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

Proceeding	92057023
Party	Plaintiff LuckyU Enterprises, Inc., dba Giovanni's Original White Shrimp Truck
Correspondence Address	Jennifer Fraser NOVAK DRUCE CONNOLLY BOVE + QUIGG LLP 1875 EYE STREET NW, ELEVENTH FLOOR WASHINGTON, DC 20006 UNITED STATES trademark@novakdruce.com, jennifer.fraser@novakdruce.com, daniel.mullarkey@novakdruce.com, breanne.staley-ashe@novakdruce.com
Submission	Motion to Extend
Filer's Name	Daniel P. Mullarkey
Filer's e-mail	daniel.mullarkey@novakdruce.com, trademark@novakdruce.com
Signature	/Daniel P. Mullarkey/
Date	02/14/2014
Attachments	Final Motion for Extension of Time.pdf(479242 bytes)

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

In the matter of Trademark Trial and Appeal Board
Cancellation No. 92057023

Marks: GIOVANNI'S ALOHA FOODS
GIOVANNI'S SCAMPI MARINADE
GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE

LuckyU Enterprises, Inc., dba Giovanni's	:	
Original White Shrimp Truck	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92057023
	:	
John "Giovanni" Aragona	:	
	:	
Respondent.	:	

**MOTION TO EXTEND THE TIME
TO TAKE PREVIOUSLY NOTICED DEPOSITIONS**

LuckyU Enterprises, Inc., dba Giovanni's Original White Shrimp Truck ("Petitioner" or "LuckyU") respectfully requests the Board grant Petitioner additional time to take two previously noticed discovery depositions. The discovery deadline is today, February 14, 2014 (the official deadline fell on February 13, 2014 and the United States Patent and Trademark Office was closed due to inclement weather thereby extending the deadline to February 14). As detailed below, considering Petitioner noticed the depositions a month ago and was trying to accommodate Respondent who initially suggested an extension would be available, if necessary, Petitioner has good cause for the extension.

I. BACKGROUND

By way of background, the subject cancellation was instituted on April 8, 2013. On April 9, 2013, the Trademark Trial and Appeal Board set forth the initial dates for the cancellation proceeding. The initial discovery deadline was set for December 15, 2013. Petitioner has been diligent about serving discovery and has served two sets of written discovery and, out of a spirit of cooperation, Petitioner has been accommodating of Respondent's schedule and previous extension requests. On September 27, 2013, counsel for John Aragona ("Respondent" or "Aragona") requested a two-week extension of time to respond to Petitioner's initial discovery requests. (See exhibit A). Shortly after receiving Respondent's responses on October 16, after allowing the two-week extension and because many facts were omitted from the responses, Petitioner sent opposing counsel a deficiency letter requesting more thorough responses to both Petitioner's First Request for Interrogatories and First Request for Production of Documents and Things. (See Exhibit B). Petitioner was informed by Respondent's counsel that Respondent was unavailable to immediately respond to the letter further delaying the discovery response period. Nearly a month passed since the deficient discovery responses were served, and Petitioner's counsel again requested supplementation of the initial discovery responses and, to allow Petitioner time to obtain responses and serve follow up discovery and prepare to schedule depositions, Petitioner indicated it would be willing to allow a 30-day or 60-day extension of the discovery period. (See Exhibit C). The request to extend discovery until February 13, 2014 was filed and granted on November 15, 2013. Respondent served the supplemental discovery responses on November 19, 2013.

