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

Proceeding	92059866
Party	Defendant Taryn Rodighiero dba KaiKini
Correspondence Address	MORRIS E TUREK YOURTRADEMARKATTORNEY.COM 167 LAMP AND LANTERN VILLAGE, #220 CHESTERFIELD, MO 63017-8208 UNITED STATES morris@yourtrademarkattorney.com
Submission	Reply in Support of Motion
Filer's Name	Morris E. Turek
Filer's e-mail	morris@yourtrademarkattorney.com
Signature	/met20/
Date	06/14/2015
Attachments	Rodighiero Reply in Support of Motion for Discovery.pdf(239171 bytes)

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

Kini Kai, L.L.C.)
Petitioner,)
v.) Cancellation No. 92059866
Taryn Rodighiero)
Registrant.)
_____)

**REGISTRANT’S REPLY IN SUPPORT OF REGISTRANT’S MOTION TO TAKE
DISCOVERY FROM PETITIONER**

Registrant Taryn Rodighiero (“Registrant”) hereby submits her Reply in Support of Registrant’s Motion to Take Discovery from Petitioner.

In its Response, Petitioner first argues that Registrant’s Motion to Take Discovery is untimely because the discovery period closed prior to the filing of Registrant’s Motion. There is absolutely nothing in the Rules of Practice that prohibits Registrant from filing a Motion to Take Discovery in response to the filing of a Motion for Summary Judgment on the grounds that the discovery period had already closed. And, Petitioner fails to cite any statute or case law to the contrary. Indeed, the only applicable time limit is that a Motion to Take Discovery be filed within 30 days from the date of service of the Motion for Summary Judgment. 37 C.F.R. § 2.127(e)(1). It is undisputed that Registrant met that deadline.

Petitioner next argues that Registrant’s Motion to Take Discovery should be denied because Registrant failed to make any attempt to take Ms. Meadors’ deposition during the discovery period. Besides the fact that Registrant was not obligated to depose Ms. Meadors during the discovery period, Registrant had no compelling need to do so prior to the filing of

Petitioner's Motion for Summary Judgment. Registrant would have had ample opportunity to cross-examine Ms. Meadors and to ask questions regarding any documents submitted into evidence by Ms. Meadors during Petitioner's testimony period (during which Ms. Meadors would surely be a testifying witness for Petitioner).

Petitioner further argues that Registrant's Motion to Take Discovery should be denied because Registrant failed to set Ms. Meadors' deposition between the date Petitioner filed its Motion for Summary Judgment (May 1, 2015) and the date discovery closed (May 10, 2015). Besides the fact that scheduling, preparing for, and conducting a deposition generally takes much longer than a mere nine days, there is no requirement in the Rules of Practice that obligates Registrant to rush to take the deposition of a witness after a Motion for Summary Judgment is filed, but before discovery closes. Again, the only applicable time limit is that a Motion to Take Discovery be filed within 30 days from the date of service of the Motion for Summary Judgment. That deadline was met.

Finally, Petitioner argues that Registrant's Motion to Take Discovery should be denied because it was not properly supported. Nothing could be further from the truth. Registrant attached the Declaration of Taryn Rodighiero (the Registrant in this proceeding) to her Motion to Take Discovery. Registrant's Declaration succinctly and clearly lays out her inability to present facts sufficient to show the existence of a genuine issue of material fact for trial without taking discovery from Petitioner. Registrant's Declaration states that such inability stems from the fact that all information and facts pertaining to Petitioner's alleged prior use of the KINI KAI mark is in the possession, custody, and/or control of Petitioner and Ms. Meadors. Not surprisingly, Petitioner has pointed to no other feasible way other than deposing Ms. Meadors through which Registrant could possibly obtain such facts and information or to test the genuineness and

