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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
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Date	09/17/2014
Attachments	Petitioner's Response to Registrant's motion for Leave to Attend and Take Depositions Remotely.pdf(12920 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. :

John "Giovanni" Aragona :

Respondent. :

Cancellation No. 92057023

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

Petitioner, LuckyU Enterprises, Inc., dba Giovanni's Original White Shrimp Truck ("LuckyU"), files this statement in response to Registrant's, John "Giovanni" Aragona ("Registrant"), motion for leave to attend the upcoming deposition of Troy Nitsche remotely. Contrary to Registrant's assertions in its Motion, Registrant only communicated the desire to attend by telephone the noticed deposition of Troy Nitsche. To the extent the Motion requests leave for Registrant to attend every deposition remotely, LuckyU does not consent and it is improper to make such a blanket request before a deposition is noticed. LuckyU does not oppose Registrant's request to remotely participate in the deposition of Troy Nitsche.

TROY NITSCHKE DEPOSITION RESPONSE

LuckyU noticed the testimony deposition of Troy Nitsche on August 25, 2014 to take place in Oahu, Hawaii near Mr. Nitsche's residence. LuckyU Enterprises is incorporated in Hawaii and most of its business takes place in the state. Thus it is reasonable to conduct the deposition in Hawaii. Counsel for Registrant claimed that her client could not afford to pay for her to attend the deposition in Hawaii and she asked to attend remotely. Based on an earlier deposition experience with Registrant's counsel and her own improper testifying during the deposition, and anticipating a similar scenario including issues of handling exhibits, counsel for LuckyU initially informed Aragona's counsel that they would not consent to her remote attendance and thought it would be better for counsel to attend in person to address objections and issues with exhibits and other conduct. Moreover, Petitioner's counsel was skeptical of claims about expense considering the many times Registrant has been on leisure travel and requested extensions for those reasons. However, Petitioner's counsel recognizes the Board's preference toward cooperation and based upon counsel's insistence, LuckyU has agreed not to oppose the motion for the limited purpose of counsel's remote attendance for the upcoming deposition of Troy Nitsche.

In consideration of accommodating Registrant, LuckyU expects that Registrant will be responsible for any costs related directly to the remote accommodation of counsel. Further, LuckyU expects that counsel will refrain from testifying during the deposition and will generally follow the Board's Rules and act accordingly.

REQUEST FOR LEAVE TO TAKE "FUTURE" DEPOSITIONS REMOTELY RESPONSE

LuckyU is of the position that a blanket proposal for remote attendance of future depositions is unnecessary and improper at this juncture. First, Registrant is requesting to take

his own deponents remotely and these issues can only be addressed once the deposition is noticed. LuckyU's counsel is not fully prepared to brief on all the reasons why this is improper, but there are numerous issues that must be worked out if/when this becomes an issue. For example, if LuckyU's counsel wants to attend in person to effectively observe and cross examine, who arranges the meeting space? Second, Registrant's Motion suggests that "all of the testimonial depositions that Registrant currently plans to take are of witnesses residing in...New York," yet none of the Initial Disclosures or disclosures of any sort mentions any person or persons residing in the state of New York. To the extent the Motion is requesting leave to take these depositions remotely is improper until each deposition is actually noticed and LuckyU opposes this portion of the current Motion.

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

Date: September 17, 2014

s/Daniel P. Mullarkey/
Jennifer Fraser
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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of September 2014 a true and correct copy of the foregoing **PETITIONER'S RESPONSE TO REGISTRANT'S MOTION FOR LEAVE TO ATTEND AND TAKE DEPOSITIONS REMOTELY** 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 Jamiempitts@jpnlawfirm.com.

s/Daniel P. Mullarkey/

Daniel P. Mullarkey