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

<b>Proceeding</b>	92043017
<b>Party</b>	Defendant Cuzcatlan Beverages, Inc. Cuzcatlan Beverages, Inc. 13015 S.W 89 Place., No. 225 Miami, FL 33176
<b>Correspondence Address</b>	Cuzcatlan Beverages, Inc. 13015 S.W 89 Place., No. 225 Miami, FL 33176
<b>Submission</b>	Opposition/Response to Motion
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<b>Filer's e-mail</b>	cmeide@meidelaw.com
<b>Signature</b>	/Cheryl Meide/
<b>Date</b>	12/28/2004
<b>Attachments</b>	CBI.009 Registrant's Memorandum in Opposition To Petitioner's Second Motion To Extend Time.pdf ( 10 pages ) Memorandum Exhibit A.pdf ( 1 page ) Memorandum Exhibit B.pdf ( 2 pages ) Memorandum Exhibit C.pdf ( 1 page )

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

CBI.0101

REGISTRANT'S MEMORANDUM IN OPPOSITION TO PETITIONERS' SECOND  
MOTION TO EXTEND TIME FOR PETITIONERS TO  
RESPOND TO REGISTRANT'S DISCOVERY

This memorandum is submitted in opposition to Petitioners' Second Motion To Extend Time For Petitioners' To Respond to Registrant's Discovery ("Petitioners' Second Motion To Extend"). Petitioners' Motion should be denied as: (1) it is not based on good cause; (2) it fails to set forth with particularity the facts said to constitute good cause for the requested extension; (3) it is untimely; and (4) it is in direct conflict with Petitioners' express agreement that Petitioners' would not request any further extensions of time in connection with Registrant's Discovery Requests for any reason.

### THE FACTS

Registrant served Petitioners with its First Set of Interrogatories to Petitioners and First Set of Requests for Production of Documents and Things on September 23, 2004 ("Discovery Requests"). Four days prior to the due date of Petitioners' discovery responses, Petitioners' Counsel contacted Registrant's Counsel and requested a two-week extension of time to respond to the Discovery Requests because the father of one of the Petitioners' principals was admitted to the hospital in connection with an extended illness. Registrant has had past dealings with Petitioners unrelated to the proceeding at hand that made Registrant suspicious as to the legitimacy or sincerity of Petitioners' inability to provide timely discovery responses despite the unfortunate circumstances cited. Thus, in response to Petitioners' request for a two-week extension of time, Registrant provided Petitioners with a three-week extension of time to ensure an adequate period of time for Petitioners to provide discovery responses and to ensure adherence to the strict condition that Petitioners would not receive any further extensions in connection with the Discovery Requests for any reason. See Exhibit A. In response Petitioners, through its Counsel, expressly acknowledged and agreed to this strict condition via email correspondence. See Exhibit B.

Despite Petitioners' assurances that no further extensions would be requested for any reason, on November 11, 2004, four days prior to the new due date for Petitioner's discovery responses, Petitioners requested from Registrant another two-week extension to respond to the

outstanding Discovery Requests. Petitioners based their request upon the death of the same father who had the extended illness. At this time Petitioners noted that a two-week period would be sufficient time to respond to the outstanding Discovery Requests as expressed by the affected principal. See Exhibit C. Since Registrant did not provide consent to the second request for extension of the discovery response deadline, Petitioners filed Petitioners' Motion To Extend Time For Petitioners To Respond To Registrant's Discovery with the Board, requesting a thirty-day extension. While the Board has not ruled on Petitioners' Motion To Extend Time For Petitioners To Respond To Registrant's Discovery at this time, to the extent the Board were to grant such motion, Petitioners' second extended deadline to provide discovery responses would be November 15, 2004.

Again, despite Petitioners' express agreement and written assurance to Registrant that no further extensions would be requested for any reason, on November 15, 2004, the last day of Petitioners' requested extended deadline, Petitioners attempted to contact Registrant via telephone seeking a third extension. Petitioners did not reach Registrant as Registrant's Counsel had left the office for the day. Petitioners did not cite any specific reason via telephone for the third extension request from Registrant. Thus, on the very last day of Petitioner's requested extended deadline, eighty-four days after receiving the Discovery Requests, Petitioners filed Petitioners' Second Motion To Extend citing, for the first time, voluminous Discovery Requests.

### Argument

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

As cited by Petitioners, 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' Second Motion to Extend Time and failure to provide any responses to the Discovery Requests is not based on good cause. Petitioners claim that Petitioners need additional time to respond to Registrant's

Discovery Requests because of the voluminous Discovery Requests is simply an effort to further avoid providing timely responses to Registrant's Discovery Requests.

In response to Petitioners' first request for an additional two-week period of time to respond to the Discovery Requests and despite Registrant's extreme reservations given Petitioners' past conduct, in good faith Registrant provided Petitioners with a three-week extension of time in response to the two-week extension request. Registrant's enlargement of Petitioners' request ensured that Petitioners would have an adequate period of time to respond and to avoid any further extension requests. Petitioners agreed that a three week period of time was sufficient and agreed that no further extension requests would be requested for any reason.

