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Filing date: **06/22/2007**

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

Proceeding	92045147
Party	Defendant Gay & Lesbian Yellow Pages, Inc. Gay & Lesbian Yellow Pages, Inc. Ste. 480 4200 Montrose Blvd. Houston, TX 77006
Correspondence Address	John S. Egbert EGBERT LAW OFFICES 412 MAIN ST., 7TH FLOOR HOUSTON, TX 77002 UNITED STATES mail@egbertlawoffices.com
Submission	Opposition/Response to Motion
Filer's Name	John S. Egbert
Filer's e-mail	mail@egbertlawoffices.com
Signature	/2178-1/
Date	06/22/2007
Attachments	2178-1 Response to Mtn to Ext Time.pdf (18 pages)(404559 bytes)

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

In the Matter of Trademark Registration No. 2,119,139
Registered on: December 9, 1997

METRO Q,

Petitioner,

v.

GAY & LESBIAN YELLOW PAGES, INC.,

Registrant.

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Cancellation No. 92045147

**REGISTRANT'S RESPONSE AND OPPOSITION TO
PETITIONER'S MOTION TO EXTEND DEADLINES**

GAY & LESBIAN YELLOW PAGES, INC. ("Registrant") hereby requests that METRO Q's ("Registrant") Motion to Extend Deadlines be denied. In support of its Response and Opposition, Applicant states as follows:

1. The above-captioned Cancellation proceeding was filed by Petitioner on November 8, 2005, more than one year and seven months ago. Since there has been more than ample enough time for Petitioner to discover any information required to prosecute its case, and due to the unnecessary delay of Petitioner described below, this proceeding should continue as scheduled in the interests of judicial economy and fairness to both parties.

2. On October 4, 2006, Egbert Law Offices filed an Appearance of Counsel and Power of Attorney to represent Registrant in this proceeding. Prior to that date, the parties had tried and failed on numerous occasions to reach a settlement.

3. On December 14, 2006, Registrant agreed to a Motion for Extension of Deadlines due to outstanding written discovery issues and because of the recent involvement of Egbert Law Offices in the proceeding.

4. Registrant had served its answers and responses to Petitioner's First Set of Discovery Requests on April 20, 2006. Petitioner served its answers and responses to Registrant's First Set of Discovery Requests on December 15, 2006. Registrant served its answers and responses to Petitioner's Second Set of Discovery Requests on December 28, 2006. As of December 28, 2006, there are no longer any outstanding written discovery issues remaining in this proceeding.

5. At the request of Petitioner's counsel, and more than two months before the discovery period was to end on March 28, 2007, Registrant submitted a proposed Settlement Agreement on January 17, 2007. The initial reception of the proposed agreement was positive by Petitioner's counsel, as can be seen in Mr. Kenneth Glaser's January 23, 2007 email. *See* [Ex. A, Mr. Glaser's January 23, 2007 email]. Egbert Law Offices sent a reminder email for the status of the Settlement Agreement on February 21, 2007. *See* [Ex. A, Mr. Craft's February 21, 2007 email].

6. More than four months later, on May 25, 2007, Petitioner's counsel explained that Petitioner would not accept the proposed agreement. Petitioner made one final settlement proposal on May 29, 2007, but Registrant rejected the proposal due to problems similar to those made before the current negotiations ever started. *See* [Ex. B, Mr. Wilson's June 13, 2007 email].

7. After a delay of more than four months that necessitated Petitioner to file an unstipulated motion to extend time on April 19, 2007, Petitioner is now asking the Board to further delay the proceeding to take discovery depositions of Registrant and other unnamed third parties.

