

ESTTA Tracking number: **ESTTA314407**

Filing date: **10/30/2009**

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

|                        |   |
|------------------------|---|
| Proceeding             | 92051532  |
| Party                  | Defendant<br>Juan B. Melendez III   |
| Correspondence Address | Juan B. Melendez III<br>2008 Grant Ave #1<br>Redondo Beach, CA 90278<br>UNITED STATES<br>DNShogun@gmail.com, juan@digitalninja.us, shogun@digitalninja.us |
| Submission             | Other Motions/Papers  |
| Filer's Name           | Juan Melendez   |
| Filer's e-mail         | DNShogun@gmail.com, juan@digitalninja.us, shogun@digitalninja.us  |
| Signature              | /Juan B. Melendez III/  |
| Date                   | 10/30/2009  |
| Attachments            | ext_RQST_103009.pdf ( 2 pages )(100844 bytes )  |



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**MOTION TO EXTEND TIME  
FOR ANSWER TO PETITION TO CANCEL**

**10/30/09**

Members of the Trademark Trial and Appeal Board,

Pursuant to rule 509.01(a) of the Trademark Trial and Appeal Board Manual of Procedure (TBMP), Juan B. Melendez III, owner of the Digital Ninja mark (Ser. No: 78938064) humbly requests an Motion to Extend Time to Answer the Petition to Cancel in Proceeding No. 92051532. This request is based on new information provided by the Petitioner's attorney, Katherine Klammer Madianos, a pending Request to Amend the mark (filed October 01, 2009, prior to this cancellation proceeding), and as the Defendant did not receive the Petition to Cancel from PictureCode LLC or its attorneys, until October 26, 2009. In the letter (**Prosecution History # 9, October 21, 2009 PAPER RECEIVED AT TTAB**), Petitioner knowingly delivered the Petition to Cancel in a "non -signature required" Federal Express Mail package to an inaccessible address and subsequently failed to report their findings until October 21, 2009, after the Defendant filed a Change in Correspondence. In the letter dated October 21, 2009, Katherine Klammer Madianos writes, "**On October 8, 2009 Petitioner's attorney became aware ... the October 1, 2009 Federal Express had not yet been delivered to Registrant...On October 9, 2009, Petitioner's attorney became aware that Registrant may no longer reside at 4280 Lindblade Drive, Apartment 104, Los Angeles, California 90066-5899.**" By the Petitioner's Attorney own admission, she filed a false Certificate of Correspondence on October 12, 2009 stating the Petition to Cancel had been delivered, solely to Juan B. Melendez III. According to the letter from the Paralegal, Millicent Canady, it states "**Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective**".

As described in the letter, the "non-signature required" Federal Express package, now in the Defendants possession, shows it was in fact deposited on Oct. 8<sup>th</sup> and subsequently delivered Oct. 9<sup>th</sup>, despite claiming this copy had been delivered and that the original "signature required" package was returned because "**Customer not available or business closed - Access is controlled by customer.**" Furthermore, the Petitioner's Attorney alleges in said letter, "**On October 1, 2009, Petitioner's attorney also deposited a copy of the Petition to Cancel with the US Postal Service for delivery by Express**

**Mail to Registrant's attorney, Thomas T. Chan, at the following address: P.O. Box 79159, Los Angeles, CA 90079-0159... This package arrived at such P.O. Box on October 5, 2009 and signed for by "T CHAN".** For clarification, Mr. Chan was in fact, my Attorney of Record at the time I entered my Request to Amend the Digital Ninja Trademark. My former attorney, Mr. Thomas T. Chan, asserts he never received a copy of the Petition to Cancel from the Petitioner's Attorney, Katherine Klammer Madianos. As stated in the **Prosecution History #5 10/05/09 PAPER RECEIVED AT TTAB**, a Certificate of Correspondence was recorded for the letter disputing the Request to Amend, yet there is no Certificate of Record for the Petition to Cancel as having been sent to Mr. Chan. Mr. Chan later requested an email of the Petition from the Petitioner's attorney. Juan B. Melendez III has since released Mr. Chan as his attorney, as he neglected to mention the forty day time limit to Answer and failed to update the address when he amended the Digital Ninja mark.

All is now in order as PictureCode's LLC's attorney states, after a search on the California Secretary of State's website, **"We now have reason to believe Registrant may reside at ... 2008 Grant Avenue, Apartment 1, Redondo Beach, CA 90278... the current address ... of Digital Ninja, LLC, a California limited liability company."** This is in fact, as noted in the Change of Correspondence and the California Secretary of State's website, the correct address. Although, for clarification purposes, the Petitioner's attorney writes, **"4280 Lindblade Drive, Apartment 104, Los Angeles, California 90066 is listed as the former address for such entity,"**- the Secretary of State website does not list the previous address of Digital Ninja LLC, as this information was updated on or around November 2008, and it does not state the address is an apartment. Due to the following circumstances, a Request to Amend being assessed, the Plaintiff failing to send the Petition to Cancel properly, and failing to notify the board, the Defendant, Juan B. Melendez III, owner of the Digital Ninja mark, Serial No: 78938064, respectfully requests an Extension for the Answer to begin from the date of receipt of the "non-signature required" Petition to Cancel (received October 26, 2009) and the Schedule of Proceedings be adjusted to reflect the new dates of the proceedings.

If you have any questions, please contact: Digital Ninja LLC, ATTN: Juan B. Melendez III, 2008 Grant Ave #1, Redondo Beach, CA 90278, 310-663-9632, [shogun@digitalninja.us](mailto:shogun@digitalninja.us)

Thank you for your time.  
Respectfully,

**/Juan B. Melendez III/**

Juan B. Melendez III

Presiding Member, Digital Ninja LLC

cc: Katherine Klammer Madianos, Esq., Kenneth G. Parker Esq., PictureCode LLC