On January 13, 2014, thirty-one (31) days before the end of the discovery period, Petitioner noticed depositions to both John Aragona and his attorney, Jamie Pitts (Ms. Pitts was

the declarant for all four applications at issue in this proceeding and was also identified as a potential fact witness in Petitioner's Initial Disclosures which were served on July 18, 2013. (See Exhibit D). Petitioner indicated to counsel that we selected dates but that we could choose dates convenient for the parties, expecting that amended notices would be issued once final dates were agreed upon. After receiving the deposition notices, the next day Respondent's counsel advised that she would not agree to her own deposition and also indicated her client required ADA accommodations so she would have to follow up on the specifics and the date. A few days later Respondent's counsel further advised that she was seeking a formal written recommendation on how to accommodate her client's disability. Later that same day, Petitioner's counsel replied to Respondent's counsel explaining that they were willing to accommodate Aragona and also providing the rationale behind noticing Ms. Pitts deposition and explaining that she was a fact witness. Petitioner's counsel also recommended discussing Ms. Pitts potential deposition with the Interlocutory Attorney before any more papers were filed on the matter. (See Exhibit E). The parties then set up a conference call to discuss the deposition issues and, after Petitioner again suggested involving the Interlocutory Attorney, Respondent's counsel suggested the parties wait until after the ADA recommendations were provided regarding Aragona's deposition. On January 28, 2014, Respondent's counsel requested Petitioner's consent to an extension of the discovery period as she had not yet heard from the counselor providing the ADA accommodations for Aragona's deposition. The parties set up a conference call to discuss options for moving forward with the end of discovery and the call was held on January 30, 2014. During that call, Petitioner indicated that it seemed premature to officially delay this matter further by allowing Respondent to extend discovery and that we could reassess in one week, one week before the end of discovery, perhaps after receiving the ADA information, to see how best to

handle the two outstanding deposition notices.¹ On February 4, 2014, Petitioner had yet to hear from Respondent regarding the depositions and whether they would take place as noticed, so Petitioner's counsel sent a follow up e-mail to Respondent's counsel. Respondent replied late on Thursday, February 6, 2014 and provided the ADA accommodation recommendations. Petitioner responded on Monday, February 10, 2014 with comments and possible accommodations for the deposition as well as another request for deposition dates that would accommodate Mr. Aragona and Ms. Pitts. Petitioner's counsel also advised that if Respondent wanted to further limit either deposition, Petitioner recommended scheduling an informal call between the parties and the Interlocutory Attorney. The next day, Respondent's counsel advised that a new attorney was taking over the case and that discovery needed to be extended ASAP (Respondent's counsel previously complained on January 30 with two weeks left in discovery that she wanted to withdraw, but Petitioner was never given any specifics nor introduced to another attorney and no revocation has ever been filed). Petitioner's counsel followed up and advised that they would consent to a two week extension to take the noticed depositions and account for any follow up discovery needed by either side. The next day, February 12, 2014, Respondent's counsel advised that she had a conference call scheduled with the "new" attorney and she would advise afterwards on an extension. Petitioner's counsel then followed up later that evening, also advising that there could be difficulties in attending to the extension due to the forecast, but Respondent's counsel did not confirm the extension, but indicated that she could file it. Petitioner's counsel, again, attempted to follow up with Respondent's counsel early on February

¹ Petitioner also suggested, if preferred by the parties, rather than to formally extend discovery, if Respondent was willing to confirm dates for the noticed depositions, even if a day or two after the official end of discovery, that might be another option so as to avoid further delaying this matter.

13, 2014. Respondent's counsel finally replied regarding the extension at 4:50 pm on February 13, 2014 demanding a 60-day extension or threatening "NOT AT ALL." (See Exhibit F).

Considering Petitioner's efforts to take the deposition of the party witness, Mr. Aragona, and the person who swore to the facts in the applications, it is respectfully submitted that this constitutes the good cause for the Board to extend the amount of time for Petitioner to take the previously noticed depositions.

II. PETITIONER'S REQUEST TO TAKE PREVIOUSLY NOTICED DEPOSITIONS SHOULD BE GRANTED

The period for filing an Extension of Time for Discovery has not yet expired and Petitioner made a good faith request of Respondent to extend time, and was led to believe that an extension of time or some arrangement would be provided to reach accommodations for the previously noticed depositions, and Petitioner now makes this request to the Board prior to the deadline.

