

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

Baxley

Mailed: January 30, 2013

Concurrent Use No. 94002525

Boi Na Braza, LLC

v.

Terra Sul Corporation a/k/a  
Churrascaria Boi Na Brasa

**Andrew P. Baxley, Interlocutory Attorney:**

In view of excepted user's failure to respond to the Board's June 18, 2012 order, consideration of concurrent use applicant's motion to amend the concurrent use statement of involved concurrent use application Serial No. 77779339 is deferred until final decision. See TBMP Section 514.03 (3d ed. rev. 2012).

Concurrent use applicant's motion (filed August 2, 2012) to use testimony from Cancellation No. 92047056 in this proceeding under Trademark Rule 2.122(f) is granted as conceded. See Trademark Rule 2.127(a). The excerpts from the discovery deposition of Farid Saleh (exhibit E), who had been excepted user's witness under Fed. R. Civ. P. 30(b)(6) in the cancellation proceeding, and the the testimony deposition of Mr. Saleh (exhibit F) that applicant submitted as exhibits to that motion may be used as evidence herein,

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subject to the right of excepted user to recall or demand the recall for examination or cross-examination of Mr. Saleh. See Trademark Rule 2.122(f); TBMP Section 704.13.

Excepted user's motion (filed October 18, 2012) to use testimony from Cancellation No. 92047056 in this proceeding under Trademark Rule 2.122(f) and, if that motion is denied, to extend excepted user's testimony period by thirty days is granted as conceded to the extent that the excerpts from the discovery deposition of Farid Saleh (exhibit A) and the the testimony deposition of Mr. Saleh (exhibit B) that applicant submitted as exhibits to that motion may be used herein, subject to the right of applicant to recall or demand the recall for examination or cross-examination of Mr. Saleh. See Trademark Rules 2.122(f) and 2.127(a); TBMP Section 704.13. The motion to extend is moot.

However, each party's motion to use excerpts from Mr. Saleh's discovery and testimony depositions as trial evidence was granted subject to the its adversary's right to recall Mr. Saleh for examination or cross-examination. See Trademark Rule 2.122(f); TBMP Section 704.13. Accordingly, remaining testimony periods are reset as follows for the limited purpose of so recalling.<sup>1</sup>

Defendant's 30-day Trial Period Ends	<b>2/28/2013</b>
Plaintiff's Rebuttal Disclosures Due	<b>3/15/2013</b>

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<sup>1</sup> Applicant's consented motion (filed January 18, 2013) to extend the final briefing schedule is moot.

Plaintiff's 15-day Rebuttal Period Ends

4/14/2013

In each instance, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.