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Filing date: **12/02/2011**

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

Proceeding	91192645
Party	Plaintiff Trummer Bar, LLC, Heather Tierney, Christopher Tierney and Eric Lopez
Correspondence Address	MICHAEL J PAMPALONE III COLUCCI & UMANS 218 EAST 50TH STREET NEW YORK, NY 10022 UNITED STATES mpampalone@colucci-umans.com
Submission	Motion to Compel Discovery
Filer's Name	Michael J. Pampalone, III
Filer's e-mail	mpampalone@colucci-umans.com
Signature	/Michael Pampalone/
Date	12/02/2011
Attachments	COMBINED MOTION TO COMPEL AND EXTEND.pdf (29 pages)(1298555 bytes)

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

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TRUMMER BAR, LLC, HEATHER TIERNEY,	:	
CHRISTOPHER TIERNEY and ERIC LOPEZ,	:	Opposition No. 91192645
	:	Serial No. 77/584,448
Opposers,	:	
	:	
v.	:	
	:	
ALBERT TRUMMER,	:	
	:	
Applicant.	:	

----- X

**OPPOSERS' COMBINED MOTION TO COMPEL DISCOVERY DEPOSITION AND
MOTION TO EXTEND DISCOVERY AND TRIAL DATES**

Pursuant to Federal Rule of Civil Procedure 37, 37 C.F.R. § 2.120(e)(1), and Trademark Board Manual of Procedure ("TBMP") § 523.01, Opposers, TRUMMER BAR, LLC, HEATHER TIERNEY, CHRISTOPHER TIERNEY and ERIC LOPEZ ("Opposers"), hereby respectfully move the Honorable Trademark Trial and Appeal Board (the "Board") for an order compelling Applicant, ALBERT TRUMMER ("Applicant"), to produce Albert Trummer for his deposition by a date certain.

In addition, pursuant to Rule 2.120 of the Trademark Rules of Practice Opposers request an extension of the discovery period for the limited purpose of allowing Opposers (and not Applicant) time to depose Albert Trummer and to pursue follow-up discovery, if necessary. Opposers also request that the testimony period be re-set to follow the close of Opposers' discovery. Opposers are also submitting a supporting Declaration of Michael J. Pampalone, III ("Pampalone Decl.") in connection

with the present motion, which follows this motion and brief.

Such an order is appropriate because Opposers, through the undersigned attorneys, have made numerous good faith efforts to schedule a mutually convenient time for Applicant to be deposed pursuant to Opposers' Notice of Deposition of Albert Trummer, which was originally served on May 2, 2011. Opposers' good faith efforts have been unsuccessful, given Applicant's complete failure to respond to Opposers' correspondence in furtherance of these efforts.

I. BACKGROUND

On November 11, 2009, Opposers filed a Notice of Opposition against Application Serial No. 77/584,448 to register the mark APOTHEKE for certain goods in International Classes 32 and 33, and services in International Class 43 (the "Application").¹ Opposers assert, among other things, that they own all right, title and interest to the APOTHEKE mark for bar and restaurant services and that the Application is based entirely upon false and fraudulent statements made by Applicant in an attempt to individually appropriate Opposers' intellectual property rights in violation of the Trummer Bar, LLC

¹ Applicant seeks to register the mark APOTHEKE as his exclusive mark for "Essences for the manufacture of liqueurs. Non-alcoholic beverages, namely, soft drinks, fruit drinks, juice drinks, mineral water, spring waters, bottled waters, ginger ale, Grenadine syrup for beverage use, non-alcoholic cocktail mix, namely, sour mix, carbonated soft drinks, vegetable juice, sweet cider, carbonated water, soda water, Quinine water, namely, tonic water, energy drinks" in International Class 32; "Spirits, Liquor and liqueur beverages. Alcoholic beverages, namely, distilled spirits, potable spirits, fermented spirits, Liqueurs, Fruit-based liqueurs, coffee-based liqueurs, crème liqueurs, chocolate-based liqueurs, spice-based liqueurs, vanilla-based liqueurs, berry-based liqueurs, flower-based liqueurs, herb liqueurs, nut-flavored liqueurs, alcoholic Bitters, gin, rum, vodka, bourbon, whiskey, rye, brandy, port, sherry, vermouth, absinthe, cachaca, mescal, whisky, schnapps, Sake, champagne, hard cider, spirits, namely, Soju, distilled liquor, namely, baijiu, Brandy, namely, fruit-based brandy in the nature of eau-de-vie, grappa, Brandy, namely, pisco, tequila, cognac, Brandy, namely, Chartreuse and Bénédictine" in International Class 33; and "Bar and restaurant services" in International Class 43.

