ESTTA Tracking number: **ESTTA717792**
Filing date: **12/31/2015**

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

Proceeding	92061236
Party	Defendant BR Consulting, Inc.
Correspondence Address	RAY K HARRIS FENNEMORE CRAIG 2394 EAST CAMELBACK ROAD, SUITE 600 PHOENIX, AZ 85012 UNITED STATES ip@fclaw.com, rharris@fclaw.com, mtollive@fclaw.com
Submission	Opposition/Response to Motion
Filer's Name	Ray K. Harris
Filer's e-mail	rharris@fclaw.com
Signature	/Ray K. Harris/
Date	12/31/2015
Attachments	Opposition to Motion to Extend Discovery.pdf(66369 bytes)

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

FWHG IP HOLDINGS LLC, Petitioner v. BR CONSULTING, INC. Registrant-Respondent	Cancellation No. 92061236 Mark: MAGO CAFÉ Registration No. 3,810,357 Date of Issue: June 29, 2010

OPPOSITION TO MOTION TO EXTEND DISCOVERY

The issue presented by the Petition to Cancel is whether the MAGO CAFÉ mark has been abandoned by Respondents. Although there was a hiatus in use of the MAGO CAFÉ mark, use resumed within three years. Therefore, burden is on Petitioner to prove intent to abandon. *Cerveceria Centroamericana, S.A. v. Cerveceria India, Inc.*, 892 F.2d 1021, 1023-24 (Fed. Cir. 1989).

There Is No Outstanding Discovery

Respondent has produced over 3,000 pages of documents with the initial disclosure and responses to written discovery. Petitioner did not notice any discovery depositions. There is no outstanding discovery to Respondent.

Petitioner also provided written discovery responses, but no documents were produced with the discovery responses. Petitioner's documents were eventually produced in December, 2015. The documents produced by Petitioner relate to third-party marks and the work of a private investigator. Based on the discovery responses, it appears Petitioner has no evidence of non-use for more than three years or intent to abandon the MAGO CAFÉ mark.

Extended Discovery Will Impose Unwarranted Cost and Delay

Respondent intends to file a Motion for Summary Judgment. Extending the discovery deadline would enable Petitioner to delay disposition of a summary judgment motion by asserting the right to additional discovery. *See* Fed. R. Civ. P 56(d); TBMP § 528.06 (2015). Delay in disposition of summary judgment would impose additional and unrecoverable cost on Respondent. Petitioner has not identified any discovery that was not available during the discovery period that now expires January 14, 2016.

Although there have been good faith settlement discussions, Respondent has advised Petitioner settlement does not appear likely. Consequently, a 90 day extension of the discovery period would serve no purpose and would needlessly delay disposition of the case.

Dated this 31st day of December, 2015.

By: */Ray K Harris/*

Ray K. Harris, Esq.
Stacie K. Smith, Esq.
Blake W. Atkinson, Esq.
FENNEMORE CRAIG
2394 East Camelback Road
Suite 600
Phoenix, AZ 85012
Tel: (602) 916-5000
Fax: (602) 619-5999
email: ip@fclaw.com

Attorneys for Respondent

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served via email to:

Boris Umansky
Ladas & Parry LLP
224 S. Michigan Avenue, Suite 1600
Chicago, IL 60604
bumansky@ladas.net

Respectfully submitted this 31st day of December, 2015.

/s/Kim Walker
Kim Walker