Exhibit B. However, counsel were not able to resolve the undersigned's request.

Pursuant to *Fed. R. Civ. P. 6(b)*, if a motion is filed prior to the expiration of a period and is based on good cause this Court may grant an extension. Pursuant to 37 *CFR* § 2.120(a) the time to respond to interrogatories and request for production of documents and things, may be extended upon motion granted by the Board. Also see *T.M.E.P.* §509.

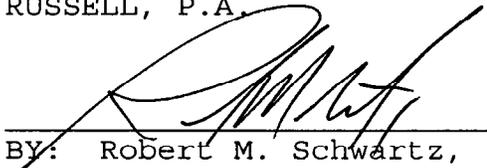
Wherefore, based on good cause shown and not for purposes of delay, Petitioners respectfully request extensions of time of one (1) month to respond to Registrant's discovery as follows, Petitioners shall have until December 15, 2004 to respond to Registrant's First Set of Interrogatories to Petitioners and Petitioners shall have until December 15, 2004 to respond to Registrant's First Set of Requests for Production of Documents and Things.

Dated: Nov. 15th, 2004

Fort Lauderdale, Florida

Respectfully submitted,

RUDEN, McCLOSKEY, SMITH, SCHUSTER &
RUSSELL, P.A.


BY: Robert M. Schwartz, Esq.
Ruden, McClosky, Smith,
Schuster & Russell, P.A.
200 E. Broward Blvd.,
Fort Lauderdale, FL 33301
Tel: (954) 527-6252
Fax: (954) 333-4252
Robert.Schwartz@ruden.com
Attorneys for Petitioners,
George Contos and Neil Pryor

CERTIFICATE OF MAILING

I hereby certify that Petitioners' Motion To Extend Time For Petitioners To Respond To Registrant's Discovery is being deposited with the United States Postal Service as first class mail in an envelope addressed to: TTAB, Assistant Commissioner for Trademarks, 2900 Crystal Drive, Arlington, VA 22202-3513, this 15th day of November, 2004.



ROBERT M. SCHWARTZ, ESQ.

CERTIFICATE OF SERVICE

I HEREBY certify that a true and correct copy of Petitioners' Motion To Extend Time For Petitioners To Respond To Registrant's Discovery 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., 6622 Southpoint Drive South, Suite 150, Jacksonville, Florida 32216.**



ROBERT M. SCHWARTZ, ESQ.

EXHIBIT A



200 EAST BROWARD BOULEVARD
FORT LAUDERDALE, FLORIDA 33301

POST OFFICE BOX 1900
FORT LAUDERDALE, FLORIDA 33302

(954) 527-6252
FAX: (954) 333-4252
ROBERT.SCHWARTZ@RUDEN.COM

October 25, 2004

VIA FACSIMILE (904) 470-4102
Confirmation via U.S Mail

Ms. Cheryl Meide
Meide Law Firm, P.A.
6622 Southpoint Drive South, Suite 150
Jacksonville, Florida 32216

Re: CUZCATLAN Marks
Consolidated Petition for Cancellation - No.
92,043,017
Our Client No.: 44622-0008

Dear Ms. Meide:

This shall serve to follow up our telephone conference of today, October 25, 2004. As a result, I confirm Petitioners shall have an additional three (3) weeks, until November 15, 2004, to respond to Registrant's First Set of Interrogatories to Petitioner and Registrant's First Set of Production of Documents and Things.

I confirm the basis for this request for extension of time was based on the fact that one of the Petitioners', George Contos's father has been suffering from cancer and this past week suffered a paralysis related to said illness. George Contos's father was checked into Sloan-Kettering Hospital on Friday, October 22, 2004. As a result, my client was unable to timely respond to the outstanding discovery.

It is our intent to respond to the Discovery in good faith and as agreed, documents and things that may be responsive to your request for production shall be provided with the response or at least a facsimile thereof to the extent possible.

FTL:1310430:1

RUDEN, McCLOSKEY, SMITH, SCHUSTER & RUSSELL, P.A.

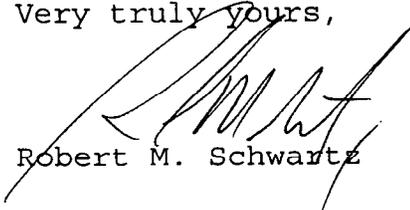
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Ms. Cheryl Meide
October 25, 2004
Page 2

I further confirm this extension of time shall be mutual and the outstanding responses to Petitioners' First Set of Requests for Production of Documents to Registrant, Petitioners' First Set of Interrogatories to Registrant and Petitioners' First Requests for Admissions to Registrant, shall be served upon the undersigned the day following receipt of my client's responses to you. In summary, I would expect to receive your said good faith responses on November 16, 2004.

