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Filing date: **03/06/2014**

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

Proceeding	92057023
Party	Defendant John "Giovanni" Aragona
Correspondence Address	JAMIE N PITTS THE LAW OFFICE OF JAMIE N PITTS 3340 WOOD THRUSH DR STE 341 PUNTA GORDA, FL 33950 UNITED STATES jamiempitts@jnplawfirm.com
Submission	Opposition/Response to Motion
Filer's Name	JAMIE PITTS
Filer's e-mail	jamiempitts@jnplawfirm.com
Signature	/JAMIE PITTS/
Date	03/06/2014
Attachments	RESPONSE TO MOTION WITH EXHIBITS.pdf(2740633 bytes)

**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.	:	

**REGISTRANT'S OPPOSITION TO PETITIONER'S
MOTION TO EXTEND DISCOVERY**

Registrant, John "Giovanni" Aragona, (hereinafter "Registrant") respectfully submits this Opposition to Petitioner, LuckyU Enterprises, Inc., (hereinafter "Petitioner") Motion to Extend Discovery, and responds as follows:

I. INTRODUCTION

As further detailed below, Petitioner's first Notices of Deposition-its first indication of its intent to conduct the two discovery depositions, served only via electronic mail, contrary to the agreed method in the waning days of discovery-was both improper and untimely under the rules. As such, Petitioner's Motion to extend discovery to specifically to conduct these discovery depositions much be denied.

II. BACKGROUND AND DISCUSSION

A. Petitioner's Notice of Deposition Was Not Properly Served and Failed to Provide Reasonable Notice

Despite having an agreement to the contrary, Petitioner's first deposition notices and second set of discovery requests were sent via email on January 13, neither were served by mail as certified and required (See Exhibit A). Trademark Rule 2.119 (a) provides that "Every paper filed in the Patent and Trademark Office in inter parties cases ...must be served upon the other parties." Trademark Rule 2.119 (b) sets forth the ways by which such service must occur. Of particular relevance here, Rule 2.119(b)(6) allows parties to use fax or e-mail for service on all cases pending or commenced on or after August 31, 2007, but only "when mutually agreed upon by the parties. " 37 CFR § 2.119 (b)(6). Registrant and Petitioner do not have a mutual agreement to electronic service of process (Exhibit B). As such, Petitioner failed to properly serve its first Notices of Deposition.

Moreover, the only notice that was served properly was served on February 17th, after the expiration of the discovery deadline, also falsely certified as mailed on February 14th (See Exhibit C). Because Petitioner failed to serve Registrant during the required timeframe, Petitioner's request to extend discovery specifically to take these depositions should be denied, and Registrant should not be obligated to produce the witnesses for discovery depositions.

Further, in proceedings before the Board, a discovery deposition must be both noticed and taken before the end of the discovery period. See TBMP § 403.02. Thus, a combined notice of deposition and request for production of documents normally must be served at least thirty-five days prior to the close of the discovery period. The two notices that were sent on January 13 contained document production requests, asking both the party and non-party witnesses to bring any documents and tangible things that may be necessary to give full, complete, and binding answers with them to the depositions. The depositions were noticed 31 days prior to the close of discovery, despite the fact that they requested documents which required at least 35 days between the date of notice and the date deposition (when serving by first class mail) to comply with the rules.

Petitioner unilaterally adapting the agreed method of service, scheduling the first noticed depositions to take place on the last two days before they had to be completed, scheduling the second amended noticed depositions to take place after the close of discovery and prior to the due date of this response despite requests to the contrary, assuming that Registrant and its counsel would voluntarily agree to everything as requested (despite persistent statements to the contrary) was both improper and untimely under the rules. All of the above, and the fact that the notices had multiple errors, such as stating that counsel was "invited to attend and to cross-examine" its own deposition, which was set to begin in 2013, and the improper method of service in the certificate of service is further proof that the notices were a rushed, last minute effort.