8. The first contact from Petitioner requesting a discovery deposition of our client was via Mr. Glaser's June 9, 2007 email sent nine days before the discovery period was to close on June

18, 2007. *See* [Ex. C, Mr. Glaser's June 9, 2007 email]. The first contact from Petitioner requesting a deposition of third parties in this proceeding was in the current Motion to Extend Deadlines, filed the day the discovery period closed. Petitioner was afforded the opportunity to disclose any potential depositions when such information was specifically requested in Registrant's Interrogatory No. 21, but Petitioner chose not to do so. No supplemental answer to Interrogatory No. 21 was ever made by Petitioner. *See* [Ex. D, Response to Interrogatory No. 21].

9. Nonetheless, in the interests of avoiding any further unnecessary delay, Ms. Laura Villagran, representative for Registrant, has made herself available for a discovery deposition. *See* [Ex. B, Mr. Wilson's June 13, 2007 email]. Registrant will stipulate to the deposition outside of the discovery period as allowed by TBMP § 404.01. Any depositions of third party witnesses testifying willingly on behalf of the Petitioner can be taken during Petitioner's testimony period.

10. The interests of judicial economy, and fairness to both parties, are best served by keeping the current timetable for deadlines in this Cancellation proceeding. Therefore, Applicant respectfully requests that Petitioner's Motion to Extend Deadlines be denied in its entirety.

Respectfully Submitted,

June 22, 2007
Date

/s/2178-1/
John S. Egbert
Reg. No. 30,627
L. Jeremy Craft

EGBERT LAW OFFICES
412 Main St., 7th Floor
Houston, Texas 77002
Tel: (713)224-8080
Fax: (713)223-4873

ATTORNEYS FOR REGISTRANT

CERTIFICATE OF SERVICE

This is to certify that on this 22nd day of June 2007, a true and correct copy of the foregoing document is being sent by regular mail to the following attorney of record for the Petitioner:

Kenneth R. Glaser
Lisa R Hemphill
Gardere Wynne Sewell LLP
3000 Thanksgiving Tower
1601 Elm Street, Suite 3000
Dallas, Texas 72501-4761
Tel: 214-999-3000
Fax: 214-999-4667

ATTORNEYS FOR PETITIONER

 /2178-1/
John S. Egbert
Reg. No. 30,627
L. Jeremy Craft

EGBERT LAW OFFICES
412 Main St., 7th Floor
Houston, Texas 77002
Tel: (713)224-8080
Fax: (713)223-4873

ATTORNEYS FOR REGISTRANT

Exhibit A

Date: Wed, 21 Feb 2007 09:10:28 -0800 (PST)
From: "Jeremy Craft" <jcraft@egbertlawoffices.com>
Subject: RE: TM Cancellation for "GAY YELLOW PAGES"
To: "GLASER, KENNETH" <kglaser@gardere.com>

Ken,
Just checking on the status of the agreement.
Thanks,
Jeremy

"GLASER, KENNETH" <kglaser@gardere.com> wrote:

Thank you.

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

From: Jeremy Craft [mailto:jcraft@egbertlawoffices.com]
Sent: Monday, January 29, 2007 12:22 PM Central Standard Time
To: GLASER, KENNETH
Subject: RE: TM Cancellation for "GAY YELLOW PAGES"

Ken,

I spoke with Mr. Egbert about this and we have no problem with the addition you suggested. Feel free to propose any language additions you would like, keeping in mind our preference to not over-lawyer the agreement.

Jeremy

"GLASER, KENNETH" <kglaser@gardere.com> wrote:

Jeremy - I need your position on the matter discussed below. That obviously is a deal breaker. Please let me know.

From: GLASER, KENNETH
Sent: Tuesday, January 23, 2007 2:47 PM
To: 'Jeremy Craft'
Subject: RE: TM Cancellation for "GAY YELLOW PAGES"

Mr. Craft - I have only taken a quick look at this, and will need to send it to my client for review. However, the one thing that jumps out at me is that if your client is reserving the right to object to Gay Pages in print form, which I have no problem with, my client also needs to reserve its right to defend against those claims, including the right to contest your client's trademarks, if she decides to sue them. I assume you have no problem with that, but I want to get confirmation before I send to my client.

