

ESTTA Tracking number: **ESTTA563307**

Filing date: **10/04/2013**

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

Proceeding	92053298
Party	Defendant Kimberly Kearney
Correspondence Address	KIMBERLY KEARNEY HOLLYWOOD SOUTH LLC 17216 SATICOY STREET, SUITE 235 VAN NUYS, CA 91406 UNITED STATES kimk@hollywoodsouthproductions.com,production@hollywoodsouthproductions.com
Submission	Other Motions/Papers
Filer's Name	Kimberly Kearney
Filer's e-mail	kimk@hollywoodsouthproductions.com
Signature	/Kimberly Kearney/
Date	10/04/2013
Attachments	CORRECTED-Kearney Mtn for TRIAL SUSPENSION & EXTENSION.pdf(131638 bytes)

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

TYLER PERRY STUDIOS, LLC,
Petitioner,

Cancellation No. 92053298

v.

KIMBERLY KEARNEY,
Respondent

**RESPONDENT'S MOTION FOR EXTENSION AND/OR SUSPENSION
OF TRIAL PROCEEDING**

Respondent, Kimberly Kearney ("Kearney"), hereby files her Motion for Extension Of Time For Defendants Testimony Period, and in support thereof, states as follows:

1. It is my sincere desire to have this case resolved as soon as reasonably possible. This proceeding has been a complete nightmare to me professionally, financially, emotionally, and spiritually, and I want nothing more than to see it resolved. However, I cannot allow the petitioner, whom is using every effort to steal my creative work after I in good faith presented my mark to him prior to the filing of their application for the same mark, bully me out of my mark with their tactics of intimidation, or attempts to use their experience and superior knowledge of this legal process, to keep me from defending my mark. It is my sincere desire to exercise my legal right to subpoena all appropriate witnesses including the owner/Plaintiff, Tyler Perry of Tyler Perry Studios, to testify in this matter since he has relevant knowledge to this case, in addition to the other witnesses I intend to depose.

2. However, it has just been brought to my attention that the State of Georgia, where the majority of my witnesses, including Mr. Perry resides and works, has implemented guidelines that will require me to file a "miscellaneous action" in their courts in order to get a judge to approve the issuance of a subpoena for each of my witnesses that reside/work there.

Apparently, this is now required by all “pro se” parties, like myself, as the state of Georgia’s way of avoiding abuse of the subpoena process. So though I did in good faith secure a process server and a company to take the deposition of my witnesses as honestly stated in my previous request for an extension, I am now informed that I have to provide them with the subpoenas for them to serve, and that those subpoenas can only be signed by an attorney, who of course is considered an officer of the court, or a court clerk. Well as you are well aware, I do not have an attorney to help me in this matter who could sign the subpoenas as an officer of the court, and the court clerk’s office says they can not, and will not, sign off on a subpoena for a pro se’ party, until a judge has approved it. And the court clerk’s office then advised me that the only way for my request for the subpoenas to be considered by a judge, is for me to get in their system by filing a miscellaneous action. They say this is the ONLY WAY for me to get a judge to consideration for my subpoena requests, file a miscellaneous action against each and every individual witness. This is UNBELIEVABLE. I thought for sure the clerk’s office was mistaken, so I even had an associate contact their office to see if they would get the same answer, and they even got an email reply from a supervisor regarding this policy, and that it is true.

3. I am in total shock and disbelief, at the disadvantage that puts me in yet again as a pro se’ party in this case, as I am doing everything humanly possible to defend my right to use a mark which I already own, shared with the petitioner in good faith, and that was granted me, and rightfully so, by the USPTO in the first place. It’s like a never-ending nightmare! But I will not give up, and I know this is only a test of my faith. So I am prepared to move forward to file such actions to initiate the steps to get a judge to grant my subpoenas so I can move forward with my depositions, and testimony, and finally get resolution in this matter. When I inquired with the clerk’s office, as to how long this process could take, to get a judge to review my actions to

secure the subpoenas, I was told it could take a month, or even 6 months, they just could not give an exact time frame, because it has to go through various different departments, before it gets back to the clerk's office with a decision, and it depends on how backlogged they are on the court's docket.

