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Filing date: **09/21/2017**

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

Proceeding	85179618
Applicant	Red Lobster Hospitality, LLC
Applied for Mark	RED LOBSTER FRESH FISH Å· LIVE LOBSTER
Correspondence Address	BELINDA J SCRIMENTI PATTISHALL MCAULIFFE NEWBURY HILLARD & GERALDSON 200 SOUTH WACKER DRIVE, SUITE 29000 CHICAGO, IL 60606 UNITED STATES Email: bjs@pattishall.com, sia@pattishall.com, smm@pattishall.com, lkn@pattishall.com, sappel@pattishall.com, bscrimenti@pattishall.com
Submission	Applicant's Request to Extend
Attachments	Motion for Extension re Disclaimer with Exhibit A.pdf(150466 bytes )
Filer's Name	Belinda J. Scrimenti
Filer's email	bscrimenti@pattishall.com, pab@pattishall.com, sia@pattishall.com, sm@pattishall.com, docketmail@pattishall.com
Signature	/Belinda J. Scrimenti/
Date	09/21/2017

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

In the Matter of Applications Serial Nos. 85/179,591 and 85/179,618

Marks:



and



Applicant: Red Lobster Hospitality LLC

Filing Date: November 18, 2010

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**APPLICANT'S MOTION FOR EXTENSION OF DEADLINE TO ACCEPT AND  
FILE DISCLAIMER PENDING APPEAL DEADLINE**

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## **Introduction**

The June 28, 2017 Trademark Trial & Appeal Board (“Board”) decision in the consolidated appeals of the referenced applications affirmed the Examining Attorney’s requirement that Applicant Red Lobster Hospitality LLC (“Applicant”) disclaim the word “LOBSTER” apart from the marks in applications to register  (Ser. No. 85/179591) and  (Ser. No. 85/179618). Pursuant to Trademark Rule 2.142(g), 37 C.F.R. §2.142, the Board granted Applicant 30 days to submit the required disclaimers.

Thereafter, Applicant filed its Request for Reconsideration to seek correction of certain errors in the Board’s opinion relating to Applicant’s compliance with reply brief page-limit rules and matters made of record. In response, by decision dated August 22, 2017, acknowledging Applicant’s compliance with rules in force at the time the reply brief was filed, the Board issued a new opinion, again affirming the Examining Attorney’s requirement of a disclaimer, but by a 2-1 decision, but with a dissenting opinion of Judge Masiello.

In a subsequent telephone conversation and email exchange with Ms. Denise DelGizzi of the Board’s office, Applicant’s counsel, Mr. Paul Borovay, was informed that the 30-day requirement for the disclaimer also applied to the August 22, 2017 decision on reconsideration. He was also informed by Ms. DelGizzi that the Board would accept a motion to extend the time to file the disclaimer, pending Applicant’s decision on whether to pursue an appeal of the decision. (*See* attached Exhibit 1) .

As the Board appreciates, while the disclaimer requirement is set at 30 days, the deadline for appeal to the Court of Appeals for the Federal Circuit or to elect to file a civil action is 63 days. 37 C.F.R. §2.145(d)(1)-(d)(4). Thus, an anomaly exists whereby an Applicant that may

decide to appeal, absent other relief from the Board, is forced to make the decision on acceptance of the disclaimer vs. an appeal or civil action within 30 days, in lieu of the 63 days otherwise available to it. Further, the Director of the USPTO may extend the time for filing an appeal or commencing a civil action. 37 C.F.R. §2.145(e).

Applicant and its counsel are currently assessing the decision of whether to accept the disclaimer requirement or to file an appeal to the U.S. Court of Appeals for the Federal Circuit or a civil action relating to the Board's August 22, 2017 decision on reconsideration. Applicant needs the additional time to consider the decision. However, pending the decision, Applicant desires to maintain its right to accept the disclaimer.

Accordingly, Applicant respectfully requests that the Board grant it the right to accept and file the disclaimer on the date of the appeal/civil action deadline of October 24, 2017, or on such later extended deadline to appeal or file a civil action, should such an extension be sought and granted by the Director.

Respectfully submitted,

PATTISHALL, McAULIFFE, NEWBURY,  
HILLIARD & GERALDSON LLP

Dated: September 21, 2017

By: /Belinda J. Scrimenti/

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# EXHIBIT 1

## Belinda J. Scrimenti

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**From:** DelGizzi, Denise <Denise.DelGizzi@USPTO.GOV>  
**Sent:** Thursday, August 31, 2017 2:33 PM  
**To:** Paul A. Borovay  
**Subject:** RE: Red Lobster Appeals: Ser. Nos. 85179591 and 85179618

External email, exercise caution.

Dear Mr. Borovay,

Yes, that is correct.

Denise

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**From:** Paul A. Borovay [<mailto:pab@pattishall.com>]  
**Sent:** Thursday, August 31, 2017 2:21 PM  
**To:** DelGizzi, Denise <[Denise.DelGizzi@USPTO.GOV](mailto:Denise.DelGizzi@USPTO.GOV)>  
**Subject:** Red Lobster Appeals: Ser. Nos. 85179591 and 85179618

Dear Denise,

Again, thank you so much for conferring with Judge Mermelstein. I just wanted to confirm our conversation from a few minutes ago. We understand that the Board will accept a motion to extend the time to file the disclaimer, should Red Lobster not appeal.

I hope you have a great long(er) weekend.

Best Regards,  
Paul



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\*Admitted in Illinois and Wisconsin



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