

ESTTA Tracking number: **ESTTA423559**

Filing date: **08/05/2011**

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

Proceeding	92053945
Party	Plaintiff Darlington Apple Festival, Inc.
Correspondence Address	JAMES K CALCUTT DARLINGTON APPLE FESTIVAL INC 1211 MAIN STREET DARLINGTON, MD 21034 UNITED STATES
Submission	Other Motions/Papers
Filer's Name	Hara K. Jacobs
Filer's e-mail	jacobsh@ballardspahr.com, sternam@ballardspahr.com
Signature	/Hara K Jacobs/
Date	08/05/2011
Attachments	Darlington.pdf ( 15 pages )(186782 bytes )

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

DARLINGTON APPLE FESTIVAL INC.,	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92053945
	:	
STEPHEN SMITH,	:	
	:	
Registrant.	:	

**PETITIONER’S OPPOSITION TO REGISTRANT’S MOTION  
FOR AN EXTENSION OF TIME WITH ALLEGED “CONSENT”**

Petitioner opposes Registrant’s “Motion for an Extension of Time with Consent” because, as demonstrated by the attached emails, Petitioner did not consent to a 60 day extension of all deadlines in this matter and, in fact, explicitly advised Registrant that it would not consent to such an extension. Registrant’s filing of his motion is entirely consistent with Registrant’s pattern of fraudulent conduct that has required Petitioner to seek cancellation of the supplemental trademark registration that Registrant fraudulently obtained of the Petitioner’s distinctive mark.

On August 3, 2011, Registrant’s counsel, Maryam Namazie of Ray Abhyanker P.C., e-mailed Petitioner’s counsel, Hara K. Jacobs, Esq., seeking a thirty (30) day extension of time for the parties to exchange Initial Disclosures. (Ms. Namzie e-mail to H. Jacobs dated August 3, 2011, Exh. A.) On August 4, 2011, Petitioner’s counsel e-mailed Ms. Namzie and advised her that Petitioner would agree to a thirty (30) day extension of time for the parties to exchange Initial Disclosures but that Petitioner would not agree to extend any other deadlines. (E-mail from H. Jacobs to M. Namazie dated August 4, 2011, Exh. B.) Petitioner’s counsel offered to file the consent motion with the TTAB in light Ms. Namzie’s statement that her firm intended to withdraw as counsel for Registrant. (Id.)

As Petitioner's counsel was preparing the consent motion, it received Mr. Smith's filing purporting to seek a 60 day extension of time to Answer the Petition to Cancel and extend all other deadlines. Mr. Smith, who filed his Answer to the Petition to Cancel on June 7, 2011, had no basis to seek an extension of the time to answer and no basis to seek a sixty (60) day extension of any deadline. Petitioner's counsel immediately e-mailed Ms. Namazie and requested that Mr. Smith's filing be immediately withdrawn. (E-mails between H. Jacobs and M. Namazie dated August 4, 2011, Exh. C.) Ms. Namazie responded by explaining that she had previously instructed Mr. Smith that Petitioner had granted only a thirty (30) days extension of time to exchange Initial Disclosures and that Petitioner would not agree to extend any other deadlines. (Id.) In a subsequent e-mail forty minutes later, Ms. Namazie advised Petitioner's counsel that her firm had withdrawn Power of Attorney and that Mr. Smith, "Acted on his volition and disregarded our email containing your explicit request." (Id.)

Petitioner's motion on "consent" is indisputably false and should be stricken from the record. The attached e-mail exchange proves that Registrant never had consent to file a sixty (60) day extension of any deadline and the only consent that existed was for an extension solely of the Initial Disclosures deadline. Indeed, Registrant's counsel has confirmed that Mr. Smith had no authority to file the consent motion and that Mr. Smith expressly disregarded his own counsel's e-mail instructing him about the specific parameters of the consented extension. Accordingly, Petitioner respectfully requests that the Board reinstitute the original deadlines from the Board's initial scheduling order for this matter as set forth below, except provide that the parties have an additional thirty (30) days – until September 6, 2011 to exchange Initial Disclosures.

Initial Disclosures Due	9/6/2011
Expert Disclosures Due	12/4/2011
Discovery Closes	1/3/2012
Plaintiff's Pretrial Disclosures	2/17/2012
Plaintiff's 30-day Trial Period Ends	4/2/2012
Defendant's Pretrial Disclosures	4/17/2012
Defendant's 30-day Trial Period Ends	6/1/2012
Plaintiff's Rebuttal Disclosures	6/16/2012
Plaintiff's 15-day Rebuttal Period Ends	7/16/2012

Dated: August 5, 2011

Respectfully submitted,

/Hara K. Jacobs/

Hara K. Jacobs

Andrew M. Stern

Ballard Spahr LLP

1735 Market Street, 51<sup>st</sup> Floor

Philadelphia, PA 19103-7599

Telephone: 215-665-8500

E-mail: jacobsh@ballardspahr.com

E-mail: sternam@ballardspahr.com

Counsel for Petitioner, Darlington  
Apple Festival Inc.



