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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	06/29/2015
Attachments	RESPONSE TO MOTION TO STRIKE.pdf(70019 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	:	
	:	
Registrant.	:	

REGISTRANT'S RESPONSE TO PETITIONER'S MOTION TO STRIKE

Registrant respectfully submits this brief in opposition to Petitioner's Motion To Strike
filed June 8th, 2015.

Under the existing trial and briefing schedule for this case, Registrant's brief on the merits was due May 18, 2015, thirty days after the due date for Petitioner's brief. The May 18th due date for Registrant's brief was set by operation of Trademark Rule 2.128(a)(1), 37 C.F.R. §2.128(a)(1), and would not have been affected by the actual date on which Petitioner filed its brief, although it was filed and served on a date other than the date it was due.

At the time of filing its original extension request on April 21, 2015, Counsel for Registrant believed the data and Registrant's Trial Brief could be recovered. On May 18, 2015, Registrant filed a combined reply and alternative motion to reopen its testimony period. To date, computer technicians have been unable to repair the hardware damaged in the storm and Registrant's Trial Brief has not been otherwise recovered.

Pursuant to Fed. R. Civ. P. 6(b)(2), the requisite showing for reopening an expired period is that of excusable neglect. In *Pioneer Investment Services Company v. Brunswick Associates Limited Partnership*, 507 U.S. 380, 395 (1993), the Supreme Court set forth four factors to be considered, within the context of all the relevant circumstances, to determine whether a party's neglect of a matter is excusable. Those factors are: (1) the danger of prejudice to the non-moving party; (2) the length of delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the moving party; and (4) whether the moving party has acted in good faith. The Supreme Court also noted that the inquiry is "at bottom an equitable one, taking account of all relevant circumstances surrounding the party's omission. These include..." and listed its four factors. *Pioneer*, 507 U.S. at 395. The introduction of the list of factors in this manner clearly suggests that all other factors bearing on the party's omission may be considered; and broader equitable considerations are not to be

overlooked. These factors and the facts related to each are addressed in Registrant's May 18th filing at TTABVUE docket number 53.

Registrant respectfully adds, that while Petitioner filed its brief on the merits, it is unlikely, however, that that brief would leave the Board without questions regarding the significance of evidence in the record, whether Petitioner has carried its burden of proof as plaintiffs, or regarding the application of the law to the facts adduced by the evidence of record. The normal course of briefing an opposition on the merits raises questions about a Petitioner's claims; and a reply brief by the Petitioner not only responds to those questions, but also raises questions about the applicant's defenses. The full extent of this exchange is valuable to the Board, especially in a case like this one, which has a large record and includes evidence and testimony as to events that have occurred during a timeframe that spans over two decades. Additionally, in a case without oral argument, the exchange of briefs suggests issues the Board may need to consider in its deliberations.

CONCLUSION

For the foregoing reasons, Registrant respectfully requests the Board deny Petitioner's Motion to Strike and issue an order granting Registrant's motion to reopen and reset the remaining deadlines. Registrant further requests a suspension pending the resolution of the outstanding motions.

Monday, June 29, 2015

Respectfully submitted,

s/Jamie N. Pitts
Jamie N. Pitts

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Counsel for Registrant

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that the foregoing Registrant's Trial Brief was served on
Monday, June 29, 2015 to Petitioner's counsel via first class mail as follows:

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s/Jamie N. Pitts

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