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Filing date: **12/17/2015**

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

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|---|---|
| Proceeding | 92061236 |
| Party | Plaintiff<br>FWHG IP HOLDINGS LLC |
| Correspondence Address | BORIS UMANSKY<br>LADAS & PARRY LLP<br>224 S MICHIGAN AVENUE , SUITE 1600<br>CHICAGO, IL 60604<br>UNITED STATES<br>CHIUSTM@LADAS.NET,bumansky@ladas.net |
| Submission | Motion to Extend |
| Filer's Name | Boris Umansky |
| Filer's e-mail | CHIUSTM@LADAS.NET |
| Signature | /Boris Umansky/ |
| Date | 12/17/2015 |
| Attachments | 2015.12.17 Petitioner's Motion to Extend Discovery Period.pdf(187457 bytes ) |

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

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

## PETITIONER'S MOTION TO EXTEND DISCOVERY PERIOD

Petitioner, FWHG IP Holdings LLC, pursuant to Fed. R. Civ. P. 6(b) and 37 CFR §§ 2.120(a) and 2.121(a), hereby moves to extend all discovery, pre-trial and trial dates by ninety (90) days as follows:

| | Current Date | New Date |
|---|---|---|
| **Discovery Period to Close :** | 01/14/2016 | 04/13/2016 |
| **Plaintiff Pretrial Disclosures :** | 02/28/2016 | 05/28/2016 |
| **Plaintiff's 30-day Trial Period Ends :** | 04/13/2016 | 07/12/2016 |
| **Defendant's Pretrial Disclosures :** | 04/28/2016 | 07/27/2016 |
| **Defendant's 30-day Trial Period ends :** | 06/12/2016 | 09/10/2016 |
| **Plaintiff's Rebuttal Disclosures :** | 06/27/2016 | 09/25/2016 |
| **Plaintiff's 15-day Rebuttal Period Ends :** | 07/27/2016 | 10/25/2016 |

In support of this Motion, Petitioner states as follows:

1. The appropriate standard for allowing an extension of a prescribed period prior to the expiration of the term is "good cause." *See* Fed. R. Civ. P. 6(b); TBMP § 509. "Ordinarily, the Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused." *American Vitamin Products Inc. v. DowBrands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992).

2. Petitioner filed this cancellation proceeding on April 8, 2015, and this is the first extension request filed by either party since the opening of the discovery period.[1]

3. The parties timely conducted a Rule 2.120(a) discovery conference and exchanged their respective initial disclosures.

4. In August 2015, the parties served written discovery requests on one another, and in September 2015 each party responded to the other's propounded discovery, with Respondent also producing over 400 pages of documents.[2]

5. In November 2015, Respondent produced another roughly 3,300 pages of documents.

6. In December 2015, Petitioner produced close to 300 pages of documents.

7. The voluminous nature of Respondent's document production combined with the character of certain of the produced documents requires follow-up discovery by Petitioner in the form of a second round of interrogatories and requests for production of documents,

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[1] On May 19, 2015 (the deadline as originally set for Respondent to file its Answer), Petitioner filed a Consented Motion for a 30-Day Suspension for Settlement as a courtesy to Respondent to allow for early settlement talks to occur. At that time, Respondent's counsel had indicated his client was interested in avoiding litigation, but he did not have any specific settlement authority. The Board granted that motion. That 30 day extension is the only one sought and obtained in this proceeding.

[2] Petitioner responded to Respondent's interrogatories, two sets of requests for production of documents, and requests for admission, and Respondent responded to Petitioner's interrogatories and requests for production of documents.

as well as potentially requests for admission. As this is a non-use cancellation proceeding, depositions of key principals of Respondent and potentially other individuals would be necessary in order to, among other things, establish the nature and timing of certain activities.

8. Additionally, in light of the busy travel schedule of Petitioner's key principal, including recent international travel, counsel for Petitioner only recently was able to discuss this matter and Respondent's production – including the 3,300 or so pages of documents produced in November 2015 – with Petitioner's primary representative.

9. Counsel for Petitioner during the relevant time period has also faced a heavy work schedule requiring efforts in Federal Court cases, other Board proceedings, and matters with time sensitive deadlines involving both foreign and domestic intellectual property law related matters for a number of clients.

10. Petitioner respectfully submits that allowing for an additional ninety (90) days for the completion of discovery will also enable the parties to fully explore potential resolution of this matter and alternatively allow for completion of discovery should settlement negotiations fail. Although a number of months had passed since initial settlement discussions had taken place early-on in this proceeding, on December 10, 2015 Petitioner's counsel made overtures during a teleconference with Respondent's counsel to explore the potential for settlement. While on December 11, 2015 counsel for Respondent wrote to Petitioner's counsel advising that his client was not interested in settlement along the lines proposed, Petitioner intends to during the extension time period continue exploring potential settlement opportunities. The focus first on possible settlement may increase the likelihood of achieving a settlement and otherwise might not divert attention should settlement opportunities exist.

11. During the December 10th telephonic conference, counsel for Petitioner also requested the consent of Respondent to the filing of this Motion. In an e-mail dated December 11, 2015, Respondent's counsel advised that he was still waiting for his client's instructions regarding the matter. As of the date of this Motion, Petitioner's counsel is not aware of Respondent's position regarding this Motion.

12. This request for an extension of the discovery period is to permit sufficient time to complete necessary follow-up discovery in this proceeding in the event settlement talks fail, and the extension will not prejudice either party. This extension is not being sought merely for the purpose of delay or for any other improper purpose.

13. For all the foregoing reasons, Petitioner respectfully requests that the Board grant this Motion and order that the discovery period be extended by ninety (90) days to and including April 13, 2016, and that all remaining dates be reset accordingly.

Respectfully submitted,

By: _____
One of Petitioner's attorneys

Boris Umansky
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Suite 1600
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(312) 427-1300

## CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of **PETITIONER'S MOTION TO EXTEND DISCOVERY PERIOD** has been served via First Class Mail, postage pre-paid, to:

Ray K. Harris, Esq.
FENNEMORE CRAIG
2394 East Camelback Road
Suite 600
Phoenix, AZ 85012

On this 17th day of December, 2015.

By _____
Boris Umansky