Operating Agreement. (Not. Of Opp. ¶¶ 3-12). Opposers also assert that Trummer Bar, LLC has extensively used and promoted the APOTHEKE mark in the United States in connection with bar and restaurant services since at least as early as August 2008 and that Applicant, contrary to the statements upon which the Application is based, has never made any use of the APOTHEKE mark in his capacity as an individual, whatsoever. (Not. Of Opp. ¶¶ 3-6). As grounds for opposition, Opposers allege priority of use, likelihood of confusion and fraud on the part of Applicant. (Not. Of Opp. ¶¶ 1-14).

Opposers first noticed Applicant's deposition for June 14, 2011 and, in order to accommodate Applicant and his counsel's alleged scheduling conflicts, Opposers agreed to repeatedly extend discovery and re-schedule Applicant's deposition. (Pampalone Decl., Ex. 1) The parties agreed to proceed with Applicant's deposition and Opposers served supplemental notices for the deposition to take place on September 1, 2011 and then again on October 12, 2011 (Pampalone Decl., Exs. 2 & 3). After again agreeing to re-schedule his deposition and further extend discovery to accommodate Applicant, on October 17, 2011, Applicant's counsel represented that he would provide Opposers with available dates for Applicant's deposition to take place in December. (Pampalone Decl., Ex. 4). Opposers wrote to Applicant's attorney on November 2, 2011 and again on November 15, 2011, requesting that Applicant provide opposers with available dates for the deposition to take place in light of availability concerns and the quickly approaching discovery deadline. *Id.*

Applicant has, to date, failed to provide available dates for his deposition or to provide any response to Opposers' November 2nd and November 15th correspondence. (Pampalone Decl., ¶ 6)

In addition, Opposers have produced and Applicant has deposed individual opposers Eric Lopez and Christopher Tierney on August 17th and 18th, respectively and Opposers have repeatedly offered to produce opposer and designated Rule 30(b)(6) witness Heather Tierney for deposition on the day prior to Applicant's scheduled deposition or at any other convenient time during the discovery period. (Pampalone Decl., ¶ 5, Ex. 4) However, as evidenced by Applicant's failure to provide any response to Opposers' correspondence requesting available dates in light of the approaching discovery deadline, Applicant has become completely unresponsive and, as a result, is improperly precluding Opposers from obtaining discovery that is necessary to support their position in the present Opposition Proceeding.

II. MOTION TO COMPEL

A. Opposers Have Made Good Faith Efforts to Work With Applicant

In accordance with Trademark Rule 2.120(e), Opposers submit that they have made numerous good faith efforts through correspondence to resolve the issues presented in this motion with Applicant. Specifically, as detailed above, Opposers have repeatedly sent correspondence to applicant's attorney attempting to schedule Applicant's deposition, to which Opposers have received no response, with the discovery period set to close on December 17, 2011.

B. Applicant's Refusal to Produce Himself for Deposition

Applicant's refusal to provide available dates for Applicant's deposition is part of Applicant's strategy to delay the present Opposition Proceeding to the greatest extent possible and Applicant has essentially brought the discovery process to a standstill. Given that Applicant is a party to this Opposition Proceeding and the only source of the discovery that Opposers seek, Applicant is improperly preventing Opposers from establishing their claims. Accordingly, under the present circumstances, given Applicant's conduct to date and continuous dilatory tactics, it is necessary and appropriate for the Board to compel Applicant to appear for deposition by a date certain. *See HighBeam Marketing LLC v. Highbeam Research LLC*, 85 USPQ2d 1902, 1907 (TTAB 2008) (motion to compel attendance for depositions granted where moving party made good faith effort to schedule depositions but opposer failed to cooperate). Opposers respectfully request that the Board issue an order compelling Applicant to comply with his discovery obligations pursuant to the Federal Rules or, in the alternative, precluding Applicant from providing any testimony in connection with the present Opposition Proceeding.

