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

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|---------------------------|---|
| Proceeding | 92064480 |
| Party | Plaintiff Mujaji Thomas |
| Correspondence Address | LAURENCE SINGER 1629 K STREET NW, SUITE 300 WASHINGTON, DC 20006 UNITED STATES Email: ls@laurencesinger.com |
| Submission | Motion to Reopen |
| Filer's Name | Laurence Singer |
| Filer's email | ls@laurencesinger.com |
| Signature | /Laurence Singer/ |
| Date | 08/09/2017 |
| Attachments | Reopen Discovery.pdf(222823 bytes) |

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

Mujaji Thomas

Cancellation No.
92064480

Petitioner

v.

NYcityVAN LLC

Mark: Man With A Van

Registrant

COMBINED MOTIONS

**MOTION TO REOPEN DISCOVERY
MOTION TO COMPEL
MOTION TO SUSPEND THE PROCEEDINGS**

Mujaji Thomas ("Petitioner") hereby submits a Motion to Reopen Discovery, a Motion to Compel, and a Motion to Suspend the Proceedings. Petitioner requests that Registrant respond to these Motions within thirty days (30) of service.

1. On June 19, 2017, the Petitioner emailed electronic versions and mailed paper copies of the Petitioner's First Set of Interrogatories, Requests for Admissions, and Requests for Production of Documents to Registrant's legal counsel.
2. Responses to the discovery requests have not been received.
3. On July 24, 2017, counsel for Petitioner emailed Registrant's counsel: "Please let me know the status of the discovery requests sent last month."
4. A call to the Registrant's counsel's office was not returned.
5. The Petitioner has satisfied its obligation to make a good faith effort to resolve the issues presented in her Motion prior to seeking the Board's intervention and resolution. See, Trademark Rule 2.120(e).

6. The factors to be considered for the Motion to Reopen Discovery include (1) the danger of prejudice to the nonmovant; (2) the length of the delay and its potential impact on judicial proceedings; (3) the reason for the delay, including whether it was within the reasonable control of the movant; and (4) whether the movant acted in good faith *Pioneer Investment Services Co. v. Brunswick Associates L.P.*, 507 U.S. 380 (1993).

7. There is no danger of prejudice to the Registrant as reopening as discovery is caused by the Registrant's actions and these are standard matters in litigation. The Registrant cannot be prejudiced by having to respond to discovery requests timely filed during the discovery period.

8. It is in the Petitioner's interest to move this proceeding along as quickly as possible. However, failure to respond to the discovery requests will prejudice the Petitioner in her preparation for trial. In any event, even a 60-day delay will not negatively impact the proceedings.

9. The reason for any delay lies with the Registrant. The date for Plaintiff's Pretrial Disclosures does not necessarily have to be moved back the exact amount of time as the reopened discovery period.

10. The Petitioner has acted in good faith and exercised diligence during the discovery period, submitting discovery requests within the discovery time frame and attempting to work with Registrant to insure appropriate responses. This situation has not resulted from Petitioner's "strategic decision" or "subsequent change of position". See, *Luster Products, Inc. v. John M. Van Zandt d/b/a Vanza USA*, Opposition No. 91202788 (T.T.A.B. Nov. 28, 2012).

11. Finally, if a party which fails to respond to discovery requests and is unable to show

that its failure was the result of excusable neglect, that party may be found to have forfeited its right to object to discovery on the merits. See *Bison Corp. v. Perfecta Chemie B.V.*, 4 U.S.P.Q.2d 1718 (TTAB 1987).

12. In light of the foregoing, Petitioner respectfully requests that
 - a. the Board reopen discovery;
 - b. compel responses to Petitioner's discovery requests without objections within twenty (20) days from the reopening of discovery; and
 - c. suspend this proceeding while considering the instant Motions.

Respectfully submitted,

/Laurence Singer/

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August 9, 2017

CERTIFICATE OF SERVICE

I hereby certify that on August 9, 2017, a true and correct copy of the foregoing Notice of Appearance is being served electronically and by first class postage prepaid on Registrant as shown in the correspondence record as follows:

Michael D. Stewart, Esq.
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Miami, FL 33131

/Laurence Singer/

Laurence Singer, Esq.