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Filing date: **03/28/2006**

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

Proceeding	92043152
Party	Plaintiff ARTURO SANTANA GALLEGO
Correspondence Address	M. CRIS ARMENTA THE ARMENTA LAW FIRM 233 WILSHIRE BLVD., SUITE 400 SANTA MONICA, CA 90401 UNITED STATES cris@crisarmenta.com
Submission	Other Motions/Papers
Filer's Name	M. Cris Armenta
Filer's e-mail	cris@crisarmenta.com
Signature	/s/ M. Cris Armenta
Date	03/28/2006
Attachments	Registrant's Consented Motion.pdf (3 pages) Email Thread A.1.pdf (2 pages) Email Thread A.2.pdf (2 pages)

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

ARTURO SANTANA GALLEGO)	Cancellation Nos.
)	92043152
Petitioner,)	92043160
)	92043175
v.)	(consolidated)
)	
SANTANA'S GRILL, INC.)	
)	
Registrant)	

REGISTRANT'S STIPULATED MOTION TO RE-SET TRIAL DATES

Petitioner, ARTURO SANTANA GALLEGO, hereby moves to extend the testimonial period and to re-set the trial dates, based on the following circumstances:

1. Petitioner's testimonial period is currently set to close on March 31, 2006;
2. Petitioner's counsel has carefully planned the testimony of the witnesses in cooperation with counsel for Registrant, Fred Berretta of Knobbe Martens LLP;
3. Petitioner's counsel and Registrant's counsel discussed and agreed on the location and time of the examinations, agreed on the use of interpreters from Spanish to English, agreed on certain items that would not require examination because of stipulations between counsel (i.e. that all use of the marks by all parties has been "in commerce"), agreed on witnesses that were unnecessary as a result of stipulations between counsel, and agreed on the contours and scope of cross-examination. Counsel also agreed to stipulate to take the rebuttal, direct and rebuttal testimony at the same time as direct testimony of certain specific witnesses, because Petitioner's witnesses are traveling some distance in order to testify. In addition and as part of the planning process, Petitioner's counsel agreed that Mr. Santana Gallego would travel from Mexico and provide oral testimony in the United States. Because of the differing

locations of the trial witnesses, counsel agreed that the testimony would all be presented in Palm Springs, California on March 30, 2006 and March 31, 2006.

4. Despite the advice and suggestion of both the Board and Magistrate Judge Ruben Brooks of the Southern District of California, until March 24, 2006, counsel for Registrant has refused to participate in any settlement proceedings, and has indicated that neither of the two principals of Santana's Grill, Inc. would voluntarily participate in any settlement discussions. However, on March 24, 2006, Petitioner's counsel and Registrant's counsel enjoyed a lengthy telephone conversation (approximately one hour) in which the dimensions of an appropriate settlement were discussed for the first time. Petitioner's counsel implored Registrant's counsel to discuss the issues with his client and to warn them of the exposure - of the possibility that the mark will be cancelled. Since the parties are related and Petitioner represents the father of Registrant's principal, Petitioner has an interest in this proceeding, but perhaps a greater interest in reuniting the family and realigning the parties to a position of family harmony.

5. On the morning of March 27, 2006, Petitioner's counsel received an email from Claudia Vallarta-Santana, one of the owners of Registrant, Santana's Grill, Inc. and the wife of Petitioner's son, Abelardo. In the email, Ms. Vallarta-Santana requested postponement of the Petitioner's planned testimony, and indicated that Mr. Berretta would no longer be representing Registrant.

6. After receipt of the email, counsel for Petitioner immediately contacted Frederick Berretta, counsel of record for Registrant. Mr. Berretta confirmed that he had been dismissed as counsel and had no further authority to perform any legal work whatsoever for Santana's Grill, Inc. Mr. Berretta confirmed that he would not attend the testimony on March 30 and March 31. Mr. Berretta was unable to provide the name of a new attorney. Mr. Berretta confirmed that his client was dissatisfied with his litigation style, in particular, the level of professional cooperation between counsel, which both counsel agreed are necessary aspects of litigation even when issues or positions are hotly in dispute. Mr. Berretta gave Petitioner's counsel permission to send a responsive email to Ms. Vallarta-Santana. Petitioner's counsel has not received any response to the email sent to Ms. Vallarta-Santana.

7. While Petitioner does not wish to extend the trial period, Petitioner acknowledges that Registrant appears to be

currently unrepresented, despite the fact that Mr. Berretta is still of record. Because Petitioner's witnesses must travel a great distance, including from Mexico, to testify, Petitioner does not wish to take testimony now only to have new counsel seek the re-open the testimony later or to pursue cross-examination. Petitioner believes that the best interests of all the parties will be served by restarting the testimonial period, to permit Registrant to engage new counsel and meaningfully participate in these proceedings.

8. In light of the anticipated change of counsel and to afford new counsel sufficient time to prepare for and understand this case, to briefly consider filing motions, and to explore the possibility of settlement, Petitioner suggests that the dates be re-set as follows:

Petitioner's Testimonial Period: May 1 - May 30
Registrant's Testimonial Period: June 15 - June 30

9. With the permission of counsel of record for Registrant, Fred Berretta, counsel for Petitioner has emailed with the principal of Santana's Grill, Inc., and has received the assent to the schedule set forth in Paragraph 8, and is making this Motion at her request.