Kenneth R. Glaser
Gardere Wynne Sewell LLP
Suite 3000, Thanksgiving Tower
1601 Elm Street
Dallas, Texas 75201
(214) 999 - 4352
(214) 999 - 3352(fax)
kglaser@gardere.com

Exhibit B

YAHOO! SMALL BUSINESS

Print - Close Window

Subject: RE: Metro Q v. GLYP**Date:** Wed, 13 Jun 2007 11:19:57 -0500**From:** "GLASER, KENNETH" <kglaser@gardere.com>**To:** "Kevin Wilson" <kwilson@egbertlawoffices.com>, "Jeremy Craft" <jcraft@egbertlawoffices.com>

Counsel - I am disappointed in the way that your firm practices law. Since we voluntarily held up on discovery while we were discussing settlement to avoid both parties, including yours, incurring needless expense, the fact that you are now going to oppose the extension of the June 15 discovery deadline makes me wonder about your motives from the beginning. In any event, if that is the way you choose to practice, that is your choice. We will move the Board for an extension, and you can try to explain to them why you did what you did.

From: Kevin Wilson [mailto:kwilson@egbertlawoffices.com]**Sent:** Wednesday, June 13, 2007 10:48 AM**To:** GLASER, KENNETH**Subject:** RE: Metro Q v. GLYP

Dear Mr. Glaser:

I have contacted our client once more regarding your input, but at this time we believe the proceeding will continue. I will let you know if anything changes. We will oppose any motion for continuance in this case since discovery is complete. You have sent two sets of discovery, and we have sent the only set of discovery we will be serving. We will be happy to accommodate the deposition of Ms. Villagran at our offices. If you feel such a deposition is necessary, please send us dates the dates you are interested in coming down to Houston.

Sincerely,
Kevin Wilson

"GLASER, KENNETH" <kglaser@gardere.com> wrote:

Gentlemen - I just want to make certain before we transition into a different phase for this matter that the parties have definitively reached impasse, in principle, and that we are not just talking about semantics of a document. Therefore, let me state the fundamental principles that my draft settlement document was intended to capture :

1. My client will never object to your client's use and registration of any phrase using "Gay Yellow Pages" for whatever business your client chooses to engage in.
2. Conversely, your client will never object to my client's use and registration of any phrase using "Gay Pages" for whatever business my client chooses to engage in.
3. My client will never use the phrase Gay Yellow Pages as the title of

any business.

4. Conversely, your client will never use "Gay Pages" as the title of any business. (at least while one or the other is still around).

Now, my current understanding (or, misunderstanding if that is what it turns out to be) is that your client objects to paragraph 2. [As an aside, that is somewhat surprising in that there are a number of companies that use the "Gay Pages" phraseology, and your client has never objected - so why is it picking on our client?]

However, whatever it is, it is. I just need to make certain that we are indeed at impasse in principle. If so, we need to get on and finish discovery. We want to schedule your client's deposition sometime in June or July that accommodates everyone's schedule. Please give me alternate dates? We will obviously also need to extend the discovery deadline - what is your preference, 60 or 90 days? My paralegal will prepare a draft stipulated extension to send to you.

Looking forward to hearing from you.

Egbert Law Offices
State National Building
412 Main St., 7th Floor
Houston, TX 77002
Tel: (713) 224-8080 Ext. 212
Fax: (713) 223-4873

Exhibit C

YAHOO! SMALL BUSINESS

Print - Close Window

Subject: RE: Metro Q v. GLYP**Date:** Sat, 9 Jun 2007 13:36:19 -0500**From:** "GLASER, KENNETH" <kglaser@gardere.com>**To:** "Kevin Wilson" <kwilson@egbertlawoffices.com>, "Jeremy Craft" <jcraft@egbertlawoffices.com>

Gentlemen - I just want to make certain before we transition into a different phase for this matter that the parties have definitively reached impasse, in principle, and that we are not just talking about semantics of a document. Therefore, let me state the fundamental principles that my draft settlement document was intended to capture :

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3. My client will never use the phrase Gay Yellow Pages as the title of any business.

