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

Proceeding	92059866
Party	Plaintiff Kini Kai, L.L.C.
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Attachments	2015-06-08-Opposition to Motion for Discovery.pdf(98002 bytes)

Registrant failed to make any attempt to set Ms. Meador's deposition. Rather, discovery closed on May 10, 2015 and the Board subsequently suspended these proceedings on May 14, 2015. It is well settled that the mere filing of a motion for summary judgment motion does not automatically suspend proceedings in a case. *See* TBMP § 528.03; *see also Super Bakery Inc. v. Benedict*, 96 U.S.P.Q.2d 1134, 1135 (T.T.A.B. 2010), *aff'd*, 101 U.S.P.Q.2d 1089 (Fed. Cir. 2011).

Registrant's request to take discovery should be denied as discovery in this matter is closed.

B. REGISTRANT HAS NOT SUPPORTED A REQUEST FOR DISCOVERY

Registrant's request for discovery in response to Petitioner's motion for summary judgment is also not properly supported. In the Declaration of Registrant attached to the motion, the Registrant states merely that she needs to take the deposition of Jennifer K. Meadors regarding "allegations of prior use of the mark KINI KAI" and regarding "the exhibits attached to Petitioner's Motion for Summary Judgment." (*See* Declaration of Taryn Rodighiero at ¶ 4-5). Registrant states that she has "no other feasible way in which to obtain facts and information pertaining to Petitioner's alleged prior use or to test the veracity of Ms. Meador's allegations." (*Id.*) Registrant then goes on to state that without taking the deposition of Jennifer K. Meadors, she, "will be unable to present facts sufficient to show the existence of a genuine issue of material fact for trial." (*Id.* at ¶ 6).

The allegation in Petitioner's motion for summary judgment that Petitioner is the senior user of the mark are the same facts and evidence presented in the Petition to Cancel filed in August 2014, in Petitioner's initial disclosures made in November 2014, and Petitioner's supplemental disclosures and discovery responses made in March 2015.

Registrant's request to more closely review the evidence presented months ago by taking the deposition of Jennifer K. Meadors is simply "unsupported speculative hope at finding some

evidence to support [her] case.” See *TBMP* 528.06. This is not a sufficient basis to request discovery in response to a motion for summary judgment (*Id.*). As succinctly stated in *Keebler Co. v. Murray Bakery Products*,

In Keebler's brief opposing summary judgment, Keebler said it should be denied because of "the absence of relevant facts upon which Opposer may adequately base its response." Indeed, it is difficult to interpret Keebler's affidavit support for its discovery motions as saying anything more than, "we have no factual basis for opposing summary judgment, but, if you stay proceedings, we might find something."

866 F.2d 1386, 1389 (Fed. Cir. 1989).

Registrant’s untimely request to take discovery is not properly supported and should be denied.

C. CONCLUSION

Discovery in this matter closed on May 10, 2015. Registrant’s request to take discovery made on May 29, 2015 is untimely. Moreover, Registrant has not sufficiently supported a request for discovery as a response to a motion for summary judgment. For all of the foregoing reasons, Registrant’s request to take discovery from Petitioner should be denied.

Respectfully submitted,

Dated: June 8, 2015

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CERTIFICATE OF SERVICE

I hereby certify that a true and complete copy of the foregoing **PETITIONER'S OPPOSITION TO REGISTRANT'S MOTION TO TAKE DISCOVERY FROM PETITIONER** has been served on the attorney of record for the Registrant, who has consented to service by email, by emailing said copy and providing links to download any attachments too large to email on June 8, 2015 to the attorney's email addresses of record:

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