Dated: March 28, 2006

Tel. No.: (310) 917-1026
 310) 488-2080

M. Cris Armenta
The Armenta Law Firm, APC
233 Wilshire Boulevard,
Fourth Floor
Santa Monica, CA 90401

Exhibit A: Email threads between Petitioner's Counsel and Claudia Vallarta-Santana

Cris Armenta

From: Cris Armenta [cris@crisarmenta.com]
Sent: Monday, March 27, 2006 11:12 AM
To: C SANTANA
Cc: George Finch; Frederick S. Berretta
Subject: Response to RE: DEPOSITIONS AND FRED BERRETA

Dear Mrs. Santana:

I can confirm that I received the email. I am sending this email to you only after receiving permission to do so from Mr. Berretta, your attorney of record over the telephone a few moments ago.

Unfortunately, I am without the ability to cancel the trial scheduled for later this week or to enter into any agreements with you at this time. At present, the trial will go forward this week.

The reason I cannot enter into any agreements is because: (1) you have an attorney that is of record in the matter; (2) corporations can generally not represent themselves, so any agreements between me need to be with either Mr. Berretta or your new attorney.

If you have already selected a new attorney, I will be happy to immediately speak on the telephone and attempt to work out an agreeable resolution, however, I cannot enter into any agreements with you or change the schedule unless it is by written stipulation with either Mr. Berretta or your future attorney. I

If you authorize Mr. Berretta to negotiate the issues or put me in touch with your new attorney to negotiate the issues (i.e, you request for a continuance or to re-schedule and certain other technical procedural issues), and we can reduce our procedural stipulations to writing, we might be agreeable to a continuance to get your new attorney enough time to become familiar with the case.

M. Cris Armenta
The Armenta Law Firm, P.C.
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-----Original Message-----

From: C SANTANA [mailto:csantana@santanas.com]
Sent: Monday, March 27, 2006 10:44 AM
To: cris@crisarmenta.com
Subject: DEPOSITIONS AND FRED BERRETA

Chris,

This email is to inform you that Fred Berretta will no longer be representing us in the case. The depositions scheduled for this Thursday and Friday (3-30-2006 and 3-31-2006) will have to be re-scheduled. My new

3/28/2006

lawyer will be contacting you by the end of this week, beginning of next one. Please reply that you got this email.

Thanks,

Claudia Santana
858-551-2033

Cris Armenta

From: C SANTANA [csantana@santanas.com]
Sent: Tuesday, March 28, 2006 8:24 AM
To: Cris Armenta
Subject: Re: DEPOSITIONS AND FRED BERRETA

Just check if it will be Ok, or at least 15 days in between.

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

From: "Cris Armenta" <cris@crisarmenta.com>
To: "C SANTANA" <csantana@santanas.com>
Sent: Tuesday, March 28, 2006 8:19 AM
Subject: Re: DEPOSITIONS AND FRED BERRETA

>i think the rules require a 30 day period between testimonial periods

>

>

> -----Original Message-----

>

> From: "C SANTANA" <csantana@santanas.com>
> Subj: Re: DEPOSITIONS AND FRED BERRETA
> Date: Tue Mar 28, 2006 8:10 am
> Size: 5K
> To: "Cris Armenta" <cris@crisarmenta.com>

>

> Mrs. Armenta,

>

> Thank you for your response, the new lawyer will be contacting you later
> in the week, meanwhile I would like to make a change to the Registrant's
> Testimonial Period to be from June 1 - June 30, 2006 instead of July
> 2006.

>

> Let me know if this works for you,

>

> Claudia Santana
> 858-551-2033

>

> From: Cris Armenta
> To: C SANTANA
> Cc: Frederick S. Berretta
> Sent: Tuesday, March 28, 2006 7:45 AM
> Subject: RE: DEPOSITIONS AND FRED BERRETA

>

>

> Dear Ms. Vallarta-Santana:

>

> Because I have not received any further response to my email yesterday
> and testimony is scheduled for later in the week, we will be filing an
> emergency motion to re-set the trial dates. The dates we will propose are
> as follows. We hope that the time extension will give your new attorney
> enough time to prepare for the testimony and file any motions necessary
> with the Board. If we do not hear a response by 10:00 a.m. today, we will
> assume that these dates are acceptable to Santana's Grill, Inc. and will
> file the emergency motion with the Board.

>

> Petitioner's Testimonial Period: May 1 - May 30
> Registrant's Testimonial Period: July 1 - July 30

>

> M. Cris Armenta
> The Armenta Law Firm, P.C.
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>

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> and Friday (3-30-2006 and 3-31-2006) will have to be re-scheduled. My new
> lawyer will be contacting you by the end of this week, beginning of next
> one. Please reply that you got this email.
>

> Thanks,

> Claudia Santana
> 858-551-2033
>
>

> M. Cris Armenta
>