4. Conversely, your client will never use "Gay Pages" as the title of any business. (at least while one or the other is still around).

Now, my current understanding (or, misunderstanding if that is what it turns out to be) is that your client objects to paragraph 2. [As an aside, that is somewhat surprising in that there are a number of companies that use the "Gay Pages" phraseology, and your client has never objected - so why is it picking on our client?]

However, whatever it is, it is. I just need to make certain that we are indeed at impasse in principle. If so, we need to get on and finish discovery. We want to schedule your client's deposition sometime in June or July that accommodates everyone's schedule. Please give me alternate dates? We will obviously also need to extend the discovery deadline - what is your preference , 60 or 90 days? My paralegal will prepare a draft stipulated extension to send to you.

Looking forward to hearing from you.

Exhibit D

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

METRO Q MANAGEMENT, LLC
f/k/a METRO Q

Petitioner,

v.

GAY & LESBIAN YELLOW PAGES, INC.,

Respondent/Registrant.

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Cancellation No. 92045147
Registration No. 2,119,139

**PETITIONER'S RESPONSE TO REGISTRANT'S
FIRST SET OF INTERROGATORIES TO PETITIONER**

Petitioner, MetroQ Management, LLC, a limited liability company, f/k/a MetroQ, a Texas corporation ("MetroQ"), submits initial responses to the First Set of Interrogatories of Registrant Gay & Lesbian Yellow Pages, Inc. ("Registrant"), as follows:

I. GENERAL OBJECTIONS

1. MetroQ generally objects to each and every interrogatory to the extent that it seeks information protected by the attorney-client privilege, the work product doctrine, or other statutory or common law privileges.

2. MetroQ generally objects to each and every interrogatory to the extent that it imposes obligations beyond those required by 37 C.F.R. 2.120 and Rules 26 and 33 of the FEDERAL RULES OF CIVIL PROCEDURE.

3. MetroQ generally objects to the vagueness and breadth of the definition of the term "Petitioner" on the ground that such definition makes all interrogatories including such term overly broad, unduly burdensome, and calling for information not relevant to the subject matter of this action nor reasonably calculated to lead to the discovery of admissible evidence. Subject

to and without waiving the foregoing objections, MetroQ will construe the term "Petitioner" as meaning MetroQ Management, LLC, the named petitioner herein.

4. MetroQ generally objects to the vagueness and breadth of the definition of the term "GAY YELLOW PAGES" on the ground that such definition makes all interrogatories including such term vague and indefinite. Subject to and without waiving the foregoing objections, MetroQ will construe such term to mean the term itself.

5. MetroQ generally objects to the vagueness and breadth of the definition of the term "GAY PAGES" on the ground that such definition makes all interrogatories including such term vague and indefinite. Subject to and without waiving the foregoing objections, MetroQ will construe such term to mean the term itself.

6. MetroQ generally objects to each and every interrogatory to the extent that it calls for disclosure of confidential or proprietary business information of MetroQ until the entry of a suitable confidential information protective order agreed to by the parties and/or entered by the Board.

II. SPECIFIC OBJECTIONS AND RESPONSES

Subject to and without waiving the foregoing general objections, MetroQ makes the following specific objections and responses:

INTERROGATORIES

INTERROGATORY NO. 1:

Identify the Petitioner, including each officer and director, giving each person's or entity's full name, address, title and duties (if applicable) with respect to Petitioner.

ANSWER:

MetroQ specifically objects to this Interrogatory to the extent that it seeks the identification of every officer and director in that such request therefore calls for information neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence. Subject to and without waiving the foregoing objections, MetroQ identifies the following individual as the person in charge of MetroQ, and the person most knowledgeable regarding the day-to-day operations of Metro Q and the issues in this proceeding:

Michael Borschow, President and CEO
MetroQ Management, LLC
2020 Live Oak Street, 12th Floor
Dallas, Texas 75201

INTERROGATORY NO. 2:

Identify and describe each and every good or service sold, distributed and/or otherwise offered by Petitioner under the designation "GAY PAGES."

