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

Proceeding	92052260
Party	Defendant Edgar Alexander Barrera
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Submission	Other Motions/Papers
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Date	09/06/2011
Attachments	Motion.pdf (3 pages)(949433 bytes)

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

STEPHEN A. WESTLAKE,	)	
	)	
Petitioner,	)	Cancellation No. 92/052,260
	)	(Serial No. 77/378,015)
	)	
EDGAR ALEXANDER BARRERA	)	
	)	
Respondent.	)	

MOTION TO EXTEND TIME TO FILE INITIAL DISCLOSURES AND MOTION TO SECURE NEW LEGAL COUNSEL

Comes now the Respondent EDGAR ALEXANDER BARRERA and hereby submits a Motion to Extend Time to File Initial Disclosures and a Motion to Secure New Legal Counsel in the above-captioned Opposition proceeding.

1. Since this proceeding began in the spring of 2010, I have cooperated with attorney R. Emmett McAuliffe to the extent possible, given that my health was seriously impaired for most of this time. I was hospitalized for acute pancreatitis in September, 2010 and nearly died. Recovery from this condition typically takes a year or more. I have only been able to resume part of my normal work schedule within the last week, and am still in considerable pain. My medical problems have been fully documented for the court in several letters from my physician.

2. During my convalescence, the only service I requested from my attorney was to file for continuances based on my poor health. Most of the actual work was done by my physician, who wrote several letters to the court explaining my medical problems and gradual progress. All Mr. McAuliffe had to do was file for the continuances.

3. At all points in this case, either I or my associates have complied with Mr. McAuliffe's requests for documentation. This has not been much of an issue during my convalescence, for the simple reason that he has not made any such requests, aside from the physician letters.

4. The last communication I had from Mr. McAuliffe was a brief email on June 29 stating that the court had granted another continuance based on my health.

5. Neither I nor my business associates received any message from Mr. McAuliffe during the weeks immediately preceding his unexpected motion to withdraw. We were not kept apprised of whatever deadlines we would have to meet, or what kind of information we would need to provide.

6. Recognizing that we might have a deadline coming up, and not having heard anything from Mr. McAuliffe, I attempted to contact him by email Aug. 29, but received no reply until Sep. 1, when he left me a voice mail at 8 p.m. I was finally able to reach him by telephone on the afternoon of Sep. 2.

7. We had three telephone conversations on Sep. 2, totaling about an hour and 15 minutes. The last call was cut short when Mr. McAuliffe excused himself to deal with some other matter; he stated that he would call me back, but never did.

8. Despite the fact that Mr. McAuliffe didn't call me back Sep. 2, I had some hope we were making progress. I told him that my health had improved to the point where I could give testimony, and that I would like to move forward. We also spoke affirmatively about him representing me on other legal matters in the future, as well as continuing to have a good working relationship for years to come.

9. The next word I had from Mr. McAuliffe was a brief email on Labor Day stating that he was withdrawing from the case. I was never even given proper legal notification; rather, I had to go to the case filings on the TTAB Internet site to find Mr. McAuliffe's motion to withdraw. I was totally shocked, as this was contrary to everything he had earlier stated to me.

10. The general thrust of our Sep. 2 conversations was that Mr. McAuliffe was preparing me to participate in a conference call with the interlocutory attorney on Tuesday, Sep. 6. Despite the fact that we never finished – and left several issues unresolved – I had every reason to believe that Mr. McAuliffe was still going to be representing me this week.

11. Among the issues we discussed and left unresolved on Sep. 2 was whether to grant the plaintiff a licensing agreement. Mr. McAuliffe seemed to favor this approach, while I chose not to make any commitments until I had learned more. In any event, we left this and several other issues on the table when our final telephone conversation was interrupted.

12. The fact that Mr. McAuliffe never got back to me to continue our discussion gave me every reason to think he was still interested in having me as a client, and was simply taking off for the holiday weekend. I had no reason to expect that I would not be talking with him again after normal business resumed, much less that he would suddenly attempt to withdraw from the case.

13. At no point during our Sep. 2 conversations did I request Mr. McAuliffe ask the court for another medical continuance. However, after a year of convalescence – which, as I have noted, is quite typical for people suffering from pancreatitis – I need additional time to work with my attorney on preparing this case. I did not "vacillate" on this issue, as Mr. McAuliffe claims. I recognize the time has come to move forward. I also recognize that I am now the only person able to speak for our business. All of my closest associates are themselves dealing with various health problems – one had brain surgery during the last week of August. We are a small group of publishing

entrepreneurs. When one of us is incapacitated in any way, we all suffer.

14. Mr. McAuliffe's abrupt, unexpected, and unprofessional withdrawal from the case places us at a serious disadvantage. He has known all along about my health problems, yet has made no attempt to keep me apprised of any looming deadlines following the most recent continuance granted June 29.

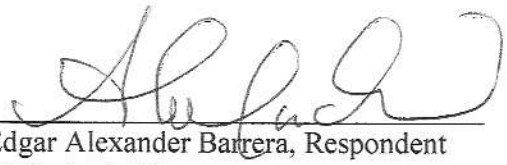
15. Mr. McAuliffe's motion to withdraw does not even allow me time to obtain other counsel. Therefore, I must respectfully make this request on my own behalf.

Respondent, under the circumstances, needs an extension of time and respectfully pleas upon this Court to grant him these Motions of not less than sixty days.

The interests of justice will be served if this continuance is granted.

WHEREFORE, Respondent respectfully seeks this Motion to Extend Time to File Initial Disclosures and a Motion to Secure New Legal Counsel based upon the foregoing reasons.

Certified and Respectfully submitted by:



Edgar Alexander Barrera, Respondent
10 Castania Ct.
St. Augustine, FL 32086

Telephone (386) 852-0012

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing instrument was placed in the United States Mail, postage prepaid, this 6th day of September, 2011, addressed to:

Mark Levy, 700 Security Mutual Bldg., 80 Exchange Street, Binghamton, NY 13902
and
Kevin Guyette, 19 Chenango St. #1101, Binghamton, NY 13901-2904
and

R. Emmett McAuliffe, Riezman Berger PC, 7700 Bonhomme, 7th Floor, St. Louis, MO 63105