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

Proceeding	91121980
Party	Defendant ROBERT NOBLE & BONGO, S.A., DE C.V.
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Date	11/23/2005
Attachments	Registrant's Response to Petitioner's Motion for Extension of Time.pdf (4 pages)

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

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ESTEFAN ENTERPRISES, INC.

Petitioner,

Opposition No.: 91121980

Cancellation No.: 92042251

vs.

BONGO, S.A. de C.V.

Registrant.

-----X

BOX TTAB

NO FEE

Assistant Commissioner of Trademarks

2900 Crystal Drive

Arlington, Virginia 22202-3513

**REGISTRANT'S/APPLICANT'S RESPONSE TO PETITIONER'S/OPPOSER'S
MOTION FOR EXTENSION OF TIME TO FILE MOTION FOR SUMMARY
JUDGMENT AND REPLY MEMORANDA**

COMES NOW Registrant Roberto Noble, by assignment from BONGO, S.A. de C.V. (hereinafter "Registrant") by and through the undersigned counsel and hereby respectfully request the Board to deny PETITIONER/APPLICANT'S MOTION FOR EXTENSION OF TIME TO FILE MOTION FOR SUMMARY JUDGMENT AND REPLY MEMORANDA.

1. Petitioner ESTEFAN ENTERPRISES, INC. has filed a consolidated Petition to Cancel Registration Number 2,347,247, and Notice of Opposition of Application Serial Number 7,576,7732.

2. Petitioner ESTEFAN ENTERPRISES, INC. has filed a Motion for Summary Judgment on or about July 28th, 2005. That motion contained argument to the effect that:

a) Registrant/Applicant has abandoned the COCO BONGO mark; b) that Petitioner/Opposer has commenced use of its BONGO'S CUBAN CAFÉ mark prior to the date upon which Registrant/Applicant commenced its use of its COCO BONGO mark; and c) that a likelihood of confusion exists caused by Registrant/Petitioner's use of its COCO BONGO mark.

3. Petitioner/Opposer has recently filed a series of Motions for Extension of Time to File a Reply to Registrant/Applicant's Memorandum of Law in Opposition to Petitioner/Opposer's Motion for Summary Judgment.

4. Petitioner/Opposer has even more recently filed a Motion for Extension of Time to File a yet another Motion for Summary Judgment including a request for a further extension to file a Reply Memoranda.

5. Petitioner/Opposer's time for filing a Motion for Summary Judgment has passed, and it should not be permitted to file a second motion for summary judgment in this consolidated action just because Petitioner/Opposer is seeking both cancellation and opposition as remedies.

6. Furthermore, Petitioner/Opposer has presented no basis whatsoever for the filing of a second motion for summary judgment, nor has it provided a basis for leave to file a reply, to which it has no right. See, TBMP § 502.02(e)(1); 37 CFR § 2.127(a) (“***The filing of reply briefs is discouraged, as the Board generally finds that reply briefs have little persuasive value and are often a mere reargument of the points made in the main brief.***” TBMP § 502.02(b). Also see, *No Fear Inc. v. Rule*, 54 USPQ2d 1551, 1553 (TTAB 2000) and *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13

USPQ2d 1719, 1720 n.3 (TTAB 1989) ("The presentation of one's arguments and authority should be presented thoroughly in the motion or the opposition brief thereto").

7. There are no new, surprise or unexpected issues raised by Registrant/Applicant's Memorandum of Law in Opposition to Petitioner/Opposer's Motion for Summary Judgment. Petitioner/Opposer has had more than ample opportunity to engage in discovery, the periods for which have been extended several times. Petitioner/Opposer completed the deposition of Declarant Isaac Halabe (the only Declaration offered in opposition to the Motion for Summary Judgment). The fact that Petitioner/Applicant did not provide for the means of properly swearing said witness was known to all parties at the time of the deposition¹. If Petitioner/Opposer had evidentiary arguments to make regarding the admissibility of the unsworn statement it improperly put before this Board, it should have made them in its Motion for Summary Judgment. A reply brief is therefore unnecessary, unwarranted and would give Petitioner/Opposer an unfair advantage.

8. Despite any statement to the contrary by Petitioner/Opposer, neither Registrant/Applicant, nor its counsel has ever consented to the filing of a second motion for summary judgment, or reply brief of any kind. The only consent provided by Registrant/Applicant has been that counsel has agreed that, in the event the Board grants Petitioner/Opposer leave to file a reply brief (to which it is not entitled, and which is not warranted), Registrant/Applicant has agreed to additional time within which to file same. However, any such enlargement of time which was previously agreed to, has now passed.

9. The issues on Petitioner's/Opposer's Motion for Summary Judgment by are currently before this Board have been fully briefed and are currently ripe for adjudication.

¹ The undersigned conspicuously, and timely objected to the use of any transcript of said deposition.

WHEREFORE, Registrant/Applicant Bongo, S.A. de C.V. respectfully requests the Board deny all of Petitioner/Opposer's Motions for Enlargement of Time, and (to the extent Petitioner/Applicant requested leave) deny it leave to file a reply brief to Registrant/Applicant's Memorandum of Law in Opposition to Petitioner/Opposer's Motion of Summary Judgment. Registrant/Applicant Bongo, S.A. de C.V. further requests that this Board deny Petitioner/Opposer's Motion for Summary Judgment forthwith.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing has been served on this 23rd day of November, 2005, by first class mail to Karen Stetson, Esq., PO Box 403023, Miami, Florida 33140.

Respectfully submitted,

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