ANSWER:

MetroQ provides an online resource of business listings which identifies businesses that are welcoming and/or friendly to gay, lesbian, bisexual, and transgender consumers.

INTERROGATORY NO. 19:

List all other media, not already identified in Interrogatories Nos. 16, 17 and 18, where Petitioner has advertised each product or service under the term “GAY PAGES” and the dates thereof.

ANSWER:

Internet and telemarketing at least as early as the date the Petition was filed in this proceeding.

INTERROGATORY NO. 20:

Identify all arrangements and/or contracts Petitioner has with any third parties that are used in selling, distributing or offering products or services under the term “GAY PAGES.”

ANSWER:

MetroQ specifically objects to this Interrogatory as overly broad, unduly burdensome, and calling for information neither relevant to the subject matter of this proceeding nor reasonably calculated to lead to the discovery of admissible evidence.

INTERROGATORY NO. 21:

State the names, and the relationship to Petitioner, if any, of any witnesses, including, but not limited to, expert witnesses, Petitioner may or will use in this cancellation proceeding through direct examination, deposition, affidavit and/or declaration, and identify the topic(s) each such witness may or will provide testimony regarding.

ANSWER:

MetroQ specifically objects to this Interrogatory as seeking information protected by the work product doctrine.

Thus, Registrant's registration is inconsistent with MetroQ's equal right to use these terms.

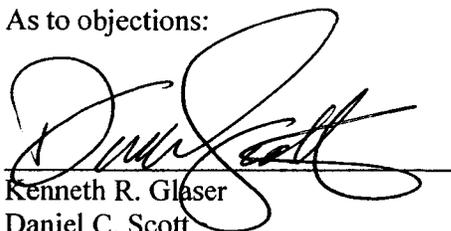
INTERROGATORY NO. 39:

Identify all persons who participated in any way in the preparation of the answers or responses to these interrogatories and state specifically, with reference to interrogatory numbers, the area of participation of each such person.

ANSWER:

Michael Borschow and counsel for MetroQ.

As to objections:



Kenneth R. Glaser

Daniel C. Scott

Lisa R. Hemphill

GARDERE WYNNE SEWELL LLP

3000 Thanksgiving Tower

1601 Elm Street, Suite 3000

Dallas, Texas 75201-4761

Tel: 214-999-3000

Fax: 214-999-4667



METRO Q MANAGEMENT, LLC

**ATTORNEYS FOR PETITIONER,
METRO Q MANAGEMENT, LLC
f/k/a METRO Q**

VERIFICATION

The undersigned declares that he is authorized by MetroQ Management, LLC (“MetroQ”) to sign the foregoing responses to interrogatories and adopts the foregoing responses as the responses of MetroQ. He has been informed and believes, and on that ground alleges, that the facts stated on MetroQ’s behalf are true and correct to the best of his knowledge.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 14th day of December, 2006.

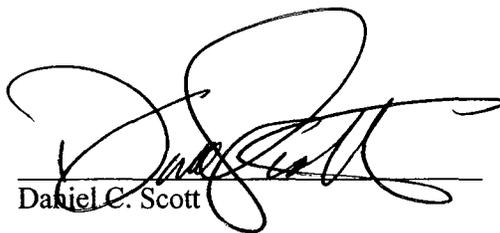


Michael Borschow

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing Petitioner’s Response to Registrant’s First Set of Interrogatories to Petitioner was served on Registrant’s counsel on this 15th day of December, 2006, via first class U.S. mail, postage prepaid, addressed as follows:

John S. Egbert
L. Jeremy Kraft
EGBERT LAW OFFICES
412 Main Street, 7th Floor
Houston, Texas 77002



Daniel C. Scott