

ESTTA Tracking number: **ESTTA626063**

Filing date: **09/09/2014**

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

Proceeding	92057023
Party	Defendant John "Giovanni" Aragona
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Date	09/09/2014
Attachments	Motion for Leave.pdf(95027 bytes)

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

In the matter of Trademark Registration No. 4220686
Mark: GIOVANNI'S ALOHA FOODS
Registration Date: October 9, 2012

In the matter of Trademark Registration No. 4224400
Mark: GIOVANNI'S SCAMPI MARINADE
Registration Date: October 16, 2012

In the matter of Trademark Registration No. 4232569
Mark: GIOVANNI'S ORIGINAL WHITE SHRIMP TRUCK
Registration Date: October 30, 2012

In the matter of Trademark Registration No. 4248595
Mark: GIOVANNI'S HOT & SPICY WE REALLY MEAN IT! SAUCE
Registration Date: November 27, 2012

LuckyU Enterprises, Inc.)	
)	
Petitioner,)	
)	
v.)	Cancellation No. 92057023
)	
John "Giovanni" Aragona,)	
)	
Registrant.)	

**REGISTRANT'S UNCONTESTED MOTION FOR LEAVE TO
ATTEND AND TAKE DEPOSITIONS REMOTELY**

Registrant, John "Giovanni" Aragona, (hereinafter "Registrant") respectfully asks the Board for leave to attend the testimony deposition of Troy Nitsche, and take future depositions by telephone or other remote means.

I. BACKGROUND

On August 25, 2014, Petitioner, LuckyU Enterprises, Inc., dba Giovanni's Original White Shrimp Truck ("Petitioner") served Registrant with its notice of the testimony deposition of Troy Nitsche. The notice scheduled the oral deposition for September 17, 2014 in a conference room at the Turtle Bay Resort, in Kahuka, Oahu, Hawaii 96731. Additionally, all of the testimonial depositions that Registrant currently plans to take are of witnesses residing in either Hawaii or New York.

II. REGISTRANT'S UNCONTESTED MOTION FOR LEAVE TO ATTEND AND TAKE DEPOSITIONS REMOTELY SHOULD BE GRANTED

The Board may grant leave to a party to conduct a deposition by telephone. TBMP § 703.01(h); Fed. R. Civ. P. 30(b)(4). Current federal practice favors the use of technological benefits to promote flexibility, simplification of procedure and reduction of cost to parties. *Hewlett-Packard co. v. Healthcare Personnel Inc.*, 21 U.S.P.Q.2d 1552, 1553 (TTAB 1991) (Board granted leave to Registrant's Florida attorney to conduct the defense of Petitioner's deposition of Petitioner's witness in California by telephone). Granting of leave to take depositions by telephone should be granted unless the non-moving party shows harm or prejudice arising therefrom. *Id.* (inconvenience and the possibility of technical problems do not constitute prejudice).

Registrant is a retired veteran whose primary source of income is Federal Disability Benefits. As such, Registrant lacks the financial resources necessary to cover the expense for Registrant's counsel located in Punta Gorda, Florida to travel to Oahu, Hawaii and conduct cross-examination in person. Registrant's desire to avoid such costs by attending and taking depositions remotely is a sufficient purpose contemplated by the Federal Rule.

Petitioner will not be prejudiced or harmed by Registrant's counsel attending and taking depositions by remote means. Furthermore, counsel for Registrant and Petitioner have been in communication regarding this matter and on September 4, 2014, Petitioner communicated to Registrant that it did not oppose a motion to remote deposition attendance by Registrant's counsel.

CONCLUSION

In conclusion, Registrant requests that the Board issue an order granting leave for Registrant to attend the September 17, 2014 deposition of Troy Nitsche, and requests that the Board's order also cover future depositions taken in locations similarly remote from Southwest Florida/or take any other appropriate action the Board deems just and proper.

Date: September 9, 2014

Respectfully submitted,

John "Giovanni" Aragona

s/Jamie N. Pitts

Jamie N. Pitts

Florida Bar No. 72632

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Counsel for Registrant

CERTIFICATE OF SERVICE

WE HEREBY CERTIFY that the foregoing **UNCONTESTED MOTION FOR LEAVE TO ATTEND AND TAKE DEPOSITIONS REMOTELY** was served on September 9, 2014 to Petitioner's counsel via U.S. Mail with a courtesy copy sent via email as follows:

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s/Jamie N. Pitts/
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