ESTTA Tracking number: **ESTTA438146**
Filing date: **10/27/2011**

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

Proceeding	92054485
Party	Plaintiff Brown Mechanic Inc.
Correspondence Address	DEBORAH A GUBERNICK CALL & JENSEN 610 NEWPORT CENTER DRIVE, SUITE 700 NEWPORT BEACH, CA 92660 UNITED STATES dgubernick@calljensen.com
Submission	Other Motions/Papers
Filer's Name	Deborah A. Gubernick
Filer's e-mail	dgubernick@calljensen.com, lashe@calljensen.com, tempuser@calljensen.com
Signature	/dag/
Date	10/27/2011
Attachments	Mtn to Strike Def's Motion to Extend Answer .pdf (10 pages)(267759 bytes)

IN THE UNITED STATES

PATENT AND TRADEMARK OFFICE

BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of: Brown Mechanic Inc., a California corporation, petitioner, v. Xavier Huante and Gabriel Huante, individuals, registrants/respondents.	Cancellation No. 92054485 Registration No.: 3,629,258 Registration Date: June 2, 2009

MOTION TO STRIKE DEFENDANTS' "CONSENTED" MOTION TO EXTEND ANSWER OR DISCOVERY TRIAL PERIODS

Petitioner Brown Mechanic Inc. ("Petitioner") hereby submits this Motion to Strike Defendants' Motion for an Extension of Answer or Discovery or Trial Periods With Consent ("Defendants' Motion") based on the following.

Counsel for Petitioner Brown Mechanic Inc. received a copy of Defendants' Motion on October 24, 2011 via the Trademark Office's ESTTA@USPTO.GOV electronic notification system. Declaration of Deborah Gubernick ("Gubernick Decl.") at Ex. A. This was the first time Petitioner was made aware of the allegedly "consented" Motion. Gubernick Decl. ¶ 2.

Not only was Defendants' Motion filed two days after Defendants' original deadline to Answer, but Defendants misrepresented material facts in their Motion. Such misrepresentations must not be rewarded (i.e., by granting an extension) and are prohibited by the Board pursuant to

37 CFR § 11.18 (b)(1). In fact, false statements made to the Board may jeopardize the document and trademark registration.

> "[B]y presenting to the Office (whether by signing, filing, submitting, or later advocating) any paper, the party presenting such paper, whether a practitioner or non-practitioner, is certifying that-
>
> (1) All statements made therein of the party's own knowledge are true . . . [and] and all statements made therein are made with the knowledge that whoever. . . knowingly or willfully falsifies, conceals, or covers up any trick, scheme, or device a material fact, or made <u>any</u> <u>false</u>, fictitious or fraudulent statements or representations, or makes or uses any false writing or document knowing the same to contain <u>any</u> <u>false</u>, fictitious or fraudulent statement or entry, shall be subject to the penalties set forth under 18 U.S.C. 1001, and that violations of this paragraph may jeopardize the validity of the application or document, or the validity or enforceability of any patent, trademark registration, or certificate resulting therefrom."

37 CFR § 11.18 (b)(1) (emphasis added).

Here, Defendants' submitted their Motion knowing the statements made therein are false. Such actions constitute a clear violation of 37 CFR § 11.18(b)(1). Defendants' false statements include claiming that the motion was a "consented" motion. Gubernick Decl. Ex. B. Defendants specifically claim to have "secured the express consent of all parties to this proceeding for the extension and resetting of dates requested herein." *Id.* This is this simply untrue. Petitioner's counsel has never had any discussions with Defendants, and has at no time granted consent to for an extension of time. Defendants' misrepresentations should not be considered by the Board. CFR § 11.18(b)(1). Accordingly, the Board's Order must be stricken.

Finally, the Defendants' Motion further misrepresents facts by stating that "[n]ot all of the Defendants had property been served with the Notice of Cancellation." *Id.* As the Board's

records in this proceeding reflect, the last owner(s) of record are Xavier Huante and Gabriel Huante, both residing at 575 East 238th Place, Carson, CA 90745. Petitioner sent the Petition to Cancel with Certificate of Service on September 9, 2011 addressed to both owner names at the address mentioned above. Gubernick Decl. Ex. D. This false statement is yet another attempt by Defendants to mislead the Board. Defendants' false statements must be disregarded and cannot be tolerated.

This pattern of false statements is simply a continuation of the false statements made by Defendants when obtaining the registration (see Petition to Cancel). Defendants must not be rewarded for repeatedly falsifying information to the Board.

CONCLUSION

Petitioner requests that Defendants' Motion for an Extension of Answer or Discovery or Trial Periods With Consent be stricken as it contains fraudulent statements and misrepresentations in violation of 37 CFR Section 11.18 (b). Based on Defendants' further false statements and failure to adequately respond, Petitioner's Petition to Cancel should be granted.

Respectfully submitted,

Dated: October 27, 2011

By: Deborah A. Gubernick

Deborah A. Gubernick
Attorneys for Petitioner
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IN THE UNITED STATES
PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of: Brown Mechanic Inc., a California corporation, petitioner, v. Xavier Huante and Gabriel Huante, individuals, registrants/respondents.	Cancellation No. 92054485 Registration No.: 3,629,258 Registration Date: June 2, 2009 **DECLARATION OF DEBORAH GUBERNICK IN SUPPORT OF MOTION TO STRIKE DEFENDANTS' "CONSENTED" MOTION TO EXTEND ANSWER OR DISCOVERY TRIAL PERIODS**

I, Deborah A. Gubernick, declare as follows:

1. I am an attorney admitted to practice law in the State of California and am an associate of the law firm of Call & Jensen, counsel of record for Petitioner, Petitioner Brown Mechanic Inc. ("Petitioner") in the above-captioned matter. I have personal knowledge of the matters stated herein, and I could and would testify competently thereto if called upon to do so.