# EXHIBIT A

**Jacobs, Hara K. (Phila)**

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**From:** Maryam Nemazie [maryam@rajpatent.com]  
**Sent:** Wednesday, August 03, 2011 5:58 PM  
**To:** Jacobs, Hara K. (Phila)  
**Subject:** Opposition No. 92053945- The Darlington Apple Festival

Dear Ms. Jacobs:

I just left you a voice mail. Our client, Mr. Stephen Smith, has not retained our services as of yet. He would like additional time to consider his legal options. He has asked me to file an extension of time, as initial disclosures are on August 5 or 6, 2011.

I just spoke with your client Mr. Calcutt and he informed me that you will be the attorney for this proceeding. I wanted to ask if you also would need an extension of time and if we have your consent? If not, I will file the extension of time without your consent. I understand that you are 3 hours ahead and may have left for the day. As such, I will wait until tomorrow at noon PST for your response. If I do not hear from you, I will file for the extension of time without your consent.

Thank you very much for your time and I look forward to receiving your response.

~Best Wishes,

Maryam

--

**Maryam Nemazie**  
*Associate Attorney*

**RAJ ABHYANKER PC**  
*Professional Law Corporation*

1580 W. El Camino Real  
Mountain View, CA 94040  
Office: + 1 650 965 8731  
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[www.rajpatent.com](http://www.rajpatent.com)

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8/4/2011

# **EXHIBIT B**

**Jacobs, Hara K. (Phila)**

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**From:** Jacobs, Hara K. (Phila)  
**Sent:** Thursday, August 04, 2011 11:25 AM  
**To:** 'Maryam Nemazie'  
**Cc:** Stern, Andrew M. (Phila)  
**Subject:** RE: Opposition No. 92053945- The Darlington Apple Festival  
Maryam,

We will consent to a 30 day extension of the deadline for the parties to exchange initial disclosures only. To be clear, we are not consenting to an extension of any other deadline in the governing scheduling order. Please let us know if we should file the extension on behalf of the parties given that your firm is withdrawing as counsel.

Further, please be advised that given the nature of the allegations in this matter, that you should of course retain all documents pertaining to your firm's work on behalf of Mr. Smith in connection with the registration of the mark THE DARLINGTON APPLE FESTIVAL that is the subject of this cancellation proceeding.

If you have any questions, do not hesitate to contact me.

Regards,

Hara

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**Hara K. Jacobs**  
Ballard Spahr LLP  
1735 Market Street  
51st Floor  
Philadelphia, PA 19103-7599  
Direct: 215.864.8209  
Fax: 215.864.8999  
[jacobsh@ballardspahr.com](mailto:jacobsh@ballardspahr.com) | [www.ballardspahr.com](http://www.ballardspahr.com)

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**From:** Maryam Nemazie [<mailto:maryam@rajpatent.com>]  
**Sent:** Wednesday, August 03, 2011 10:27 PM  
**To:** Jacobs, Hara K. (Phila)  
**Subject:** Re: Opposition No. 92053945- The Darlington Apple Festival

Dear Ms. Jacobs:

I just spoke with our client. He has decided not to retain our law firm. However, he may decide to proceed either pro se or retain another attorney. He also would like to file an extension of time. Would he have your consent?

As Mr. Smith has not retained our firm, we are withdrawing power of attorney at this time.

Please let me know if you have any further questions or concerns.

8/4/2011

~Best Wishes,

Maryam

On Wed, Aug 3, 2011 at 2:57 PM, Maryam Nemazie <[maryam@rajpatent.com](mailto:maryam@rajpatent.com)> wrote:

Dear Ms. Jacobs:

I just left you a voice mail. Our client, Mr. Stephen Smith, has not retained our services as of yet. He would like additional time to consider his legal options. He has asked me to file an extension of time, as initial disclosures are on August 5 or 6, 2011.

I just spoke with your client Mr. Calcutt and he informed me that you will be the attorney for this proceeding. I wanted to ask if you also would need an extension of time and if we have your consent? If not, I will file the extension of time without your consent. I understand that you are 3 hours ahead and may have left for the day. As such, I will wait until tomorrow at noon PST for your response. If I do not hear from you, I will file for the extension of time without your consent.

Thank you very much for your time and I look forward to receiving your response.

~Best Wishes,

Maryam

--

**Maryam Nemazie**

*Associate Attorney*

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--

**Maryam Nemazie**

8/4/2011

*Associate Attorney*

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Mountain View, CA 94040  
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8/4/2011

# EXHIBIT C

**Stern, Andrew M. (Phila)**

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**From:** Maryam Nemazie [maryam@rajpatent.com]  
**Sent:** Thursday, August 04, 2011 5:11 PM  
**To:** Jacobs, Hara K. (Phila)  
**Cc:** Stern, Andrew M. (Phila)  
**Subject:** Re: FW: ESTTA. Stipulated/Consent Motion. confirmation receipt ID: ESTTA423475

Dear Hara:

We have withdrawn power of attorney. You should receive a copy of our withdrawal in the mail in the next few days.

