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UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Mailed: May 27, 2014

Cancellation No. **92057023**

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

v.

John "Giovanni" Aragona

Yong Oh (Richard) Kim, Interlocutory Attorney:

This matter comes up on petitioner's motion (filed February 14, 2014) to extend discovery so as to complete the taking of two previously noticed depositions. The motion is fully briefed.

As last reset, discovery was scheduled to close on February 13, 2014. However, as Federal offices were closed due to adverse weather conditions on February 13, 2014,¹ that day is considered a Federal holiday and by operation of Trademark Rule 2.196, discovery effectively closed on February 14, 2014. *See Filing of Papers During Unscheduled Closings of the Patent and Trademark Office*, 1076 TMOG 6 (March 10, 1987). As petitioner's motion was filed prior to the expiration of the discovery period as previously

¹ See <http://www.opm.gov/policy-data-oversight/snow-dismissal-procedures/status-archives/>.

extended, petitioner need only show good cause for the requested extension. *See* Fed. R. Civ. P. 6(b). To show good cause, the moving party must set forth with particularity the facts said to constitute good cause and must demonstrate that the requested extension is not necessitated by the moving party's own lack of diligence or unreasonable delay. *See National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008).

Here, petitioner seeks an extension of discovery to complete the taking of two discovery depositions served on January 13, 2014, and noticed for February 11 and 12, 2014.² In reviewing the intervening correspondence between the parties' counsels in trying to schedule these depositions, it appears that any delay or difficulty in timely proceeding with the depositions lies with respondent rather than petitioner. Specifically, it was respondent who requested appropriate ADA accommodations for his deposition and the

² The reference to 2013 in the original notices of deposition was clearly a clerical error and had no bearing on the parties' attempts to schedule the depositions. As to respondent's claim that the original notices of deposition were improperly served, the contention is meritless as the corresponding certificates of service reflect service by email and first-class mail. That the certificates refer to the first-class mailing as a courtesy copy is of no event and to nullify such service on such grounds would exalt form over substance which the Board declines to do here. Finally, respondent's contention that the notices of deposition should have been served at least thirty-five days prior to the close of discovery because the notices were combined with a "request for production of documents" is without basis. Simply requesting that the deponent bring to the deposition "any documents and tangible things that may be necessary for [the deponent] to give full, complete, and binding answers" does not equate to a formal request for production that "describe[s] with reasonable particularity each item or category of items to be inspected" as required under Fed. R. Civ. P. 34(b). Further, the Board finds that respondent's timeliness contention contradicts his contention of improper service since service under one of the methods listed under Trademark Rule 2.119 is implicit in a claim that a combined notice of deposition and request for production of documents must be served at least thirty-five days prior to the close of discovery.

need to consult with his psychiatric rehabilitation counselor for recommendations. *Opposition to Motion*, Exh. D. It was also respondent who chose to involve another attorney to handle the depositions and demanded additional time to allow said attorney to familiarize himself with the case. *Motion to Extend*, Exh. F. And it was respondent who objected to the taking of his counsel's deposition thereby requiring a subpoena under Fed. R. Civ. P. 45. *Opposition to Motion*, Exh. D. Additionally, as early as January 20, 2014, respondent led petitioner to believe that he had agreed to a two week extension as needed and went as far as to dissuade petitioner from making travel arrangements for the depositions until the issues relating thereto were resolved, only to turn around on the last day of discovery demanding a 60-day extension at a minimum or otherwise agreeing to none at all. *Reply*, Exhs. H and J. Under these circumstances, it can hardly be said that petitioner unreasonably delayed or lacked diligence in taking the depositions. Indeed, the correspondences between the parties' counsels demonstrate that petitioner diligently pursued the depositions while trying to accommodate respondent's schedule and requests.

In view thereof, the Board finds that petitioner has demonstrated the requisite cause for an extension. Petitioner's motion to extend discovery is hereby **GRANTED** and dates are **RESET** as follows:

Discovery Closes	6/30/2014
Plaintiff's Pretrial Disclosures Due	8/14/2014
Plaintiff's 30-day Trial Period Ends	9/28/2014
Defendant's Pretrial Disclosures Due	10/13/2014
Defendant's 30-day Trial Period Ends	11/27/2014

Plaintiff's Rebuttal Disclosures Due
Plaintiff's 15-day Rebuttal Period Ends

12/12/2014
1/11/2015

IN EACH INSTANCE, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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