B. Petitioner Failed to Secure Attendance by Subpoena

TBMP 404.03 and 37 CFR Sec 2.120(b) specifically states that if a proposed deponent residing in the United States is not a party, the responsibility of securing the attendance of the proposed deponent rests wholly with the deposing party. Further, if the proposed deponent is not willing to appear voluntarily, the deposing party must secure attendance by subpoena, issued by the appropriate United States district court pursuant to 35 U.S.C. § 24 and Fed. R. Civ. P. 45.

In every email and every conversation that counsel has had to-date, I have always maintained my position as to the inappropriateness of my deposition and that I am not willing to voluntarily be deposed. Counsel has known that was my position since Jan 14, the day after the notice was emailed, when I replied to the email and the attached notices by specifically stating:

“I cannot agree to the deposition as it calls for disclosure of attorney/client privileged communications and production of attorney work product. I also do not have the requisite personal knowledge; anything I know is inadmissible hearsay. All relevant, non-privileged information I could provide can be obtained from other sources, namely the client. Further, FL’s ethics rules require me to make every effort practicable to avoid disclosure of information relating to a representation and seek appropriate protective orders or other arrangements to the fullest extent practicable.” (See Exhibit D).

I maintained this position in an email I sent on Jan 20, and stated “the facts I relied on in signing everything from the trademark applications to TTAB documents came either directly from my clients, or from publically available information.” “I definitely do not think you should make travel arrangements for my deposition until you've obtained a court order that says I have to testify in this case.” (See Exhibit E).

I also maintained this position during our last conference call, and in emails sent over the last few weeks of discovery. Regardless of the fact that counsel knew that I was extremely opposed to its contentions that my deposition as fact-witness/attorney was a necessity, they failed to exercise the option of securing attendance through a subpoena despite having had ample time to do so. In fact, no subpoena was ever issued or served until February 17th four days after the close of discovery, despite the February 14th date that was included in the sworn certification.

C. No Good Cause Shown and No Stipulation

The closing date of the discovery period may be extended by stipulation of the parties approved by the Board, or on motion (pursuant to Fed. R. Civ. P. 6(b)) granted by the Board, or by order of the Board. T.B.M.P. Section 403.04. A motion to extend the discovery period must be based on good cause, and must state with particularity the grounds justifying the extension. See *Luemme Inc. v. D.B. Plus Inc.*, 53 U.S.P.Q.2d 1758, 1760 (T.T.A.B. 1999). In this case, Petitioner has not made a good cause showing to justify the extension.

As noted in the Trademark Trial and Appeal Board Manual of Procedure, "[m]ere delay in initiating discovery does not constitute good cause for an extension of the discovery period." T.B.M.P. Section 403.04; see also *Luemme Inc.*, 53 U.S.P.Q.2d at 1760; *Dating DNA LLC v. Imagini Holdings Ltd.*, 94 U.S.P.Q.2d 1889, 1892 n.3 (T.T.A.B. 2010) ("It is well established that a party that delays in initiating discovery so that it will not receive responses to an initial set of discovery requests until after the scheduled close of discovery, generally is not entitled to an extension to allow for follow-up discovery."). In this case, discovery first opened on June 18, 2013. Petitioner had ample time to complete its depositions and pursue third-party discovery well in advance of the close of the period. Yet, Petitioner waited until the end of the period, and now requests permission to conduct discovery depositions outside of the time allotted by the rules.

Discovery depositions must be taken prior to the expiration of the discovery period unless the parties stipulate that the deposition may be taken outside of the period. The parties did discuss a possible extension or an informal stipulation to the depositions outside of discovery but Registrant NEVER agreed to the stipulation options proposed by Petitioner and also could not get Petitioner to agree to options that worked for Registrant.

III. CONCLUSION

WHEREFORE, For the foregoing reasons, Registrant respectfully requests that the Board issue an order denying 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.

Date: March 6, 2014

Respectfully submitted,

s/Jamie N. Pitts/

Jamie N. Pitts

Florida Bar No. 72632

The Law Office of Jamie N. Pitts, Esq.