In the event this is not our understanding, I would appreciate your immediate comments thereto.

Very truly yours,



Robert M. Schwartz

RMS/vkh

Schwartz, Robert

From: Cheryl Meide [cmeide@meidelaw.com]
Sent: Monday, October 25, 2004 8:34 PM
To: Schwartz, Robert
Subject: Extension Clarification

Dear Robert:
Please see the attached. Thank you.

Cheryl Meide, Esquire
Technology Law and Trademark Law

Meide Law Firm, P.A.
6622 Southpoint Drive South, Suite 150
Jacksonville, Florida 32216

Phone: 904-470-4110
Fax: 904-470-4102
Email: Cmeide@meidelaw.com

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Meide Law Firm, P.A.

Trademark and Technology Law

6622 Southpoint Drive South, Suite 150
Jacksonville, Florida 32216

Telephone: 904.470.4110
Facsimile: 904.470.4102
cmeide@meidelaw.com
www.Meidelaw.com

CDM04-074
October 25, 2004
Via Facsimile
And Email

Ruden McClosky
200 East Broward Boulevard
Fort Lauderdale, Florida 33301

Attention: Robert Schwartz, Esq.,

Re: CUZCATLAN® marks
Consolidated Petition for Cancellation
No. 92,043,017
CBI International, Inc.
Discovery Response Extension

Dear Robert:

I enjoyed speaking with you earlier today. Thank you for your correspondence earlier this evening to document our discussions and my client's agreement to provide a mutual three-week extension for discovery responses in the above noted proceeding.

In addition to your correspondence confirmations, further aspects of our discussion need to be identified in response to your request for immediate clarification of our understanding. As we discussed, the three-week extension for both Petitioners and Registrant's discovery responses are agreed to by Registrant strictly with the condition that Petitioners will not receive any further extensions in connection with any discovery deadlines for any reason. In addition, my client's agreement to a three-week extension is strictly under the condition that the responses to both Registrants First Set of Interrogatories to Petitioners and Registrant's First Set of Production of Documents and Things to Petitioners ("Requests") will be substantively complete with the exception of any objections particular to each individual request. My client has consented to your client's two-week extension request with a three-week extension to ensure that we will receive substantive answers to both sets of Requests from your client on November 15, 2004.

Please let me know if you have any questions or comments. Thank you so much.

Kind Regards,



Cheryl Meide

C: Jaime Giammattei (Via Email)
German Giammattei (Via Email)



203 EAST BROWARD BOULEVARD
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TEL: (954) 527-6252
FAX: (954) 333-4252
ROBERT.SCHWARTZ@RUDEN.COM

October 25, 2004

VIA FACSIMILE (904) 470-4102
Confirmation via U.S. Mail

Ms. Cheryl Meide
Meide Law Firm, P.A.
6622 Southpoint Drive South, Suite 150
Jacksonville, Florida 32216

Re: CUZCATLAN Marks
Consolidated Petition for Cancellation - No.
92,043,017
Our Client No.: 44622-0008

Dear Ms. Meide:

This shall serve to follow up our telephone conference of today, October 25, 2004. As a result, I confirm Petitioners shall have an additional three (3) weeks, until November 15, 2004, to respond to Registrant's First Set of Interrogatories to Petitioner and Registrant's First Set of Production of Documents and Things.

I confirm the basis for this request for extension of time was based on the fact that one of the Petitioners', George Contos's father has been suffering from cancer and this past week suffered a paralysis related to said illness. George Contos's father was checked into Sloan-Kettering Hospital on Friday, October 22, 2004. As a result, my client was unable to timely respond to the outstanding discovery.

It is our intent to respond to the Discovery in good faith and as agreed, documents and things that may be responsive to your request for production shall be provided with the response or at least a facsimile thereof to the extent possible.

FTL:1310430:1

RUDEN, McCLOSKEY, SMITH, SCHUSTER & RUSSELL, P.A.

