

**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451**

Mailed: November 21, 2013

Cancellation No. 92055269

Mango's Tropical Cafe, Inc.

v.

Tango Mango, LLC

**George C. Pologeorgis,  
Interlocutory Attorney:**

On October 22, 2013, petitioner filed a motion for summary judgment based upon its asserted claims of priority and likelihood of confusion and abandonment through non-use. Because petitioner's motion was served by electronic transmission only, respondent's response to petitioner's motion is due by November 21, 2013. *See* Trademark Rules 2.119(b)(6) and 2.127(e).

This case now comes before the Board for consideration of respondent's motion (filed November 19, 2013) (1) for leave to file a response to petitioner's motion for summary judgment in excess of the page limitations set forth in Trademark Rule 2.127(a), and (2) to extend its time to respond to petitioner's motion for summary judgment.

In support of its motion, respondent contends that it requires an additional ten pages for its response in order to explain clearly and adequately the facts and legal principles at issue with regard to petitioner's

claim of abandonment and the claims of likelihood of confusion for each of the seven asserted registrations, including each of the goods or services in registrations with multiple classes.<sup>1</sup> Respondent further maintains that its request is reasonable and necessary in light of the complexity of the likelihood of confusion claims asserted against it and the fact that the petitioner has sought summary judgment on its claim of abandonment in the same motion.

### **Decision**

Trademark Rule 2.127(a) provides, in relevant part, that “[n]either the brief in support of a motion nor the brief in response to a motion shall exceed twenty-five pages in length in its entirety, including table of contents, index of cases, description of the record, statement of the issues, recitation of facts, argument, and summary.”

As stated in the Notice of Final Rulemaking in which the twenty-five page limitation was adopted, it is believed that the twenty-five pages is sufficient for a main brief and a response thereto of any motion that arises in a Board *inter partes* proceeding. Because of the limited nature of Board proceedings, the Board has further stated that briefing for motions in such proceedings need not be as extensive as that in proceedings in court. Notice of Final Rulemaking, 63 Fed. Reg. 48081, 48094 (September 9, 1998); *see also*

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<sup>1</sup> The Board notes that respondent improperly relies upon Trademark Rule 2.128(b) and TBMP Section 537 in support of its motion. This Trademark Rule and TBMP section concern extending the page limitations for final briefs on the case, not the page limitations of motions in Board proceedings.

*Saint-Gobain Corp. v. Minnesota Mining and Manufacturing Co.*, 66 USPQ2d 1220 (TTAB 2003). Although the Board is of the firm opinion that all issues in a motion can be briefed in 25 pages for a main brief, as well as the corresponding response, the rule does not specifically prohibit a motion for leave to file a longer brief upon a showing of good cause. 63 Fed. Reg. 48081, 48094 (September 9, 1998).

While we note that petitioner relies upon all seven of its pleaded registrations in support of its motion for summary judgment, four of them are for the identical mark and all of them contain the term MANGO. Further, the services identified in five of these pleaded registrations are for restaurant and bar services with the remaining services constituting collateral goods and services offered under the pleaded marks. In view thereof, the Board finds that the twenty-five page limitation set forth in Trademark Rule 2.127(a) is sufficient to allow respondent to set forth its arguments in response to petitioner's motion for summary judgment.

Accordingly, based upon the record and in consideration of respondent's arguments, the Board finds that respondent has failed to demonstrate the requisite good cause to justify allowing respondent to file a response to petitioner's motion for summary judgment in excess of the twenty-five page limitation set forth in Trademark Rule 2.127(a).

In view of the foregoing, respondent's motion to file a response that exceeds the page limitations set forth in Trademark Rule 2.127(a) is

**DENIED.**<sup>2</sup>

Further, inasmuch as respondent's response to petitioner's motion for summary judgment is due as of the date of this order, the Board will afford respondent a brief extension up to, and including, **November 26, 2013**<sup>3</sup> in which to file its response to petitioner's motion for summary judgment.

A reply brief, if filed, must be filed in accordance with Trademark Rule 2.127(e).

Proceedings otherwise remain suspended pending the disposition of petitioner's motion for summary judgment.

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<sup>2</sup> Notwithstanding the Board's decision herein, respondent's response must comply with the form of briefs on motions under Trademark Rule 2.126.

<sup>3</sup> The Board notes that respondent was in receipt of petitioner's motion for summary judgment on October 22, 2013 but waited until two days before its response deadline to file its request to submit a response in excess of the page limitations under Board rules. Clearly, respondent could have filed its motion much earlier which would have resolved this issue prior to the original deadline to respond to petitioner's motion, yet respondent inexplicably failed to do so. Because of respondent's delay, the Board finds the brief extension provided herein appropriate. Further, the Board will not entertain any further requests to extend respondent's time to respond to petitioner's motion for summary judgment unless such request is consented to by petitioner or the request is based upon a showing of extraordinary circumstances.