1064 N. Tamiami Trail, Ste. #1533

Sarasota, FL 34236

(941) 893-7751– telephone

(855) 224-7819– facsimile

Email: jamienspitts@jnplawfirm.com

Counsel for Registrant

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing **REGISTRANT'S OPPOSITION TO PETITIONER'S MOTION TO EXTEND DISCOVERY** was served electronically upon Petitioner by delivering true and correct copies of same electronically and via U.S. Mail to counsel for Petitioner on March 6, 2014 as follows:

Jennifer Fraser
NOVAK DRUCE CONNOLLY BOVE & QUIGG LLP
1875 Eye Street, N.W.
Eleventh Floor
Washington, D.C. 20006

s/Jamie N. Pitts/

Jamie N. Pitts

EXHIBIT A

**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 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

**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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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

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

EXHIBIT B



Jamie Pitts <jamienpitts@gmail.com>

LuckyU v. Aragona - U.S. Trademark Opposition No. 92057023

1 message

Jennifer Fraser <Jennifer.Fraser@novakdruce.com>

Thu, Jun 27, 2013 at 3:33 PM

To: Jamie Pitts <jamienpitts@jnplawfirm.com>

Cc: Daniel Mullarkey <daniel.mullarkey@novakdruce.com>

Dear Jamie,

Further to our June 18 discovery conference, we outline various issues we discussed below.

This confirms the parties agree the standard Protective Order is acceptable. Also during our call, the parties agreed to send a courtesy copy of all documents via e-mail, in addition to the required service copies by mail.

You also indicated you would provide some proposed stipulations for our consideration and we look forward to receiving your proposals. We are also open to considering ACR and we can discuss this later after we receive the stipulations.

We look forward to hearing from you. Please do not hesitate to contact us if you have any questions.

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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CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February 2014 a true and correct copy of the foregoing **AMENDED NOTICE OF DEPOSITION OF JOHN ARAGONA** 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 C

**UNITED STATES DISTRICT COURT
For the
MIDDLE DISTRICT OF FLORIDA**

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. :

John "Giovanni" Aragona :

Respondent. :

Trademark Trial and Appeal Board
Cancellation No. 92057023

Youngblood Process Service
Date 2-27-14 Time 11:52 AM
Court Certification # 157618
Owen R. Youngblood ay

SUBPOENA TO TESTIFY AT A DEPOSITION

To: Jamie Pitts
The Law Office of Jamie N. Pitts
3340 Wood Thrush Dr. Ste. 341
Punta Gorda, FL 33950

✓ *Testimony*: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this matter. 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. The deposition topics are listed in Schedule A attached hereto.

Place: Burr Forman LLP 201 North Franklin Street Suite 3200 Tampa, FL 33602	Date and Time: February 27, 2014
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**UNITED STATES DISTRICT COURT
For the
MIDDLE DISTRICT OF FLORIDA**

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,	:	
	:	Trademark Trial and Appeal Board
v.	:	Cancellation No. 92057023
	:	
John "Giovanni" Aragona	:	
	:	
Respondent.	:	

SUBPOENA TO TESTIFY AT A DEPOSITION

To: Jamie Pitts
The Law Office of Jamie N. Pitts
3340 Wood Thrush Dr. Ste. 341
Punta Gorda, FL 33950

✓ *Testimony*: YOU ARE COMMANDED to appear at the time, date, and place set forth below to testify at a deposition to be taken in this matter. 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. The deposition topics are listed in Schedule A attached hereto.

Place: Burr Forman LLP 201 North Franklin Street Suite 3200 Tampa, FL 33602	Date and Time: February 27, 2014
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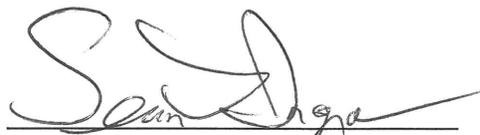
The provisions of Fed. R. Civ. P. 45(c), relating to the place of compliance; Rule 45(d), relating to your protection as a person subject to a subpoena; and Rule 45(e) and (g), relating to your duty to respond to this subpoena and the potential consequences of not doing so are attached.