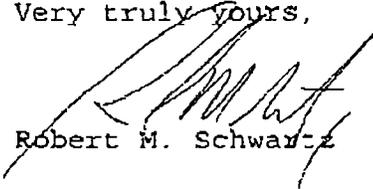
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Ms. Cheryl Meide
October 25, 2004
Page 2

I further confirm this extension of time shall be mutual and the outstanding responses to Petitioners' First Set of Requests for Production of Documents to Registrant, Petitioners' First Set of Interrogatories to Registrant and Petitioners' First Requests for Admissions to Registrant, shall be served upon the undersigned the day following receipt of my client's responses to you. In summary, I would expect to receive your said good faith responses on November 16, 2004.

In the event this is not our understanding, I would appreciate your immediate comments thereto.

Very truly yours,



Robert M. Schwartz

RMS/vkh

FTL:1310430:1

RUDEN, McCLOSKEY, SMITH, SCHUSTER & RUSSELL, P.A.

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Schwartz, Robert

From: Schwartz, Robert
Sent: Tuesday, October 26, 2004 9:50 AM
To: 'Cheryl Meide'
Subject: RE: Extension Clarification

Dear Cheryl,
Further to my letter to you of yesterday, I confirm you will not agree to further extension requests and we will not request another extension. Further I confirm our responses will be made in good faith and within the rules of evidence.

Robert.

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

From: Cheryl Meide [mailto:cmeide@meidelaw.com]
Sent: Monday, October 25, 2004 8:34 PM
To: Schwartz, Robert
Subject: Extension Clarification

Dear Robert:
Please see the attached. Thank you.

Cheryl Meide, Esquire
Technology Law and Trademark Law

Meide Law Firm, P.A.
6622 Southpoint Drive South, Suite 150
Jacksonville, Florida 32216

Phone: 904-470-4110
Fax: 904-470-4102
Email: Cmeide@meidelaw.com

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EXHIBIT B

Schwartz, Robert

From: Schwartz, Robert
Sent: Thursday, November 11, 2004 4:55 PM
To: 'Cheryl Meide'
Subject: CUZCATLAN discovery

Dear Ms. Meide,

Yesterday afternoon (Wednesday), I called my client in regards to our finishing up the pending discovery. In a return call to me later in the evening, George Contos advised me that his father had passed away last Saturday and that the funeral had been that day (Wednesday). In view thereof, it is most likely not going to be possible to meet the deadline we had previously agreed upon for furnishing discovery responses. I would appreciate your thoughts on this unforeseen turn of events. I asked George what he wanted to do. He indicated it is his intent to complete the discovery responses. I first ask you for an additional period of time. I propose two weeks. George indicated this should be possible. It is not his intent to delay these proceedings. Please advise your position. You may advise your client on my behalf that we would appreciate their understanding and cooperation. My alternative would be to request an extension from the TTAB. Thank you.

ps This is the first opportunity I have had today to forward this information.
Also, if this would impact the testimony periods I propose we discuss this directly.

Robert M. Schwartz
Registered Patent Attorney
Ruden McClosky Smith Schuster & Russell, P.A.
200 East Broward Boulevard
P.O. Box 1900
Fort Lauderdale, FL 33302
Direct Dial: 954-527-6252
Direct Fax: 954-333-4252
email: RMS@ruden.com

Schwartz, Robert

From: Cheryl Meide [cmeide@meidelaw.com]
Sent: Thursday, November 11, 2004 5:38 PM
To: Schwartz, Robert
Subject: RE: CUZCATLAN discovery

Dear Mr. Schwartz:

Thank you for your email. I will forward your email to my client and I will let you know their response. My condolences to your client.

Kind Regards,

Cheryl Meide, Esquire
Technology Law and Trademark Law

Meide Law Firm, P.A.
6622 Southpoint Drive South, Suite 150
Jacksonville, Florida 32216

Phone: 904-470-4110
Fax: 904-470-4102
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-----Original Message-----

From: Schwartz, Robert [mailto:Robert.Schwartz@ruden.com]
Sent: Thursday, November 11, 2004 4:55 PM
To: Cheryl Meide
Subject: CUZCATLAN discovery

Dear Ms. Meide,

Yesterday afternoon (Wednesday), I called my client in regards to our finishing up the pending discovery. In a return call to me later in the evening, George Contos advised me that his father had passed away last Saturday and that the funeral had been that day (Wednesday). In view thereof, it is most likely not going to be possible to meet the deadline we had previously agreed upon for furnishing discovery responses. I would appreciate your thoughts on this unforeseen turn of events. I asked George what he wanted to do. He indicated it is his intent to complete the discovery responses. I first ask you for an additional period of time. I propose two weeks. George indicated this should be possible. It is not his intent to delay these proceedings. Please advise your position. You may advise your client on my behalf that we would appreciate their understanding and cooperation. My alternative would be to request an extension from the TTAB.

