

ESTTA Tracking number: **ESTTA580991**

Filing date: **01/09/2014**

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

Proceeding	92052901
Party	Plaintiff Whataburger Partnership
Correspondence Address	WILLIAM G BARBER PIRKEY BARBER LLP 600 CONGRESS AVENUE, SUITE 2120 AUSTIN, TX 78701 UNITED STATES wlarson@pirkeybarber.com, bbarber@pirkeybarber.com, eolson@pirkeybarber.com, tmcentral@pirkeybarber.com
Submission	Stipulated/Consent Motion to Extend
Filer's Name	Wendy C. Larson
Filer's e-mail	wlarson@pirkeybarber.com, bbarber@pirkeybarber.com, eolson@pirkeybarber.com, tmcentral@pirkeybarber.com
Signature	/WCL/
Date	01/09/2014
Attachments	Consented Motion to Extend (1-9-14) (WHAT008).pdf(13568 bytes)

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

WHATABURGER PARTNERSHIP,	§	
	§	
Petitioner,	§	
	§	
v.	§	Cancellation No. 92052901
	§	
WALA INDUSTRIES, INC.	§	
	§	
Registrant.	§	

PETITIONER’S CONSENTED MOTION TO EXTEND

The parties have been actively engaged in negotiations for the settlement of this matter. Petitioner¹ requests that the discovery and trial deadlines in this proceeding be extended for 60 days to allow the parties to complete discovery and prepare their cases for trial.

On June 20, 2013, July 12, 2013, and October 10, 2013, Petitioner filed a consented Motion to Extend all remaining deadlines and two Motions for Suspension, respectively. The Board granted the Motions on January 8, 2014, but required that any future requests include “(1) a detailed statement of issues that have been resolved and issues that remain to be resolved, and (2) a detailed and firm timetable for resolution.” Petitioner therefore files this consented motion to extend deadlines, and presents the following progress report.

1. Detailed statement of issues that have been resolved and issues that remain to be resolved

In this proceeding, Petitioner has relied upon its rights in its WHATA family of marks for various food items and related goods and services. On May 23, 2013, Petitioner communicated to Registrant that it had recently acquired registrations for WHAT A PIZZA! (Reg. No. 2066960) and WOW! WHAT A PIZZA! (Reg. No. 2066885), both covering “frozen pizza,” and intended

to rely on these rights as well in the proceeding. Petitioner stated that Registrant did not appear to be using the mark as depicted in the registration anymore, but was now using a different mark in its marketing materials. As a settlement proposal, Petitioner requested that Registrant cancel its registration, and in return, Petitioner would not challenge the use of that new mark.

Registrant sent its latest position and settlement proposal to Petitioner on January 6, 2014. In it, Registrant provided a counter-proposal to Petitioner's proposal, and takes the position that the validity of Petitioner's recently acquired registrations for WHAT A PIZZA! and WOW! WHAT A PIZZA! is "highly questionable" because Whataburger alleged in its petition to cancel those two marks that they had been abandoned. Registrant proposed in its settlement proposal of January 6 that Registrant would agree not to petition for cancellation of either Registration Number 2066960 or 20666885 and that Petitioner would dismiss the instant proceeding and pay legal fees to date incurred by Registrant in responding to cancellation proceeding number 9205901. Consequently, at this point, it appears the parties may be at an impasse. However, as Petitioner only received this communication a few days ago, it is reviewing the proposal with its counsel and is discussing next steps and strategy, particularly in light of its overall business objectives.

2. A detailed and firm timetable for resolution

Given the parties' current positions, we expect that the matter will either resolve in 60 days, or the parties will have nothing more to discuss and will proceed with the cancellation proceeding. We do not expect settlement discussions to continue beyond 60 days, and thus do not expect any further extensions would be necessary in this phase of the proceeding.

Upon the granting of this motion, the following time periods would apply:

¹ After the initiation of this proceeding, Petitioner Whataburger Partnership was converted to Tres Aguilas Enterprises LLC, a Texas limited liability company.

Expert Disclosure Due:	03/09/2014
Discovery Closes:	04/08/2014
Plaintiff's Pretrial Disclosures:	05/23/2014
Plaintiff's 30-day Trial Period Ends:	07/07/2014
Defendant's Pretrial Disclosures:	07/22/2014
Defendant's 30-day Trial Period Ends:	09/05/2014
Plaintiff's Rebuttal Disclosures:	09/20/2014
Plaintiff's 15-day Rebuttal Period Ends:	10/20/2014

Petitioner submits that good cause is shown and respectfully requests that the Board grant this motion. Petitioner has secured the express consent of all other parties to this proceeding for the suspension and resetting of dates requested herein. Specifically, Registrant's attorney communicated Registrant's consent to this request on January 9, 2014.

Respectfully submitted,

Dated: January 9, 2014

By: /Wendy C. Larson/
William G. Barber
Wendy C. Larson
PIRKEY BARBER PLLC
600 Congress Avenue, Suite 2120
Austin, Texas 78701
Telephone: (512) 322-5200
Telecopier: (512) 322-3201

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the **PETITIONER'S CONSENTED MOTION TO EXTEND** has been served via First Class Mail, postage prepaid to counsel for Registrant at the address below, on January 9, 2014:

William L. Chapin, Esq.
Law Offices of William L. Chapin
4540 Campus Drive, Suite 144
Newport Beach, CA 92660

/Wendy C. Larson/_____