As explained in Federal Rule of Civil Procedure 6(b) and TBMP 509;

When an act may or must be done within a specified time, the court may, for good cause, extend the time:

- (A) With or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires; or
- (B) On motion made after the time has expired if the party failed to act because of excusable neglect.

Because the time has not yet expired, to extend time Petitioner need only show good cause for the requested extension. *See* Trademark Board of Manual Procedure (TBMP) § 509.01. The requested extension is not due to any lack of diligence or unreasonable delay, and it is respectfully submitted the additional time requested herein is solely to conduct previously and timely noticed depositions which Petitioner has been trying to schedule for some time. As

mentioned above, the depositions were noticed 31 days before the end of discovery. Respondent's counsel informed Petitioner's counsel that Respondent would need certain special accommodations before being deposed. It took three weeks before Petitioner was made aware of the requested accommodation for one of the depositions and it was Petitioner's belief that the parties had an agreement to extend time to take the depositions. As can be seen from Exhibit F, Respondent's counsel waited until the very last minute to threaten Petitioner if Respondent did not get another lengthy extension of time. Petitioner submits that permitting Respondent to further delay this case when it has made no effort to take further discovery, is inappropriate and will only cause Petitioner to incur further delay and expense, and thus Petitioner did not agree to the "all or nothing extension" offered by Respondent. Petitioner only seeks to extend discovery for the limited purpose of taking the previously noticed depositions. Petitioner tried to confer with Respondent in good faith on these issues, and of course Petitioner was willing to take the depositions at a mutually agreeable time to Respondent and upon proper notice and is still willing to do so but considering Respondent's refusal to work with Petitioner, Petitioner is left with no recourse but to enlist the assistance of the Board with an extension that will enable Petitioner to take the two depositions.

In view of the above, it is respectfully submitted Petitioner has set forth the requisite good cause for the Extension. See TBMP § 509.01(a).

CONCLUSION

Petitioner respectfully requests that the Board enter an order granting Petitioner's Motion to Extend the Time to Take Previously Noticed Depositions and/or taking any other appropriate action the Board deems just and proper.²

Respectfully submitted,

Date: February 14, 2014

s/ Jennifer Fraser/
Jennifer Fraser, Esq
Daniel P. Mullarkey
Novak Druce Connolly Bove + Quigg, LLP
1875 Eye Street, NW
Eleventh Floor
Washington, DC 20006
Jennifer.fraser@novakdruce.com
Daniel.mullarkey@novakdruce.com
Attorneys for Petitioner

² Petitioner is concurrently serving amended notices on Respondent for both depositions with new dates, locations, and a subpoena for Ms. Pitts with specific topics she must be prepared to discuss.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February 2014 a true and correct copy of the foregoing **MOTION TO EXTEND THE TIME TO TAKE PREVIOUSLY NOTICED DEPOSITIONS** was served via first class mail to Respondent's Counsel Jamie Pitts at The Law Office of Jamie N. Pitts, 3340 Wood Thrush Dr., Ste. 341, Punta Gorda, FL 33950, with a courtesy copy sent via email to Jamienpitts@jpnlawfirm.com

s/Daniel P. Mullarkey/
Daniel P. Mullarkey

EXHIBIT A

Daniel Mullarkey

From: jamienpitts@gmail.com on behalf of Jamie Pitts <jamienpitts@jnplawfirm.com>
Sent: Friday, September 27, 2013 12:48 PM
To: Daniel Mullarkey; Jennifer Fraser
Subject: Production Deadline

Dan,

The Aragona's have been out of town the majority of this month and they are behind in getting your discovery requests back to me. Can we please get a two week extension on our deadline to return the requests for admission and production? It would be greatly appreciated.