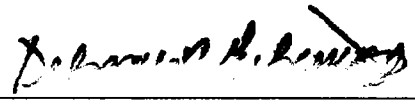
2. Attached as Exhibit A is true and correct copy of the electronic notification I received from ESTTA@USPTO.GOV, received on October 24, 2011 indicating that the Board had issued an Order extending time to answer. This is the first communication I received informing me of Defendants' "consented" Motion. At no time prior to receiving this notification

of Order had I granted consent to an extension of time for Defendants to file an Answer to the Petition to Cancel.

3. Attached as Exhibit B is a copy of the Motion filed by Defendants, which contains specifically untrue statements: 1) "Not all Defendants had not been properly served with notices of cancellation" and 2) "[Defendants] has [sic] secured the express consent of all parties to this proceeding for the extension and resetting of dates requested herein." These statements are untrue because 1) Petitioner served all parties, as the record reflects in the certificate of service attached to the Petition to Cancel; and 2) at no time did Defendants discuss filing this Motion for Extension of Time or "secure[] the express consent of all parties" before making this Motion.

4. As the Board's records in this proceeding reflect, the last owner(s) of record are Xavier Huante and Gabriel Huante, both residing at 575 East 238th Place, Carson, CA 90745. A Certificate of Service was submitted with the Petition to Cancel, and service was provided to not only both owner names at the address of record for Defendants, but also to Defendants' last attorney of record, Mr. Christopher Day.

I declare under penalty of perjury under the laws of the state of California that the foregoing is true and correct. Executed on this 21st day of October 2011, at Newport Beach, California.



Deborah A. Gubernick

EXHIBIT A

Debbie Gubernick

From: ESTTA@USPTO.GOV
Sent: Monday, October 24, 2011 3:50 PM
To: huantex@gmail.com; Debbie Gubernick
Subject: MOTION TO EXTEND TIME TO ANSWER GRANTED - 92054485 - Found word(s) click on the link reply button click on the button in the Text body

UNITED STATES PATENT AND TRADEMARK OFFICE Trademark Trial and Appeal Board

Proceeding No. 92054485

10/24/2011

IMPORTANT NOTICE

The Trademark Trial and Appeal Board (TTAB) has issued an order in this proceeding. To see the order, click on the link below or paste the URL into the address box of your browser.

http://ttabvue.uspto.gov/ttabvue/v?pno=92054485&pty=CAN&eno=5

This order contains important information which you should review immediately. A response may be required and trial dates may have changed. In some cases, this will be the only notification of this order you will receive. An e-mail copy of the order itself will not be sent.

If you are unable to view the order, call the TTAB for technical assistance at 571-272-8500. Do not use the reply button to respond to this message by e-mail.

The entire public file of this proceeding may be viewed at http://ttabvue.uspto.gov.

Papers in Board proceedings may be filed electronically with ESTTA at http://estta.uspto.gov.

Further information is available at the TTAB's web page at http:// www.uspto.gov.

EXHIBIT B

FYA01-03

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

Proceeding : 92054485
Applicant : Xavier Huante and Gabriel Huante
Other Party:Plaintiff
Brown Mechanic Inc.

RECEIVED
delivered by USPS
OCT 25 2011
@ 10:45am KJC
CALL & JENSEN

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 10/24/2011. Xavier Huante and Gabriel Huante requests that such date be extended for 30 days, or until 11/23/2011, and that all subsequent dates be reset accordingly.
Time to Answer :11/23/2011
Deadline for Discovery Conference :12/23/2011
Discovery Opens :12/23/2011
Initial Disclosures Due :01/22/2012
Expert Disclosure Due :05/21/2012
Discovery Closes :06/20/2012
Plaintiff's Pretrial Disclosures :08/04/2012
Plaintiff's 30-day Trial Period Ends :09/18/2012
Defendant's Pretrial Disclosures :10/03/2012
Defendant's 30-day Trial Period Ends :11/17/2012
Plaintiff's Rebuttal Disclosures :12/02/2012
Plaintiff's 15-day Rebuttal Period Ends :01/01/2013

The grounds for this request are as follows:
Not all Defendants had not been properly served with notices of cancellation.

Xavier Huante and Gabriel Huante has secured the express consent of all parties to this proceeding for the extension and resetting of dates requested herein.
Xavier Huante and Gabriel Huante 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,
/XAVIER HUANTE/
Xavier Huante
huantex@gmail.com
dgubernick@calljensen.com
10/24/2011

CERTIFICATE OF SERVICE

I hereby certify that true and complete copies of the foregoing **MOTION TO STRIKE "CONSENTED" EXTENSION OF ANSWER OR DISCOVERY OR TRIAL PERIODS** is being served on the Registrants via U.S. Mail to:

Xavier Huante and Gabriel Huante
575 East 238th Place
Carson, California 90745

And their attorney of record for the subject Registration
Christopher J. Day
Law Office of Christopher Day
9977 North 90th Street, Suite 155
Scottsdale, AZ 85258

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct, and that this Certificate is executed on October 27, 2011.

Linda Ashe