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

Proceeding	92048118
Party	Defendant Select Export Corp. dba Trident
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Attachments	SEC.023 Opposition to Motion to Suspend Action For Cause.pdf (5 pages) (34642 bytes)

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

Jack Richeson & Co., Inc.,
Petitioner

v.

Select Export Corp. D/B/A Trident
Registrant

In the matter of
Trademark Registration No. 2,619,642
For the mark: TRIDENT (and design)
International Classes 9, 16, and 20

Cancellation No.: 92,048,118

REGISTRANT'S MEMORANDUM IN
OPPOSITION TO PETITIONER'S
MOTION TO SUSPEND ACTION FOR
CAUSE

SEC.0504

**REGISTRANT'S MEMORANDUM IN OPPOSITION TO PETITIONER'S MOTION
TO SUSPEND ACTION FOR CAUSE**

This memorandum is submitted in opposition to Petitioner's Motion to Suspend Action For Cause ("Petitioner's Motion"). Petitioner's Motion should be denied as Petitioner fails to show good cause for the requested suspension. Petitioner has failed to substantially evidence the need for any visa and has substantially delayed in initiating and acquiring proper visa requirements for its testimony witness.

FACTS

Petitioner's lead counsel, Paul Kruse, Esquire is extremely well versed with the rules of the USPTO. Mr. Kruse worked several years as an employee at the USPTO as a Trademark Attorney - Advisor.

On December 31, 2008 Petitioner filed a Motion for Summary Judgment. On September 30, 2009 the Board denied Petitioner's Motion for Summary Judgment. On October 21, 2009 Petitioner filed its present Motion to Suspend Action for Cause claiming that one of its testimony witnesses does not have a visa to travel to the United States for his testimony deposition during Petitioner's Testimony Period that closes December 2, 2009.

ARGUMENT

Petitioners' Motion Is Not Based On Good Cause

Pursuant to 37 CFR §2.117(c), the Board may grant a motion to suspend based on good cause. Petitioners' Motion fails to show any good cause as to why Petitioner should receive a suspension of this action. Petitioner has had more than sufficient time to ensure its witnesses have adequate visas for Petitioner's Testimony Period. Petitioner's delay in acquiring any such visa should not be rewarded with a suspension of this action to the detriment of Registrant.

Petitioner has failed to identify when any visa was applied for, the type of visa applied for, how long the visa will be valid, why Petitioner could not have started the application months ago, or evidence of how long it should take to receive a visa. The only general information that Petitioner has provided to the Board regarding a visa contradicts the information Petitioner provided to Registrant. Petitioner states in its motion that the visa will take several weeks to be issued. Yet Petitioner stated to Registrant via correspondence dated October 20, 2009 that it will take several months to get the visa issued. (See Petitioner's email attachment to its Motion to Suspend Action for Cause).

Petitioner's failure to see that its witnesses acquire the proper visa documentation was caused by nothing more than delay by Petitioner. Petitioner had every opportunity to acquire the proper documentation for its witness and Petitioner simply failed to do so. Petitioner's counsel is a seasoned former USPTO Trademark Attorney - Advisor that fully understands the consequences of failing to timely utilize testimony devices. The only information provided by Petitioner regarding visas is that a visa takes either many weeks or many months (again contradicting information was provided by Petitioner) to acquire a visa. Thus Petitioner's counsel knew it could not wait until the Board ruled on the outstanding motion for Summary Judgment to seek a visa for its witness.

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). Petitioner has failed to show any evidence that Mr. Domingos Zanocco is even trying to get a visa.

There is no evidence that a visa application has been filed on behalf of Domingos Zanocco. Petitioner should have submitted an application for a visa months before now since, as a seasoned former USPTO Trademark Attorney – Advisor, Petitioner's counsel also knows that Motions for Summary Judgment are seldom granted. Instead Petitioner is claiming that the Board's ruling on the Motion for Summary Judgment is not what Petitioner expected. A party to these proceedings must always be prepared to move forward when a ruling is not in their favor. Petitioner's counsel, as a former Trademark Attorney – Advisor for the USPTO, is well aware of this fact. Petitioner has failed to show that the request at hand is not necessitated by Petitioner's own lack of due diligence or unreasonable delay.

Petitioner has requested that Petitioner be able to unilaterally control the resumption of these proceedings based upon the issuance of Mr. Zanocco's visa when Petitioner has not even provided any evidence that Mr. Zanocco requires a visa or that Mr. Zanocco has *properly* applied for a United States visa. If Petitioner is granted its motion to suspend, Petitioner can indefinitely suspend these proceedings to the significant prejudice and detriment to Registrant, at minimum, by the non-application or improper application for a visa. For a number of reasons, Mr. Zanocco may simply never get a visa.

A delay in these proceedings will substantially prejudice Registrant as such proceedings were originally initiated by Petitioner for purposes of harassing Registrant to prevent Registrant's impending civil law suit against Petitioner. Such delay will also negatively affect business opportunities for Registrant. Such delay will also negatively affect Registrant as each day this case is delayed is another day that allows Petitioner to engage in continued infringement against Registrant including, without limitation, the dumping of counterfeit and trademark infringing merchandise that siphon profits away from Registrant. Petitioner should not be rewarded with such detrimental effects against Registrant because Petitioner failed to properly and timely acquire proper visa documentation.

In contrast to the significant prejudice and detriment to Registrant if Petitioner's motion is granted, Petitioner will not be prejudiced if Petitioner's motion is denied. Petitioner correctly notes that Mr. Zanocco can always be deposed on written questions pursuant to 37 C.F.R.

§2.124(d)(2) in lieu of an in person deposition. While Registrant would prefer that these proceedings not be suspended, Petitioner already has available an effective method for deposing Mr. Zanocco that will not indefinitely suspend action in these proceedings under 37 C.F.R. §2.124(d)(2) through depositions upon written questions. A suspension for depositions upon written questions may be granted merely to allow for the orderly and timely completion of the deposition. By contrast, Petitioner is requesting an indefinite suspension that is solely within the control of Petitioner without good cause because Petitioner has failed to timely acquire a visa for its witness. Petitioner should be required to use the available method for deposition upon written questions if Petitioner has not timely acquired a proper visa for its witness. Petitioner can depose Mr. Zanocco without a visa. Thus Petitioner has not shown good cause for its requested suspension

CONCLUSION

Petitioners' Motion should be denied as Petitioner has failed to show any facts said to constitute good cause for the requested extension. Accordingly, Registrant respectfully requests that the Board deny Petitioner's motion in its entirety and allow the proceedings to resume as originally set.

Respectfully submitted,



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November 9, 2009

Date

CERTIFICATE OF SERVICE

I hereby certify that the foregoing Registrant's Memorandum In Opposition To Petitioner's Motion to Suspend Action For Cause was provided via first class mail, postage prepaid, in an envelope addressed to Paul W. Kruse, Esq., Bone McAllester Norton PLLC, 511 Union Street, Suite 1600, Nashville, Tennessee, 37219 on the date set forth below.



November 9, 2009

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CERTIFICATE OF ESTTA SUBMISSION

Date of Deposit November 9, 2009

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.