Date: February 14, 2014

CLERK OF COURT

Signature of Clerk or Deputy Clerk

OR



Attorney's Signature
Sean L. Ingram (FL Bar #0050842)

The name, address, e-mail, and telephone number of the attorney representing Lucky U Enterprises, Inc., who issues or requests this subpoena, are:

Novak Druce Connolly Bove + Quigg, LLP

Sean L. Ingram
525 Okeechobee Blvd.
Fifteenth Floor
West Palm Beach, FL 33401
Sean.ingram@novakdruce.com
(561) 847-7800

and

Jennifer Fraser
Daniel P. Mullarkey
1875 Eye Street, NW, 11th Floor, Washington, DC 20006
Jennifer.fraser@novakdruce.com
daniel.mullarkey@novakdruce.com
(202) 331-7111

Civil Action No. TTAB No. 92057023

PROOF OF SERVICE

(This section should not be filed with the court unless required by Fed. R. Civ. P. 45.)

I received this subpoena for *(name of individual and title, if any)* _____
on *(date)* _____ .

I served the subpoena by delivering a copy to the named individual as follows: _____

_____ on *(date)* _____ ; or

I returned the subpoena unexecuted because: _____
_____ .

Unless the subpoena was issued on behalf of the United States, or one of its officers or agents, I have also
tendered to the witness the fees for one day's attendance, and the mileage allowed by law, in the amount of
\$ _____ .

My fees are \$ _____ for travel and \$ _____ for services, for a total of \$ _____ 0.00 _____ .

I declare under penalty of perjury that this information is true.

Date: _____

Server's signature

Printed name and title

Server's address

Additional information regarding attempted service, etc.:

Federal Rule of Civil Procedure 45 (c), (d), (e), and (g) (Effective 12/1/13)

(c) Place of Compliance.

(1) For a Trial, Hearing, or Deposition. A subpoena may command a person to attend a trial, hearing, or deposition only as follows:

- (A) within 100 miles of where the person resides, is employed, or regularly transacts business in person; or
- (B) within the state where the person resides, is employed, or regularly transacts business in person, if the person
 - (i) is a party or a party's officer; or
 - (ii) is commanded to attend a trial and would not incur substantial expense.

(2) For Other Discovery. A subpoena may command:

- (A) production of documents, electronically stored information, or tangible things at a place within 100 miles of where the person resides, is employed, or regularly transacts business in person; and
- (B) inspection of premises at the premises to be inspected.

(d) Protecting a Person Subject to a Subpoena; Enforcement.

(1) Avoiding Undue Burden or Expense; Sanctions. A party or attorney responsible for issuing and serving a subpoena must take reasonable steps to avoid imposing undue burden or expense on a person subject to the subpoena. The court for the district where compliance is required must enforce this duty and impose an appropriate sanction—which may include lost earnings and reasonable attorney's fees—on a party or attorney who fails to comply.

(2) Command to Produce Materials or Permit Inspection.

(A) *Appearance Not Required.* A person commanded to produce documents, electronically stored information, or tangible things, or to permit the inspection of premises, need not appear in person at the place of production or inspection unless also commanded to appear for a deposition, hearing, or trial.

(B) *Objections.* A person commanded to produce documents or tangible things or to permit inspection may serve on the party or attorney designated in the subpoena a written objection to inspecting, copying, testing, or sampling any or all of the materials or to inspecting the premises—or to producing electronically stored information in the form or forms requested. The objection must be served before the earlier of the time specified for compliance or 14 days after the subpoena is served. If an objection is made, the following rules apply:

- (i) At any time, on notice to the commanded person, the serving party may move the court for the district where compliance is required for an order compelling production or inspection.
- (ii) These acts may be required only as directed in the order, and the order must protect a person who is neither a party nor a party's officer from significant expense resulting from compliance.

(3) Quashing or Modifying a Subpoena.

(A) *When Required.* On timely motion, the court for the district where compliance is required must quash or modify a subpoena that:

- (i) fails to allow a reasonable time to comply;
- (ii) requires a person to comply beyond the geographical limits specified in Rule 45(c);
- (iii) requires disclosure of privileged or other protected matter, if no exception or waiver applies; or
- (iv) subjects a person to undue burden.

(B) *When Permitted.* To protect a person subject to or affected by a subpoena, the court for the district where compliance is required may, on motion, quash or modify the subpoena if it requires:

(i) disclosing a trade secret or other confidential research, development, or commercial information; or

(ii) disclosing an unretained expert's opinion or information that does not describe specific occurrences in dispute and results from the expert's study that was not requested by a party.

