ESTTA Tracking number: **ESTTA131471**

Filing date: **03/22/2007**

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

Proceeding	91172018
Party	Plaintiff Menper Distributors Inc.Menper Distributors Inc. Menper Distributors Inc. Menper Distributors Inc. Menper Distributors Inc. 6500 N.W. 35th Ave. Miami, FL 33147 UNITED STATES
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Date	03/22/2007
Attachments	Reply Extension of Time.pdf (5 pages)(2030165 bytes)

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

MENPER DISTRIBUTORS, INC.

Opposer,

v. OPPOSITION NO. 91172018

ESTABLECIMIENTOS ANCALMO S.A.
DE C.V.

Applicant.
_____/

REPLY TO APPLICANT'S OPPOSITION TO OPPOSER'S MOTION FOR AN EXTENSION OF TIME TO RESPOND TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT

Opposer asks the Board to exercise its discretion to consider the instant Reply and avers as follows:

Opposer's Motion is not moot because it clearly seeks an extension of more than three weeks. Applicant's assertion that "[t]he only fact in Opposer's Motion that pertains to Opposer's ability to prepare a response to the MSJ is the three week delay" occasioned by Applicant's mailing its Motion for Summary Judgment ("MSJ") should be readily evident, but is so preposterous that Opposer feels compelled to bring it to light, in addition to the following fact: once again, Opposer did not receive a paper filed by the Applicant with the Board. This time, despite the fact that the Applicant's Response shows the proper address for service upon undersigned counsel, the Response mysteriously remains undelivered by the Postal Service. Opposer learned of its existence only by checking TTABVue.

Opposer therefore requests that the Board order the Applicant from now on to fax and e-mail a notification to the undersigned of any filings with the Board.

Applicant asserts that the Opposer's "Motion [for Extension of Time] includes detailed facts, but it fails to include any detailed facts that constitute good cause." It is tempting to characterize this assertion with terms that are inapt in the context of sober lawyering. Perhaps Applicant intends to so tempt the Opposer.

Opposer will simply point to this:

1. Opposer's motion clearly avers in detail inequitable and unethical conduct by Applicant's attorneys designed to disadvantage Opposer. Applicant fails to rebut any of these averments or explain why it should be rewarded for its chicanery.

2. Even in the absence of Applicant's misconduct, the fact that its MSJ consists of 256 pages comprising voluminous exhibits and lengthy declarations, including a medical expert witness, is good cause for an extension. Opposer is in the process of obtaining expert witness affidavits, gathering information on the relevance of Applicant's hundreds of pages of exhibits, and drafting its response to the MSJ. It took Opposer three weeks just to find the expert witnesses with the proper qualifications who were available on short notice to offer rebuttal testimony. Opposer has been diligent, mobilized immediately upon learning of Applicant's MSJ, put aside as much other work as possible, and continues to

work with the experts to prepare a detailed rebuttal demonstrating the existence of genuine issues of material fact, but needs more time to complete this work.

3. Applicant has failed to aver, nor can it, that it will be prejudiced by the extension being sought.

4. Applicant's suggestion that Opposer is "attempt[ing] to delay the proceedings that it initiated" is particularly galling when it was Applicant who requested not one, but two extensions of time, further lengthening the proceedings after its summary judgment motion is denied, as Opposer is confident it will be.

5. Applicant's states that it could find no support for "Opposer's novel contentions that, when the parties agree to extend discovery, good cause is automatically established for a matching extension of time to respond to a MSJ." This is a gross mischaracterization. Good cause has been established here by Applicant's manipulative, strategic conduct and the extraordinarily voluminous and complex nature of the MSJ. The request for an equal time period of 60 days to respond is only an appeal to equity.

Applicant also argues that it could find no case reflecting a similar fact pattern. Such cases do not exist because attorneys usually do not conduct themselves as the Applicant's in this case and normally would agree to more than a 15-day extension of time when they file a 256-page motion.

Interestingly, the principal case Applicant relies upon is actually an indictment of its own position. In *Luemme Inc. v. D.B. Plus, Inc.*, "petitioner's delay in initiating discovery . . . resulted in the instant motion [for an extension of

the discovery period]." 53 U.S.P.Q.2d 1758, 1760 (TTAB 1999). The petitioner then filed a "manipulative, strategic motion" and could only articulate a "vague assertion that extensive travel had made it difficult to participate . . . in the discovery process." *Id.* at 1761. Similarly, the Applicant's delay in responding to discovery, its vague supplications for two extensions of time, and its manipulative, strategic motion are the problem here.

Lastly, it is one thing to deny a motion for an extension of time to engage in discovery (without a showing of good cause) while an opponent may still present testimony and to deny a motion for an extension of time (with the cause here shown) and in effect grant a dispositive motion by the Applicant.

Respectfully submitted:

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CERTIFICATE OF TRANSMISSION AND SERVICE

I HEREBY CERTIFY that this correspondence is being electronically filed with the Trademark Trial and Appeal Board on March 22, 2007.

I FURTHER CERTIFY that a true and complete copy of the foregoing REPLY TO APPLICANT'S OPPOSITION TO OPPOSER'S MOTION FOR AN EXTENSION OF TIME TO RESPOND TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT has been served on ESTABLECIMIENTOS ANCALMO S.A. DE C.V. by mailing said copy on March 23, 2007, via First Class Mail, postage prepaid, to Tammy L. Lightman, Christie, Parker & Hale, LLP, 350 W. Colorado Blvd., Suite 500, Pasadena, CA 91109-7068.

By: /AC/
Amaury Cruz, Esq.