

ESTTA Tracking number: **ESTTA555093**

Filing date: **08/20/2013**

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

Proceeding	91183677
Party	Plaintiff Foodarama Incorporated
Correspondence Address	SCOTT W JOHNSON MERCHANT & GOULD PC 80 SOUTH EIGHTH STREET, SUITE 3200 MINNEAPOLIS, MN 55402 2215 UNITED STATES SJohnston@merchantgould.com, slindemeier@merchantgould.com
Submission	Stipulated/Consent Motion to Extend
Filer's Name	Scott W. Johnston
Filer's e-mail	sjohnston@merchantgould.com, slindemeier@merchantgould.com
Signature	/SWJ/
Date	08/20/2013
Attachments	2013 08 20 Stipulated Motion to Extend or Reopen 91183677.PDF(155586 bytes)

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

Foodarama, LLC,)	Opposition No. 91183677
)	
Opposer,)	Mark: METRO CASH&CARRY
)	
v.)	Serial No.: 78/632,210
)	
MIP Metro Group Intellectual Property)	Filing Date: May 18, 2005
GmbH & Co. KG,)	
Applicant.)	Published: October 23, 2007
_____)	

STIPULATED MOTION TO EXTEND OR REOPEN

Opposer, Foodarama, LLC and Applicant, MIP Metro Group Intellectual Property GmbH & Co. KG respectfully request that the Board extend all discovery and trial dates by 120 days to allow for settlement negotiations. Opposer filed a motion to extend discovery and trial dates on June 6, 2013. However, in an order dated June 12, 2013, the Board denied the motion because the motion did not provide a detailed progress report on the status of the settlement negotiations. Opposer's counsel subsequently spoke to Interlocutory Attorney Ann Linnehan on August 1, 2013, asking to set up a telephone conference with Applicant's counsel relating to the denied motion. Ms. Linnehan indicated that a phone conference was not necessary for this extension and that we should simply file a new motion with a more detailed discussion of the progress on settlement. Opposer's counsel explained that the delay in this case is largely due to changes in management at the parties. Those changes are discussed in more detail below. These management changes have made it difficult for counsel to obtain instructions with respect to settlement or this proceeding and should be sufficient to satisfy the good cause required to extend dates or the excusable neglect standard if applicable.

The parties have been trying to settle this dispute and have exchanged several settlement proposals. The parties appear to both be open to the structure of the settlement, which would either involve an assignment and license back or a structured coexistence agreement. However, the parties also contemplated a monetary component to the deal and were not able to agree on a dollar amount. Opposer's counsel sought instructions from Opposer but was unable to get any direction because of several changes in the company and the executives making the decisions. Further information about those changes is detailed below. The parties sought an extension so that they could obtain instructions and be able to continue their settlement discussions.

Opposer, Foodarama, LLC, is a subsidiary of SUPERVALU INC., a large retailer and distributor of groceries in the U.S. On January 10, 2013, SUPERVALU announced that it would sell all of its acquired Albertson's banners, which consists of Albertson's, Acme, Jewel-Osco, Shaw's and Star Market stores and related Osco and Save-On in-store pharmacies to AB Acquisition, LLC. The total number of stores being sold was 877. This was important to the instant proceeding because counsel was taking direction for this proceeding from an Albertson's in-house counsel, who was then looking to his management for instructions. Opposer's counsel had brought the Albertson's attorney and executives up to speed on this proceeding since it was previously managed by an attorney at SUPERVALU.

In addition to the sale, within 10 business days, a newly formed acquisition entity owned by a Cerberus-led investment consortium indicated that it would conduct a tender offer for up to 30 percent of SUPERVALU's outstanding common stock.

Following the closing of this transaction, which took place on March 21, 2013, SUPERVALU appointed a new CEO, Sam Duncan, who replaced interim CEO, Wayne Sales.

Mr. Sales came on board with SUPERVALU when CEO Craig Herkert, was terminated by the SUPERVALU Board of Directors.

As a result of the Albertson's divestiture and a new CEO coming on board at SUPERVALU, there were multiple changes to the executive leadership team and members of the Board of Directors. In addition, following the announcement in January, 2013, that SUPERVALU would be divesting all of its Albertson's banners, it was anticipated that there would be a reduction in force. On March 26, 2013, SUPERVALU announced plans to reduce its national workforce by an estimated 1,100 positions, which affected nearly all company offices and crossed most departments with SUPERVALU. CEO Sam Duncan indicated that the reduction in force was an important part of the company's strategy to be more efficient in operations. As a result of this workforce reduction, multiple leadership roles were eliminated.

The result of these transactions and changes in leadership for the purposes of this case was that despite repeated follow ups and attempts by Opposer's counsel to receive direction as to how to proceed with this case, Opposer's counsel was unable to get clear direction on settlement. Accordingly, the parties agreed to extend dates again while management was finalized and some decisions could be made. Opposer now has new management in place and is in a position to continue the settlement discussions. Opposer intends to complete the settlement prior to expiration of the present extension should the Board grant it.

Respectfully submitted,
FOODARAMA, LLC
By its Attorneys,

Date: 8-20-13



Scott W. Johnston
MERCHANT & GOULD P.C.
80 South Eighth Street, Suite 3200
Minneapolis, Minnesota 55402-2215
(612) 332-5300

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing STIPULATED MOTION TO EXTEND OR REOPEN was served upon the following attorney of record for Applicant by First Class Mail, postage pre-paid, this 20th day of August, 2013:

Mark H. Tidman
Baker & Hostetler LLP
Washington Square, Suite 1100
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5304



Scott W. Johnston