Thank you,

Jamie

THE LAW OFFICES OF JAMIE N. PITTS, ESQ., P.A.
IP, ENTERTAINMENT, & CORPORATE LAW
www.jnplawfirm.com

CELL: 941-893-7751 FAX: 855-224-7819

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EXHIBIT B



Jennifer Fraser
Partner
202-756-4356
jennifer.fraser@novakdruce.com

October 28, 2013

VIA EMAIL ONLY (jamiempitts@jnplawfirm.com)

Jamie N. Pitts, Esq.
The Law Offices of Jamie N. Pitts
1064 N. Tamiami Trail, Ste. 1533
Sarasota, Florida 34236

Re: LuckyU Enterprises v. John Aragona
Cancellation No. 92057023

Dear Ms. Pitts:

We are in receipt of the discovery responses served on October 16, 2013 in the above referenced matter and, as explained below, Registrant's Objections and Responses to Petitioner's First Set of Interrogatories and Requests for Production of Documents are deficient. We write this letter so that you can promptly supplement the responses. Considering Registrant had to extend the time for these initial Responses, we hope there is no further delay in discovery and that we can resolve these issues without involving the Board.

- 1. Copies of non-privileged documents responsive to an interrogatory will be made available for inspection and copying at a mutually convenient time at undersigned counsel's office*

The responses to Interrogatories No. 5, 6, 9, 16, 17, and 33 are incomplete as Federal Rule of Civil Procedure 33(d) requires specificity if you choose to answer an interrogatory in this manner. None of your responses to these interrogatories provides any detail, let alone sufficient detail, to permit us to locate and identify an answer to the interrogatories. Further, Respondent is in a better position than Petitioner to answer Interrogatories No. 5, 6, 9, 16 and 17 and it should not be a burden to provide a proper answer to these interrogatories. Also, Interrogatory No. 16 requests that Respondent state whether he received an opinion regarding the marks at issue and does not merit an examination of business records in order to respond to the Interrogatory. Response to Interrogatory No. 17 is similarly deficient. Finally, you state that responsive documents will be provided for inspection and copying at counsel's office, yet you have not provided any reason as to why these documents could not be included in your document production served on the same day.



Jamie N. Pitts, Esq.
October 28, 2013
Page 2

2. Interrogatory No. 21

This request asked Respondent to describe the business relationship with Connie Aragona with particularity, and the Response is limited to an “ongoing business relationship” and the date it ended. Respondent needs to describe the full relationship including the nature of the relationship prior to the date “day-to-day communications ended.”

3. Interrogatory No. 22

The response to Interrogatory No. 22 is deficient as it only provides that “Ownership was transferred during Respondent and Connie Aragona’s divorce in 2000” and does not specify the terms of the agreement nor have you provided any document that memorializes this transfer in order to determine terms of the agreement.

4. Interrogatory No. 26

The response to Interrogatory No. 26 is deficient as it omits the date(s) when Mr. Aragona allegedly took the photographs used as specimens for the statement of use in Registration Nos. 4,220,686 and 4,232,569.

5. Interrogatory No. 29

The response fails to describe the circumstances surrounding the transfer.

6. Interrogatory No. 35

The response to Interrogatory No. 35 is deficient as it omits the dates Mr. Aragona owned the 1953 Chevy bread truck.

7. Interrogatory No. 36

The response to Interrogatory No. 36 appears to be deficient considering Respondent’s answers to other interrogatories. For example, Respondent’s response to Interrogatory No. 8 indicates a number of bottling companies utilized by Respondent for purported bottling of his marinades and sauces. Yet you only indicate Petitioner’s two business locations where Respondent’s Goods/Services are manufactured, sold and or provided, etc.



Jamie N. Pitts, Esq.
October 28, 2013
Page 3

8. Interrogatory No. 38

The response does not indicate the approximate time and is not broken down by year.

9. Interrogatory No. 40

You do not provide a response to Interrogatory No. 40 other than your objections. Please indicate as to which objection(s) preclude you from providing any response to this Interrogatory.

10. Deficient Document Production

Respondent's document production is wholly deficient and the production appears to consist mostly of publicly available documents and does not include any documents related to employee information, advertising expenditures, Mr. Aragona's taxes, vendors, invoices, sales, assets, menus, pricing, website changes, correspondence between the parties, etc. If such documents do not exist, Respondent should supplement its Responses to so indicate, rather than indicating they will be produced.