(C) *Specifying Conditions as an Alternative.* In the circumstances described in Rule 45(d)(3)(B), the court may, instead of quashing or modifying a subpoena, order appearance or production under specified conditions if the serving party:

- (i) shows a substantial need for the testimony or material that cannot be otherwise met without undue hardship; and
- (ii) ensures that the subpoenaed person will be reasonably compensated.

(e) Duties in Responding to a Subpoena.

(1) Producing Documents or Electronically Stored Information. These procedures apply to producing documents or electronically stored information:

(A) *Documents.* A person responding to a subpoena to produce documents must produce them as they are kept in the ordinary course of business or must organize and label them to correspond to the categories in the demand.

(B) *Form for Producing Electronically Stored Information Not Specified.* If a subpoena does not specify a form for producing electronically stored information, the person responding must produce it in a form or forms in which it is ordinarily maintained or in a reasonably usable form or forms.

(C) *Electronically Stored Information Produced in Only One Form.* The person responding need not produce the same electronically stored information in more than one form.

(D) *Inaccessible Electronically Stored Information.* The person responding need not provide discovery of electronically stored information from sources that the person identifies as not reasonably accessible because of undue burden or cost. On motion to compel discovery or for a protective order, the person responding must show that the information is not reasonably accessible because of undue burden or cost. If that showing is made, the court may nonetheless order discovery from such sources if the requesting party shows good cause, considering the limitations of Rule 26(b)(2)(C). The court may specify conditions for the discovery.

(2) Claiming Privilege or Protection.

(A) *Information Withheld.* A person withholding subpoenaed information under a claim that it is privileged or subject to protection as trial-preparation material must:

- (i) expressly make the claim; and
- (ii) describe the nature of the withheld documents, communications, or tangible things in a manner that, without revealing information itself privileged or protected, will enable the parties to assess the claim.

(B) *Information Produced.* If information produced in response to a subpoena is subject to a claim of privilege or of protection as trial-preparation material, the person making the claim may notify any party that received the information of the claim and the basis for it. After being notified, a party must promptly return, sequester, or destroy the specified information and any copies it has; must not use or disclose the information until the claim is resolved; must take reasonable steps to retrieve the information if the party disclosed it before being notified; and may promptly present the information under seal to the court for the district where compliance is required for a determination of the claim. The person who produced the information must preserve the information until the claim is resolved.

(g) Contempt.

The court for the district where compliance is required—and also, after a motion is transferred, the issuing court—may hold in contempt a person who, having been served, fails without adequate excuse to obey the subpoena or an order related to it.

SCHEDULE A

1. Your knowledge and belief that Respondent, John Aragona, was the owner of the trademarks/service marks sought to be registered in the applications that matured to U.S. Trademark Registration Nos. 4,220,686, 4,224,400, 4,232,569, and 4,248,595 (“Registrations at Issue”) to which you attested to by signing the declaration for each application.

2. Your knowledge and belief that no other person, firm, corporation, or association had the right to use the marks in commerce, either in identical form thereof or in such near resemblance thereto as to be likely, when used on or in connection with the goods/services of such other person, to cause confusion, or to cause mistake, or to deceive to which you attested to by signing the declaration for each application of the Registrations at Issue.

3. Your knowledge and belief as to the veracity of the dates of first use in each of the applications that matured to the Registrations at Issue and to which you attested to by signing the declaration for each application.

4. Your knowledge and belief that the specimens of use for each of the applications that matured to the Registrations at Issue demonstrated applicant’s use of the marks in commerce as attested by you when signing the declarations for the applications that matured into the Registrations at Issue.

5. The basis for all factual statements in the applications that matured to the Registrations at Issue as you attested to by signing the declarations for each of the applications that matured into the Registrations at Issue.

