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

Proceeding	92050966
Party	Plaintiff Atlas Flowers, Inc. d/b/a Golden Flowers
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Attachments	Response to Motion to Extend.pdf (6 pages)(80590 bytes)

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

In re Registration No. 3,074,073
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ATLAS FLOWERS, INC. d/b/a GOLDEN FLOWERS,	:
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Petitioner,	:
	:
- against -	:
	:
GOLDEN VISION FLOWER, INC.,	:
	:
Registrant.	:
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Cancellation No.: 92050966

PETITIONER’S OPPOSITION TO REGISTRANT’S MOTION TO ENLARGE TIME TO RESPOND TO MOTION FOR SUMMARY JUDGMENT

Petitioner Atlas Flowers, Inc., d/b/a Golden Flowers (“Petitioner”), responds to registrant Golden Vision Flower, Inc.’s (“Registrant”) Motion to Enlarge Time to Respond to Motion for Summary Judgment (DE 18):

1. Petitioner’s motion requests an open-ended extension for an unspecified period of time, until two events occur: (1) Registrant obtains a second translation of the depositions at issue based on audiotapes, and (2) Registrant “likely” brings a motion “directed to the validity of

the depositions” that is filed, fully briefed and determined. If granted, Registrant’s current motion to extend potentially could extend this proceeding by many months. There is no demonstrated need for granting such an open-ended extension.

2. Indeed, at this juncture it is no more than sheer speculation that there are any material problems with the translation. All that has occurred is an “initial review” (Motion, ¶ 3) of the audiotapes and a self-serving conclusion that it is “likely” (*Id.*) that a motion directed to the validity of the transcripts will be filed. Such speculative (not to mention unsupported) arguments simply do not justify the broad, open-ended extension of time contemplated by Registrant’s motion.

Registrant Has Had Sufficient Time To Obtain A Second Translation From The Audiotapes

3. Registrant indicates that it has received and delivered these audio tapes to a translation service, but provides no indication as to when such translation will be completed.

4. Petitioner’s counsel ordered copies of the audio-tapes at the same time as Registrant’s counsel: on June 15, 2010. Petitioner’s counsel received them the next day by overnight courier. There is every reason to believe that Registrant’s counsel received them at or about the same time. Thus Registrant has had the tapes for over a month.

5. The tapes at issue are quite short. The first deposition took a total of 2:39 hours and the second 1:51 hours, and this includes both the English and Mandarin Chinese portions. Thus the total deposition time with translator is only four-and-a-half hours. The translation of these documents could be completed in a day or two.

6. Registrant and its counsel have been well aware of the issue of translation for some time. On May 14, 2010 Registrant moved the Board for an order to preserve the audiotapes. In that motion, they charged that the deposition included “improper translations” that “related to central issues in this proceeding” and requested preservation of the audiotapes so that they could be “reviewed by an interpreter versed in commercial and business matters who can determine if the translations were proper.” (Registrant’s Motion 5/14/2010 To Preserve Audiotapes, ¶¶ 5,7)

7. Petitioner submits that Registrant has already had sufficient time – more than a month – to obtain a second translation of these audiotapes, if that were its intent. To the extent the Board is inclined to grant additional time, such should be for a specified and relatively short time, *e.g.*, two weeks.

Any Challenge To The Submitted Deposition Transcript Should Be In The Context Of Opposing The Summary Judgment Motion, Not A Separate Motion

8. The second part of Registrant’s motion seeks to delay briefing of the summary judgment motion until Registrant “likely” files a separate motion “directed to the validity of the depositions” *and* such motion is briefed and determined. That part of the motion should be denied.

9. First, there is no basis for making a separate motion. The translators who provided the initial translations (which were transcribed by the Court reporter) were professional translators provided by the deposition service. A review of the transcripts (submitted as Exhibits C and D to the Benschar Declaration on the summary judgment motion) reveals that they contain

a coherent, business-like exchange as one would expect at any deposition. There is no reason to believe that these transcripts will be struck in total from the motion.

10. Second, any translation is a matter of judgment, and the same statement in one language, given to two different translators, may well result in somewhat differing translations. That is simply the nature of the matter.

11. Third, the extension requested by Registrant would delay the proceedings by several months at least, and require two sets of motions to be determined.

12. Petitioner submits that for these reasons, any objection to the translation by Registrant should be made in the context of the pending Summary Judgment motion, and whether any issues of translation are material to the legal and factual bases of the motion. The materiality of any translation problems (which at this juncture are sheer speculation) can only be determined in the context of the summary judgment motion — the legal issues raised therein and the particular testimony relied upon by Petitioner in support of its motion.

13. Accordingly, Petitioner opposes that part of Registrant's motion which would extend Registrant's response time until after a separate motion is filed, briefed and determined. Registrant can include its objections to the deposition transcripts, if any, as part of any opposition to the summary judgment motion.

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X
X
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X

WHEREFORE Petitioner requests the Board deny the Motion to Enlarge Time, at least in its present form. To the extent the Board is inclined to grant an extension of time, this should be for a specific, limited time to allow the second translation to be completed. Any objections based on translation issues should thereafter be raised in the context of opposing the summary judgment motion.

Dated: July 22, 2010
New York, New York

Respectfully Submitted,

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Attorneys for Petitioner



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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing has been furnished via U.S. Mail and electronic mail on July 22, 2010 to Jeffrey S. Dawson, 56 Fourth Street, NW, Suite 100, Winter Haven Florida, 33881.

CERTIFICATE OF FILING

I HEREBY CERTIFY that the foregoing document is being filed with the Trademark Trial and Appeal Board through the ESTTA system on July 22, 2010.

Dated: New York, New York
July 22, 2010

KALOW & SPRINGUT LLP



By: _____

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