11. Deficient Objections

Many of the asserted objections appear improper and in supplementing the responses, you should also consider the propriety of such objections, for example, there is a Protective Order and thus any refusal to produce documents because they are confidential is inappropriate. Many of the requests are clearly relevant and objections as to scope are also inappropriate. The responses also raise objections as to "vagueness" without clarifying the particular objection and, for the isolated responses where you object to particular wording, such as No. 28, the phrases have a clearly understood meaning and the objections are improper. Finally, to the extent Ms. Pitts will rely on information provided to her in preparing, filing and signing the applications, the assertion of privilege appears improper. In view of the foregoing, please also revise the objections that are improper.

We trust you will be able to make the above supplementation promptly so we do not have to involve the Board and we can continue with discovery.

Please contact us if you would like to discuss.

Very truly yours,

JENNIFER FRASER

JF:DPM/bms
cc: Daniel P. Mullarkey, Esq.

5411571_1

EXHIBIT C

Daniel Mullarkey

From: Jennifer Fraser
Sent: Thursday, November 14, 2013 5:37 PM
To: 'Jamie Pitts'; Daniel Mullarkey
Subject: RE: Lucky U v. Aragona,

Dear Jamie,

We want to follow up again and inquire as to specifically when we can expect supplementation of the responses. It appears the Aragonas would have returned November 9 and considering the upcoming end of discovery, currently scheduled for December 15, we do not want to see further delays. It also appears that many of the deficient responses do not require further input from the clients: either the referenced documents exist or they do not (and we previously agreed to a two week extension to try to enable complete and proper responses). We trust that you will be in a position to promptly reply with supplemental responses in the coming days; otherwise, we will be forced to involve the Board.

In view of these delays, it also appears it will be necessary to extend the discovery deadline by 30 or 60 days. We trust Respondent will not object to this and we can attend to filing an appropriate extension depending on whether we receive the supplementation shortly, or if we have to involve the Board. Or course, we would prefer not to have to involve the Board to obtain complete responses and appreciate your cooperation moving this matter forward.

Please feel free to contact me or Dan if you would like to discuss.

Regards,

Jen

Jennifer Fraser

Partner | Novak Druce Connolly Bove + Quigg LLP

1875 Eye Street, N.W. | Eleventh Floor | Washington, D.C. 20006

t: 202.756.4356 | f: 202.293.6229 | e: jennifer.fraser@novakdruce.com | w: www.novakdruce.com

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From: jamienpitts@gmail.com [mailto:jamienpitts@gmail.com] **On Behalf Of** Jamie Pitts
Sent: Wednesday, November 06, 2013 4:24 PM
To: Daniel Mullarkey
Cc: Jennifer Fraser
Subject: Re: Lucky U v. Aragona,

Daniel,

The Aragona's are currently out of the country on a cruise and unable to communicate, work on supplementation of our discovery responses is awaiting their return which is scheduled to be by next week (their boarding pass is attached). I will try to have an answer to the issues outlined in the October 28 letter within 7 days of their return.

Thank you for your patience,

Jamie

THE LAW OFFICES OF JAMIE N. PITTS, ESQ., P.A.
IP, ENTERTAINMENT, & CORPORATE LAW
www.jnplawfirm.com

CELL: 941-893-7751 FAX: 855-224-7819

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On Wed, Nov 6, 2013 at 4:05 PM, Daniel Mullarkey <daniel.mullarkey@novakdruce.com> wrote:

Jamie,

Attached is Petitioner's First Request for Admissions and a link to an FTP site for you to download the exhibits cited within.

<https://novakdruce.sharefile.com/d/s246b57ec5cd42359>

Additionally, further to our October 28 letter (attached), we have also not received any supplementation of Registrant's discovery responses or even heard from you as to when we can expect supplementation. Considering the discovery deadline is approaching, please provide such supplementation immediately. Please contact us if you would like to discuss.