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. Based on Registrant's three-week extension and Petitioners' subsequent second request for an extension of time in defiance of the parties' agreement, to date Petitioners have had three months to review the substance of and respond to Registrant's Discovery Requests. At no time during Petitioners' prior extension requests or discussions with Registrant regarding the Discovery Requests did Petitioner identify or cite the Discovery Requests as voluminous. Instead, Petitioners' affected principal stated to Registrant through Counsel on November 11, 2004, after having the Discovery Requests for seven weeks and after the cited death, that an additional fourteen days would be sufficient time to provide the discovery responses. See Exhibit B. Thirty-four days later, and on the last day of the assumed extended deadline, Petitioners are now requesting another thirty days to respond to the Discovery Requests. Petitioners' request is all of a sudden based solely upon "voluminous interrogatories and requests" even though the Discovery Requests are typical in number and type and Petitioners never noted any concern over the volume of the Discovery Requests for two and a half months after receiving the Discovery Requests.

Petitioners' claim that Registrant's Discovery Requests are voluminous two and a half months after receipt of such Discovery Requests and after Petitioners admitted that an additional two weeks, five weeks ago, would be sufficient time to respond to such Discovery Requests fails to show good cause sufficient to grant Petitioners' Second Motion to Extend.

2. Petitioner's Second Motion To Extend Time Fails to Set Forth with Particularity the Facts Said to Constitute Good Cause

A motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension; mere conclusory allegations lacking in factual detail are not sufficient. TBMP 509.01(a). *See e.g. Luemme, Inc. v. D.B. Plus, Inc.*, 53 USPQ2d 1758 (TTAB 1999). Petitioners' Second Motion to Extend merely cites as its good cause that "Petitioner needs additional time to respond because of the voluminous interrogatories and requests." Petitioner has simply identified the number of requests sought by Registrant as its factual basis. Petitioner has failed to show with particularity why Registrant's number of requests is voluminous. Registrant's requests of 41 Interrogatories and 69 document production requests are not atypical in a cancellation proceeding. Petitioner has failed to show why such requests would require additional time over and beyond the eighty-four days already provided for a response. Thus, Petitioners' Second Motion to Extend Time should fail as the motion fails to set forth with particularity the facts said to constitute good cause for the requested extension.

3. Petitioners' Second Motion to Extend Time is Untimely

Petitioners' Second Motion to Extend Time is untimely as it comes eight days prior to the end of Petitioners' Testimony Period, which closed on December 23, 2004. At the time of this memorandum, Petitioners' Testimony Period has expired, Petitioner has not taken any testimony or offered any other evidence and Petitioner has not timely filed any requests for extension of the Testimony Period. Petitioners' Second Motion to Extend Time thus is moot as Petitioner has failed to prosecute its case in this cancellation proceeding.

4. Petitioners' Motion to Extend Time Is In Direct Contravention Of Its Strict Agreement To Request No Further Extensions For Any Reason

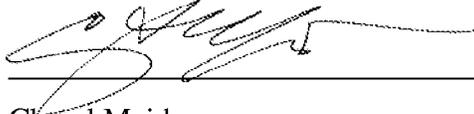
Registrant cooperated with Petitioners in good faith and provided more time than Petitioners originally requested to ensure that responses to the Discovery Requests would be provided as agreed. Registrant's good faith reliance and willingness to grant Petitioners' initial request strictly on the basis that no further extensions would be provided for any reason should not be ignored. To the extent Petitioners did not believe they could uphold such an agreement, Petitioners should not have misled Registrant and entered into such an agreement. Such agreement was made after Petitioners had knowledge of the circumstances in connection with an individual's long-standing illness and well after more than sufficient time had passed to assess any alleged voluminous aspects of the Discovery Requests.

Subsequent to such an agreement, Petitioners have requested not one, but multiple requests for extensions of time without even any reference or acknowledgement to Petitioners' earlier express written agreement. An extension granted by the Board would be in direct contradiction to the express agreement between the parties and would allow Petitioners to benefit from misleading Registrant.

CONCLUSION

Petitioners' motion to the Board to further extend time for Petitioners' to respond to the Discovery Request fails to show good cause, fails to set forth with particularity the facts said to constitute good cause for the requested extension, is untimely, and is in direct conflict with Petitioners' express agreement that Petitioners' would not request any further extensions of time in connection with Registrant's discovery requests for any reason. 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 28, 2004

Cheryl Meide  
Attorney for Registrant  
Florida Bar No. 0064173

Date

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CERTIFICATE OF SERVICE

I hereby certify that the foregoing Registrant's Memorandum In Opposition To Petitioners' Second Motion to Extend Time For Petitioners' To Respond To Registrant's Discovery was deposited with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to Robert M. Schwartz, Esquire, Ruden, McClosky, Smith, Schuster & Russell, P.A., 200 E. Broward Blvd., Fort Lauderdale, FL 33301 on the date set forth below.



December 28, 2004

Cheryl Meide  
Attorney for Registrant  
Florida Bar No. 0064173

Date

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Jacksonville, Florida 32216  
Phone: (904) 470-4110  
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EXHIBIT A

EXHIBIT B

EXHIBIT C

# Meide Law Firm, P.A.

Trademark and Technology Law

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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)

From: Schwartz, Robert [Robert.Schwartz@ruden.com]

Sent: Tuesday, October 26, 2004 8:50 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

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From: Schwartz, Robert [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.  
Also, if this would impact the testimony periods I propose we discuss this directly.

Robert M. Schwartz  
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