6. Your authorization to execute the applications of the Registrations at Issue on behalf of the applicant.

CERTIFICATE OF SERVICE

I hereby certify that on this 14th day of February 2014 a true and correct copy of the foregoing **SUBPOENA TO TESTIY AT A DEPOSITION** 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 Jamienspitts@jpnlawfirm.com

s/Daniel P. Mullarkey/
Daniel P. Mullarkey

EXHIBIT D



Jamie Pitts <jamienpitts@gmail.com>

Re: LuckyU v. Aragona - New Discovery Requests

1 message

Jamie Pitts <jamienpitts@jnplawfirm.com>

Tue, Jan 14, 2014 at 7:23 PM

To: Daniel Mullarkey <daniel.mullarkey@novakdruce.com>

Daniel,

Regarding the subpoena issued to me--

I cannot agree to the deposition as it calls for disclosure of attorney/client privileged communications and production of attorney work product. I also do not have the requisite personal knowledge; anything I know is inadmissible hearsay. All relevant, non-privileged information I could provide can be obtained from other sources, namely the client. Further, FL's ethics rules require me to make every effort practicable to avoid disclosure of information relating to a representation and seek appropriate protective orders or other arrangements to the fullest extent practicable.

As to John's subpoena—

For John to be able to effectively participate in a deposition ADA accommodations are going to be necessary. I am going to speak to John's psychiatric rehabilitation counselor to get her suggestions on the particular accommodations that are appropriate under the circumstances this week. I will follow up with you after as to the specifics and the date.

Please contact me if you have any questions or need further information.

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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error, please notify us immediately. Thank you.

On Mon, Jan 13, 2014 at 3:00 PM, Daniel Mullarkey <daniel.mullarkey@novakdruce.com> wrote:

Jamie,

Please see the attached discovery requests and deposition notices. Please confirm the deposition notice dates and advise if we need to discuss date adjustments.

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 E



Jamie Pitts <jamienpitts@gmail.com>

Re: LuckyU v. Aragona - New Discovery Requests

1 message

Jamie Pitts <jamienpitts@jnplawfirm.com>

Mon, Jan 20, 2014 at 1:01 PM

To: Daniel Mullarkey <daniel.mullarkey@novakdruce.com>, Jennifer Fraser <Jennifer.Fraser@novakdruce.com>

Daniel,

Thank you for your willingness to accommodate John . As I said the counselor will provide a formal, written recommendation, she is doing so in the form of a sworn declaration. I am hopeful that she will get her recommendation back to me this week, I will forward it to you as soon as I get it.

I maintain that the facts I relied on in signing everything from the trademark applications to TTAB documents came either directly from my clients, or from publically available information. Jennifer is the only person who's signed all of your client's TTAB documents, I don't intend on deposing her, I intend on getting the testimony directly from your clients. I definitely do not think you should make travel arrangements for my deposition until you've obtained a court order that says I have to testify in this case. And I wouldn't make travel arrangements for John's deposition until we hear back from his VA counselor. I assume these are discovery depositions, if you need to extend discovery another couple of weeks I am fine with doing so.

I was under the impression that FL's Middle District Court was the appropriate forum to determine the appropriateness of depositions. If you feel speaking to the TTAB attorney is also necessary, I'd be happy to do so. Either way, just let me know.

Thanks,

Jamie

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On Fri, Jan 17, 2014 at 6:11 PM, Daniel Mullarkey <daniel.mullarkey@novakdruce.com> wrote:

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

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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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

Daniel,

I just spoke to the counselor at the VA that John has worked with since around the time he left Hawaii. She said that a normal deposition is not something that John is going to be able to handle. She is going to provide a written recommendation as to how John's testimony should be obtained, I will forward that to you as soon as I get it back. The counselor's name is Debra Wolfe and her email is debra.wolfe@VA.gov, please consider her added to my list of people who we might get testimony from.

Please let me know if you have any questions.

Thanks,

Jamie

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On Tue, Jan 14, 2014 at 7:23 PM, Jamie Pitts <jamienpitts@jnplawfirm.com> wrote:

Daniel,

Regarding the subpoena issued to me--

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Jamie

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On Mon, Jan 13, 2014 at 3:00 PM, Daniel Mullarkey <daniel.mullarkey@novakdruce.com> wrote:

Jamie,

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Regards,

Daniel P. Mullarkey

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