Regards,

Daniel P. Mullarkey

Associate | Novak Druce Connolly Bove + Quigg LLP

1875 Eye Street, NW | Eleventh Floor | Washington, DC 20006

t: [202.380.1178](tel:202.380.1178) | f: [202.293.6229](tel:202.293.6229) | e: daniel.mullarkey@novakdruce.com | w: www.novakdruce.com

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EXHIBIT D

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

In the matter of Trademark Registration No. 4,220,686
Mark: GIOVANNI'S ALOHA FOODS
Registration date: October 9, 2012

In the matter of Trademark Registration No. 4,224,400
Mark: GIOVANNI'S SCAMPI MARINADE
Registration date: October 16, 2012

In the matter of Trademark Registration No. 4,232,569
Mark: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
Registration date: October 30, 2012

In the matter of Trademark Registration No. 4,248,595
Mark: GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE
Registration date: November 27, 2012

LuckyU Enterprises, Inc., dba Giovanni's	:	
Original White Shrimp Truck	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92057023
	:	
John "Giovanni" Aragona	:	
	:	
Respondent.	:	

NOTICE OF DEPOSITION OF JAMIE PITTS

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 30(b)(1), plaintiff LuckyU Enterprises, Inc., dba Giovanni's Original White Shrimp Truck ("LuckyU"), by and through its attorneys, shall take the deposition by oral examination of Jamie Pitts. The deposition shall begin on **February 12, 2013 at 10:00 AM (EST)** at the Tampa Airport Marriott located at 42000 George J. Bean Parkway, Tampa, FL 33607, or at a date, time, and place mutually agreeable to the parties. The deposition shall be recorded by stenographic means and may also be

recorded by video or audio tape and by instant visual display of the stenographic record. The testimony shall be before a Notary Public or other officer authorized by law to administer oaths.

LuckyU requests that Jamie Pitts bring with her to the deposition any documents and tangible things that may be necessary for her to give full, complete, and binding answers.

The deposition shall proceed in accordance with the Federal Rules of Civil Procedure and shall continue from day to day until completed, unless otherwise agreed. You are invited to attend and to cross-examine.

Respectfully submitted,
LuckyU Enterprises, Inc. dba Giovanni's Original
White Shrimp Truck

Date: January 13, 2014

s/Jennifer Fraser/
Jennifer Fraser
Daniel P. Mullarkey
Novak Druce Connolly Bove + Quigg LLP
1875 Eye Street, NW, 11th Floor
Washington, DC 20006
Attorneys for Petitioner

5432356_1

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January 2014 a true and correct copy of the foregoing **NOTICE OF DEPOSITION OF JAMIE PITTS** was served via e-mail to Respondent's Counsel at Jamienpitts@jpnlawfirm.com with a courtesy copy sent First Class Mail, postage prepaid, to Jamie N. Pitts, The Law Office of Jamie N. Pitts, 1064 N. Tamiami Trail, STE 1533, Sarasota, FL 34236.

s/Daniel P. Mullarkey/

Daniel P. Mullarkey

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

In the matter of Trademark Registration No. 4,220,686
Mark: GIOVANNI'S ALOHA FOODS
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In the matter of Trademark Registration No. 4,232,569
Mark: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
Registration date: October 30, 2012

In the matter of Trademark Registration No. 4,248,595
Mark: GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE
Registration date: November 27, 2012

LuckyU Enterprises, Inc., dba Giovanni's	:	
Original White Shrimp Truck	:	
	:	
Petitioner,	:	
	:	
v.	:	Cancellation No. 92057023
	:	
John "Giovanni" Aragona	:	
	:	
Respondent.	:	

NOTICE OF DEPOSITION OF JOHN ARAGONA

PLEASE TAKE NOTICE that, pursuant to Federal Rule of Civil Procedure 30(b)(1), plaintiff LuckyU Enterprises, Inc., dba Giovanni's Original White Shrimp Truck ("LuckyU"), by and through its attorneys, shall take the deposition by oral examination of John Aragona. The deposition shall begin on **February 11, 2013 at 10:00 AM (EST)** at the Tampa Airport Marriott located at 42000 George J. Bean Parkway, Tampa, FL 33607, or at a date, time, and place mutually agreeable to the parties. The deposition shall be recorded by stenographic means and

may also be recorded by video or audio tape and by instant visual display of the stenographic record. The testimony shall be before a Notary Public or other officer authorized by law to administer oaths.