4. Fearing that this delay could jeopardize my ability to defend my case, and me the new Testimony Period deadline. I immediately tried contacting numerous attorneys licensed in Georgia to see if I could just pay one to sign and issue the subpoenas on my behalf, as attorneys are allowed to do, being considered officers of the court. To me this would have simplified and expedited the process, and allowed me to meet the existing Testimony Period deadline. However, not one single attorney I spoke with, would consent to doing so, because they say they cannot authorize a subpoena without extensively reviewing the entire case, and that even if they felt the subpoenas were justified, they automatically would be considered my counsel in the matter, just by filing the subpoenas on my behalf, which would also subject them to various liabilities that they were not willing to take on, unless I fully retained them as my attorney. So I am back to square one, again a huge disadvantage, because I don't have means to secure an attorney to fight this lawsuit, a case that should not have been filed in the first place, if the petitioner had one ounce of integrity.

So I have no choice but to beg the Board to PLEASE either extend this case until I can secure the subpoenas under the approval of a judge in the Georgia court or to suspend the case, until the subpoenas have been secured, whichever it deems appropriate. Failure to do so would prevent me from being able to defend my mark as the law allows. Below is the contact information for the courthouse supervisor who verified what the court clerk's offices stated as to their procedure in pro se' cases so you can verify that what I am saying is honest and true. She said that since

this is not a case in their district, but only with the trademark office, I have to file a miscellaneous case just to get into their system, so my requests for subpoenas can be considered.

Please see the following statement from an email she sent, and you are more than welcome to contact her office to verify this policy...

“Regarding the issuance of subpoenas by our Court to pro se litigants. He confirmed that in our Court a miscellaneous action must be established and a motion filed requesting the issuance of subpoenas to a pro se litigant when a case is pending in another district. This is the standard policy in our Court. Thank you.

Kathy Farmer | Financial Administrator
United States District Court | NDGA
Atlanta, Georgia | 404.215.1630
Kathy_farmer@gand.uscourts.gov

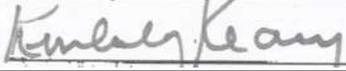
5. Additionally, I will continue to see if I can raise money from other resources, donations, friends, etc. to see if I can find a way to secure an attorney to file the subpoenas to try and expedite this process, so this case can move forward and be resolved. But since that is not guaranteed, I can only depend on the option given by the clerk's office, to file a miscellaneous case for each witness, and pay the filing fee of \$46/each, which is exactly what I intend to do.

6. Again, I assure you that this motion is not being filed for purposes of delay, as I am SO very eager to have this issue resolved. It has been one of the most horrific, stressful, and taxing experiences of my entire life. I want it to be over, hoped that the Petitioner would follow up in regards to my offer to settle the matter, or consider my offer to even share the mark under a restrictive use, which they have not followed up to this date, though

their email to me stated that they were considering my offer to share the mark under restrictive use, which I think was probably another tactic to mislead me and give me false hope that they wanted to work this matter out peacefully and amicably. Note that most people would never consider sharing something they already own 100% as I do this trademark, and rightfully so, with someone who is tryin to steal it from them. But yet I still offered to share MY mark with them at NO COST whatsoever, NOT ONE DIME, from the Plaintiff, as my humble attempt of showing good faith, and that it was my sincere desire to resolve this matter once and for all. But in lieu of their response accepting my offer or a counter offer, I have no choice but to continue to do everything in my power to defend my mark in spite of my limited resources and lack of legal experience, or representation. Until this matter is resolved, I can only continue to rightfully and lawfully use my trademark, and pray for resolution in the very near future.

7. Please be advised, I will suffer great prejudice should this extension be denied, whereas Petitioner will not suffer any prejudice from a grant of this requested extension and/or suspension.

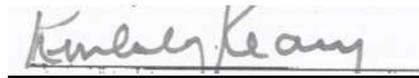
Respectfully submitted,



Kimberly Kearney

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and correct copy of the foregoing was served via mail upon Petitioner's Attorney, Victor K. Sapphire, Connolly, Bove, Lodge & Hutz, LLP, 333 S. Grand Ave., Suite 2300, Los Angeles, CA 90071, and via email at: victor.sapphire@novakdruce.com, trademarks@cblh.com, vsapphire@cblh.com, epriksker@cblh.com, and via mail to this _4th_ day of __October__, 2013

A handwritten signature in cursive script that reads "Kimberly Kearney". The signature is written in black ink on a light-colored background.

Kimberly Kearney