Thank you.

ps This is the first opportunity I have had today to forward this information.

11/15/2004

Also, if this would impact the testimony periods I propose we discuss this directly.

Robert M. Schwartz
Registered Patent Attorney
Ruden McClosky Smith Schuster & Russell, P.A.
200 East Broward Boulevard
P.O. Box 1900
Fort Lauderdale, FL 33302
Direct Dial: 954-527-6252
Direct Fax: 954-333-4252
email: RMS@ruden.com

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Schwartz, Robert

From: Cheryl Meide [cmeide@meidelaw.com]
Sent: Monday, November 15, 2004 12:52 PM
To: Schwartz, Robert
Subject: RE: CUZCATLAN discovery

Dear Robert:

Thank you for your emails. I have not been able to successfully contact my client to see if they would be willing to modify the original extension agreement between the parties. Although I have not been able to contact my client regarding your request for an extension of the testimony periods, as you note it was expressly agreed between the parties that Registrant's discovery responses would not be due until after Registrant's receipt of Petitioners' discovery materials. Thus of course I cannot grant any request unless my client expressly tells me otherwise. To the extent I am able to contact my client and they are willing to provide any extensions I will let you know as soon as possible. Thank you.

Kind Regards,

Cheryl Meide, Esquire
Technology Law and Trademark Law

Meide Law Firm, P.A.
6622 Southpoint Drive South, Suite 150
Jacksonville, Florida 32216

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

From: Schwartz, Robert [mailto:Robert.Schwartz@ruden.com]
Sent: Monday, November 15, 2004 11:35 AM
To: Cheryl Meide
Subject: RE: CUZCATLAN discovery

Dear Cheryl,

In furtherance of my email sent earlier this morning (copy below), it appears that since I have not received responses from Registrant Cuzcatlan Beverages, Inc. it will be necessary to extend the close of Plaintiff's testimony period. I recognize our prior agreement in regards to the timing of receipt of said responses, however, in order to proceed with Plaintiff's testimony period, Plaintiff will need to review Registrant's said responses.

At this time, I roughly calculate not more than 30 more days to conclude discovery exchanges and therefore I propose a 30 day extension of the testimony and rebuttal periods. Please advise if this is acceptable and that I can stipulate to same, otherwise I intend to request the extension.

Thanks.

11/15/2004

Robert M. Schwartz

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

From: Schwartz, Robert
Sent: Monday, November 15, 2004 10:51 AM
To: 'Cheryl Meide'
Subject: RE: CUZCATLAN discovery

Dear Cheryl,
I have not heard back from you in regards to our request. I do appreciate your efforts. I shall be filing a motion today requesting an extension of time.
Robert M. Schwartz

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

From: Cheryl Meide [mailto:cmeide@meidelaw.com]
Sent: Thursday, November 11, 2004 5:38 PM
To: Schwartz, Robert
Subject: RE: CUZCATLAN discovery

Dear Mr. Schwartz:

Thank you for your email. I will forward your email to my client and I will let you know their response. My condolences to your client.

Kind Regards,

Cheryl Meide, Esquire
Technology Law and Trademark Law

Meide Law Firm, P.A.
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-----Original Message-----

From: Schwartz, Robert [mailto:Robert.Schwartz@ruden.com]
Sent: Thursday, November 11, 2004 4:55 PM
To: Cheryl Meide
Subject: CUZCATLAN discovery

Dear Ms. Meide,
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11/15/2004

the pending discovery. In a return call to me later in the evening, George Contos advised me that his father had passed away last Saturday and that the funeral had been that day (Wednesday). In view thereof, it is most likely not going to be possible to meet the deadline we had previously agreed upon for furnishing discovery responses. I would appreciate your thoughts on this unforeseen turn of events. I asked George what he wanted to do. He indicated it is his intent to complete the discovery responses. I first ask you for an additional period of time. I propose two weeks. George indicated this should be possible. It is not his intent to delay these proceedings. Please advise your position. You may advise your client on my behalf that we would appreciate their understanding and cooperation. My alternative would be to request an extension from the TTAB.

Thank you.

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Also, if this would impact the testimony periods I propose we discuss this directly.

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