LuckyU requests that John Aragona bring with him to the deposition any documents and tangible things that may be necessary for him to give full, complete, and binding answers.

The deposition shall proceed in accordance with the Federal Rules of Civil Procedure and shall continue from day to day until completed, unless otherwise agreed. You are invited to attend and to cross-examine.

Respectfully submitted,
LuckyU Enterprises, Inc. dba Giovanni's Original
White Shrimp Truck

Date: January 13, 2014

s/Jennifer Fraser/
Jennifer Fraser
Daniel P. Mullarkey
Novak Druce Connolly Bove + Quigg LLP
1875 Eye Street, NW, 11th Floor
Washington, DC 20006
Attorneys for Petitioner

5432356_1

CERTIFICATE OF SERVICE

I hereby certify that on this 13th day of January 2014 a true and correct copy of the foregoing **NOTICE OF DEPOSITION OF JOHN ARAGONA** was served via e-mail to Respondent's Counsel at Jamienpitts@jpnlawfirm.com with a courtesy copy sent First Class Mail, postage prepaid, to Jamie N. Pitts, The Law Office of Jamie N. Pitts, 1064 N. Tamiami Trail, STE 1533, Sarasota, FL 34236.

s/Daniel P. Mullarkey/

Daniel P. Mullarkey

EXHIBIT E

Daniel Mullarkey

From: Daniel Mullarkey
Sent: Friday, January 17, 2014 6:12 PM
To: 'Jamie Pitts'
Cc: Jennifer Fraser (Jennifer.Fraser@novakdruce.com)
Subject: RE: LuckyU v. Aragona - New Discovery Requests

Jamie,

Please let us know how best to accommodate Mr. Aragona. However, if you do have to make changes to the currently scheduled deposition based on the counselor's recommendation, it will be helpful if the counselor provides a formal letter explaining that the changes should be made. There is no need to explain why the changes need to be made, but only that the counselor believes the changes should be made and what those accommodations should be.

Regarding your deposition, we respectfully believe you interjected yourself as a potential fact witness when you signed the Application Declarations that are the subject of the instant cancellation proceeding. In those applications you swore that it was your belief that Mr. Aragona is the owner of marks, that you are aware of no one else entitled to use the marks, and also attested to the dates of use and specimens. This makes you a fact witness in this case. Further, each of the discovery responses so far provided by you and/or Mr. Aragona have been signed by you and therefore you are the only person of record who has sworn to any personal knowledge of use in this case. You are the only person with personal knowledge as to the facts as you swore in your declaration signed September 21, 2011, and no other means exists to obtain the information. In fact, this is the risk associated with signing the applications. While it is possible that Mr. Aragona's deposition will provide all of the required information rendering your deposition moot, we cannot know that until we depose Mr. Aragona. In view of this, we trust that you will be available for your deposition on February 12; otherwise, if you intend to refuse to appear and/or file a Motion to Quash, we suggest a joint discussion with the TTAB attorney to discuss the issue beforehand.

We will be making travel arrangements shortly and please contact if you would like to discuss.

Regards,

Daniel P. Mullarkey

Associate | Novak Druce Connolly Bove + Quigg LLP

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From: jamienpitts@gmail.com [mailto:jamienpitts@gmail.com] **On Behalf Of** Jamie Pitts
Sent: Friday, January 17, 2014 4:40 PM
To: Daniel Mullarkey
Subject: Re: LuckyU v. Aragona - New Discovery Requests

EXHIBIT F

Daniel Mullarkey

From: jamienpitts@gmail.com on behalf of Jamie Pitts <jamienpitts@jnplawfirm.com>
Sent: Thursday, February 13, 2014 4:50 PM
To: Daniel Mullarkey
Subject: Re: URGENT: Follow up from Yesterday Email

Daniel,

My apologies, I thought I sent you this email yesterday afternoon, but for some reason it was in my outbox.