Mr. Smith acted on his volition and disregarded our email containing your explicit request.

Thank you for your time.

~Best Wishes,

Maryam

On Thu, Aug 4, 2011 at 1:29 PM, Maryam Nemazie <maryam@rajpatent.com> wrote:

Dear Hara:

I emailed Mr. Smith explicitly telling him that you only consent to a 30 day extension for the initial disclosure ONLY. I will forward this message to him.

~Best Wishes,

Maryam

On Thu, Aug 4, 2011 at 1:14 PM, Jacobs, Hara K. (Phila) <JacobsH@ballardspahr.com> wrote:

Maryam,

Your client's filing below is false, unethical and deeply troubling. How could Mr. Smith possibly file a motion on consent for an extension that we explicitly refused to provide? We request that Mr. Smith immediately withdraw his filing. If his filing is not withdrawn by close of business today, we will file an opposition tomorrow.

I look forward to hearing from you.

Regards,

Hara

---

Hara K. Jacobs  
Ballard Spahr LLP

1735 Market Street  
51st Floor  
Philadelphia, PA 19103-7599  
Direct: 215.864.8209  
Fax: 215.864.8999  
[jacobsh@ballardspahr.com](mailto:jacobsh@ballardspahr.com) | [www.ballardspahr.com](http://www.ballardspahr.com)

-----Original Message-----

From: [estta-server@uspto.gov](mailto:estta-server@uspto.gov) [mailto:[estta-server@uspto.gov](mailto:estta-server@uspto.gov)]  
Sent: Thursday, August 04, 2011 4:07 PM  
To: [stephenhque@gmail.com](mailto:stephenhque@gmail.com); Jacobs, Hara K. (Phila)  
Subject: ESTTA. Stipulated/Consent Motion. confirmation receipt ID: ESTTA423475

Stipulated/Consent Motion.

Tracking No: ESTTA423475

#### ELECTRONIC SYSTEM FOR TRADEMARK TRIALS AND APPEALS Filing Receipt

We have received your Stipulated/Consent Motion. submitted through the Trademark Trial and Appeal Board's ESTTA electronic filing system. This is the only receipt which will be sent for this paper. If the Board later determines that your submission is inappropriate and should not have been accepted through ESTTA, you will receive notification and appropriate action will be taken.

Please note:

Unless your submission fails to meet the minimum legal requirements for filing, the Board will not cancel the filing or refund any fee paid.

If you have a technical question, comment or concern about your ESTTA submission, call 571-272-8500 during business hours or e-mail at [estta@uspto.gov](mailto:estta@uspto.gov).

The status of any Board proceeding may be checked using TTABVUE which is available at <http://ttabvue.uspto.gov> Complete information on Board proceedings is not available through the TESS or TARR databases. Please allow a minimum of 2 business days for TTABVUE to be updated with information on your submission.

The Board will consider and take appropriate action on your filing in due course.

Printable version of your request is attached to this e-mail

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ESTTA server at <http://estta.uspto.gov>

ESTTA Tracking number: ESTTA423475

Filing date: 08/04/2011

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

Proceeding : 92053945  
Applicant : Stephen Smith  
Other Party:Plaintiff  
Darlington Apple Festival, Inc.

Motion for an Extension of Answer or Discovery or Trial Periods With Consent

The Defendant's Time to Answer is currently set to close on 08/04/2011. Stephen Smith requests that such date be extended for 60 days, or until 10/03/2011, and that all subsequent dates be reset accordingly.

Time to Answer :10/03/2011

Deadline for Discovery Conference :11/02/2011 Discovery Opens :11/02/2011 Initial Disclosures Due :12/02/2011 Expert Disclosure Due :03/31/2012 Discovery Closes :04/30/2012 Plaintiff's Pretrial Disclosures :06/14/2012 Plaintiff's 30-day Trial Period Ends :07/29/2012 Defendant's Pretrial Disclosures :08/13/2012 Defendant's 30-day Trial Period Ends :09/27/2012 Plaintiff's Rebuttal Disclosures :10/12/2012 Plaintiff's 15-day Rebuttal Period Ends :11/11/2012

The grounds for this request are as follows:  
Want to prepare to answer.

Stephen Smith has secured the express consent of all parties to this proceeding for the extension and resetting of dates requested herein.

Stephen Smith has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address of record by First Class Mail on this date.

Respectfully submitted,  
/stephen smith/  
stephen smith  
[stephenhque@gmail.com](mailto:stephenhque@gmail.com)  
[jacobsh@ballardspahr.com](mailto:jacobsh@ballardspahr.com)  
08/04/2011

--

**Maryam Nemazie**  
Associate Attorney

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