

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

RK

Mailed: October 29, 2015

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 Respondent's filing¹ of May 18, 2015, seeking an extension or reopening of time to file his main brief and Petitioner's motion (filed June 8, 2015) to strike the filing and to otherwise oppose the reopening of Respondent's briefing period. The filings have each been contested and proceedings herein were suspended on August 29, 2015, pending disposition of the motions.

In reviewing the filings, it is apparent that the parties' dispute stems from a "consented" schedule submitted by Respondent and automatically approved by the Board's ESTTA system on December 2, 2014. *See* 36 TTABVUE 1. By that schedule, the close of Respondent's testimony period and all subsequent dates were extended by thirty (30) days. It appears, however, that Petitioner

¹ Respondent styled the filing as "Registant's [sic] Reply to Petitioner's Response to Motion to Extend."

did not consent to a thirty-day extension but rather to a one week extension. *See id.* and Exh. C to *Petitioner's Motion to Strike*, 55 TTABVUE 15-18. Nevertheless, despite the Board's notices and the parties' awareness of the scheduling error, neither party filed a corrected schedule nor moved to otherwise rectify the error. In view thereof, the Board deems any objection thereto waived and the schedule stands as set forth in Respondent's filing of December 2, 2014.

Pursuant to this schedule, Petitioner's rebuttal testimony period closed on February 17, 2015, with Petitioner's main brief due April 18, 2015, and Respondent's main brief due May 18, 2015. *See* Trademark Rule 2.128. Accordingly, Respondent's initial motion (filed April 22, 2015) to extend his time to file his main brief to April 26, 2015, was unnecessary in view of the reset schedule and the Board's granting of that motion resetting Respondent's time to April 30, 2015, which order was issued nearly two weeks after said date, was in error. On the other hand, Respondent's subsequent filing of May 18, 2015, seeking an extension of his briefing schedule was appropriate and timely filed *vis-à-vis* the reset trial schedule such that Respondent need only demonstrate 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. TBMP § 509.01(a). So long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions has not been abused, the Board is liberal in granting extensions of time. *See National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008).

The essence of Respondent's extension request is that lightning caused a power surge "which resulted in damage to [counsel's] electronic equipment and total loss of data, including Registrant's trial brief and relevant case files." *Respondent's Reply*, 53 TTABVUE 3. In response, Petitioner seeks to strike the extension request as improper, untimely and moot in view of the Board's previous order setting the brief's due date to April 30, 2015. *Petitioner's Motion to Strike*, 55 TTABVUE 2. But as noted *supra*, that order was in error and notwithstanding the schedule Petitioner may have believed to be in place, Petitioner was aware that this matter was proceeding under a different schedule yet failed to correct it. Thus, Petitioner will not be heard to object to a filing based on a schedule unknown and unapproved by the Board.

In view thereof, Respondent's motion for extension is hereby **GRANTED** and Petitioner's motion to strike is hereby **DENIED**. Respondent's main brief on the case is due **NOVEMBER 30, 2015**. With that being said, Respondent is placed on notice that in view of the amount of time that he has had to reconstruct his case files and brief, no further extensions will be forthcoming.

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Unless consented to by Petitioner, any further motion by Respondent to extend or suspend this matter will be given no consideration.

Briefing herein is **RESUMED**.

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