Daniel,

I just spoke to Patrick McGovern, the new attorney that will be handling all depositions, and he said that there was no way that two weeks would be enough time for him to be caught up to speed with this case enough to actively participate in a deposition. Further, we have not resolved how John's deposition should be handled, or whether or not mine should even take place. I agree that we should discuss these issues with the interlocutory attorney, but that requires a minim of 10 days advance notice, and then travel plans and the depositions would still have to take place there after. All of the above couldn't feasibly be done in two weeks. If these discovery depositions were addressed earlier in the discovery process we would have had the time to deal with how they should be handled. We do not consent to a two week extension because it would provide no benefit and we do not want to drag this case out any longer that absolutely necessary. 60 days is the minimum extension we would consent to at this point so all outstanding issues can either be dealt with appropriately or NOT AT ALL.

I will be available to talk until at least 9 PM, so please feel free to call me to discuss.

Thanks,

Jamie

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CELL: 941-893-7751 FAX: 855-224-7819

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On Thu, Feb 13, 2014 at 1:36 PM, Daniel Mullarkey <daniel.mullarkey@novakdruce.com> wrote:

Hi Jamie,

Further to my emails below, we would like to confirm the 2-week extension will be filed today so we can take advantage of the TTAB forms. If the deadline passes, regardless of the PTO closure, we have to submit a written motion for extension.

Further, we need to promptly confirm deposition dates so we can make arrangements. At this point 2/18 and 2/19 might not be feasible without incurring significant travel costs so please provide alternate dates prior to 2/26.

I am working from home today, so please reach me through email.

Regards,

Daniel P. Mullarkey

Senior Associate | Novak Druce Connolly Bove + Quigg LLP

1875 Eye Street, NW | Eleventh Floor | Washington, DC 20006

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From: Daniel Mullarkey
Sent: Wednesday, February 12, 2014 5:14 PM
To: 'Jamie Pitts'
Cc: Jennifer Fraser (Jennifer.Fraser@novakdruce.com)
Subject: RE: Follow up from Yesterday Email

Hi Jamie,

Any follow up on your discussion with the attorney? We would like to ensure the extension is filed and we would like to start planning our trip to Tampa, so please also confirm the dates of availability for both you and Mr. Aragona.

Regards,

Daniel P. Mullarkey

Associate | Novak Druce Connolly Bove + Quigg LLP

1875 Eye Street, NW | Eleventh Floor | Washington, DC 20006

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From: jamienpitts@gmail.com [<mailto:jamienpitts@gmail.com>] **On Behalf Of** Jamie Pitts

Sent: Wednesday, February 12, 2014 1:13 PM

To: Daniel Mullarkey

Subject: Re: Follow up from Yesterday Email

Hey Daniel,

I have a call with the new counsel coming up between 2 & 3 today to discuss what he wants to do. As he will be the one conducting/defending the depositions in this case, it really comes down to how soon he can be ready to do so. I will follow up with you as soon as I get off of the phone with him. If you need me to file the extension request for you this afternoon or tomorrow I can certainly do so, just let me know.

Thanks,

Jamie

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On Wed, Feb 12, 2014 at 12:59 PM, Daniel Mullarkey <daniel.mullarkey@novakdruce.com> wrote:

Jamie,

We have a snow storm that is going to hit us pretty soon and we have been instructed to clear our dockets for tomorrow. As you know, the discovery deadline is tomorrow so we would like to know if you consent to the two week extension so we can get the extension on file as soon as possible.

Regards,

Daniel P. Mullarkey

Associate | Novak Druce Connolly Bove + Quigg LLP

1875 Eye Street, NW | Eleventh Floor | Washington, DC 20006

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