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

Proceeding	77332131
Applicant	Cafe Rio, Inc.
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Submission	Motion for Extension of Time to File Appeal Brief
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Date	10/04/2010

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

APPLICANT:	CAFE RIO, INC.)	
)	
MARK:	COMAL INTERIOR)	
	LOCATION DESIGN)	
)	
SERIAL NO.:	77/332,131)	MOTION FOR EXTENSION OF
)	TIME TO FILE APPEAL BRIEF
FILED:	November 16, 2007)	
)	
EXAMINING)	
ATTORNEY:	E. K. Martin)	
)	

MOTION FOR EXTENSION OF TIME TO FILE APPEAL BRIEF

Applicant, Cafe Rio, Inc., by and through its counsel hereby moves the Trademark Trial and Appeal Board (hereinafter referred to as the "Board") for a second 60-day extension of time to file its appeal brief. Good cause exists for granting this motion. Applicant respectfully requests the Board to grant this motion for the reasons that follow.

The relevant facts and circumstances relating to the file history of U.S. Application Serial No. 77/332,131 are as follows.

- 1) U.S. Application Serial No. 77/332,131 was filed on November 16, 2007.
- 2) On March 17, 2008, the Trademark Office issued a non-final Office Action, raising an issue relating to whether or not the mark is functioning as a service mark.
- 3) On September 17, 2008, Applicant filed its Response to the March 17, 2008 Office Action.

- 4) On December 19, 2008, the Trademark Office issued an Office Action, which was made final with respect to the failure to function as a service mark issue.
- 5) On June 19, 2009, Applicant filed a Request for Reconsideration and a Notice of Appeal. Applicant continued to present arguments that the mark was in fact functioning as a service mark and also raised new issue by making a §2(f) claim for the first time based on over 5 years of substantially exclusive and continuous use.
- 6) On August 18, 2009, the Trademark Office issued an Office Action, which was non-final because of the new issue raised in Applicant's June 19, 2009 response. The issue turned from whether the mark was functioning as a service mark to the sufficiency of the §2(f) evidence submitted.
- 7) On February 18, 2010, Applicant filed its Response to the non-final August 18, 2009 Office Action.
- 8) On May 20, 2010, the Trademark Office issued an Office Action considering Applicant's remarks and making the issue regarding the sufficiency of the §2(f) evidence final.
- 9) On June 2, 2010, the Board issued an order resuming the appeal proceedings and ordering Applicant to file its appeal brief.
- 10) On August 2, 2010, Applicant filed a Motion to Extend Time to File Appeal Brief for 60 days.
- 11) On August 16, 2010, the Board granted Applicant's request for an extension of time, allowing Applicant until October 2, 2010, to file its Appeal Brief.

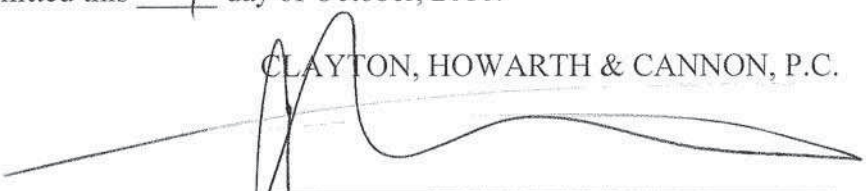
An apparent conflict has arisen between the response period provided by the May 20, 2010 final Office Action and the Board's order dated June 2, 2010. In Applicant's view, Applicant should

have six months to respond to the final Office Action issued by the Trademark Office on May 20, 2010. Procedurally, Applicant should have the opportunity to provide additional evidence of acquired distinctiveness to the examining attorney, in lieu of the appeal being resumed at the Board. However, according to the June 2, 2010 order, it is the Board's position that the appeal is resumed. Accordingly, the Board set a deadline of August 1, 2010 for Applicant to file its appeal brief.

Good cause exists for granting this motion for the following reasons. Since the last motion for an extension of time to file the appeal brief was filed and granted, Applicant has made significant progress in obtaining additional evidence of acquired distinctiveness. Applicant has prepared a consumer survey to evidence that the above-identified mark has acquired distinctiveness. Applicant is in the process of conducting that survey and analyzing the survey results. Applicant has also been in contact with many customers who are willing to execute customer declarations. Applicant has also prepared several store manager declarations. Applicant needs additional time to obtain executed copies of those declarations establishing that the above-identified mark has acquired distinctiveness. Once that evidence is obtained, Applicant will file a request for remand for further action by the examining attorney. Thus, Applicant respectfully requests the Board to extend the deadline for filing its appeal brief for an additional 60 days to allow Applicant additional time to obtain §2(f) evidence.

Respectfully submitted this 4 day of October, 2010.

CLAYTON, HOWARTH & CANNON, P.C.



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