III. MOTION TO EXTEND

In accordance with Federal Rule of Civil Procedure 6(b), Opposers hereby move the Board for a thirty (30) day extension of the discovery period for the limited purpose of allowing Opposers (and not applicant) time to depose Applicant and to pursue follow-up discovery if necessary. Opposers also request an extension of the testimony periods.

Opposers do not seek an extension of time for purposes of delay. It is requested that the limited thirty (30) day extension run from the date of Applicant's deposition as ordered by the Board, and that the discovery period be otherwise closed.

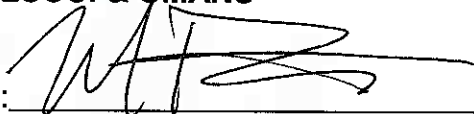
Opposers also request an extension of the testimony period to follow the re-set discovery period.

IV. CONCLUSION

For the reasons stated above, Opposers respectfully request that the Board grant Opposers' motion to compel and order Applicant to produce Albert Trummer within twenty days from the mailing date of the Board's ruling on the present motion. Opposers also respectfully request that the Board grant Opposers' motion for an extension of the discovery period for the limited purpose of allowing Opposers (and not Applicant) time to review Applicant's deposition transcript discovery and to pursue follow-up discovery if necessary. Opposers request that the extension run from the date of Applicant's deposition and that the discovery period be otherwise closed. Opposers further request that the testimony period be re-set to follow the close of discovery.

Dated: New York, New York
December 2, 2011

COLUCCI & UMANS

By: 

Michael J. Pampalone, III
218 East 50th Street
New York, NY 10022
Telephone: 212-935-5700
Facsimile: 212-935-5728

mpampalone@colucci-umans.com

Attorneys for Opposers

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing "Opposers' Combined Motion to Compel Discovery Deposition and Motion to Extend Discovery" has been forwarded via First Class Mail, postage prepaid, to Applicant's Attorneys, Yuval H. Marcus, Leason Ellis LLP, One Barker Avenue, Fifth Floor, White Plains, New York 10601-1526, this 2nd day of December 2011.



Teresa Kiernan

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

----- X

TRUMMER BAR, LLC, HEATHER TIERNEY,	:	
CHRISTOPHER TIERNEY and ERIC LOPEZ,	:	Opposition No. 91192645
	:	Serial No. 77/584,448
Opposers,	:	
	:	
v.	:	
	:	
ALBERT TRUMMER,	:	
	:	
Applicant.	:	

----- X

**DECLARATION OF MICHAEL J. PAMPALONE, III, IN SUPPORT OF
OPPOSERS' COMBINED MOTION TO COMPEL DISCOVERY DEPOSITION AND
MOTION TO EXTEND DISCOVERY AND TRIAL DATES**

Pursuant to 28 U.S.C. § 1746, Michael Pampalone declares under penalty of perjury as follows:

1. I am an associate of the law firm of Colucci & Umans, counsel for opposers, TRUMMER BAR, LLC, HEATHER TIERNEY, CHRISTOPHER TIERNEY and ERIC LOPEZ ("Opposers"). I am fully familiar with the facts hereinafter set forth of my own personal knowledge.
2. On May 2, 2011, Opposers served applicant Albert Trummer ("Applicant"), via his counsel, with a "Notice of Deposition" of Albert Trummer, which was to be taken on June 14, 2011. A true and accurate copy of the "Notice of Deposition" is attached hereto and incorporated herein by reference as Exhibit 1.
3. On July 20, 2011 Opposers served Applicant, via his counsel, with a "First Amended Notice of Deposition" of Albert Trummer, which was to be taken on

September 1, 2011. A true and accurate copy of the "First Amended Notice of Deposition" is attached hereto and incorporated herein by reference as Exhibit 2.

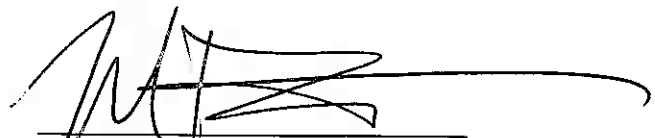
4. On October 3, 2011 Opposers served Applicant, via his counsel, with a "Second Amended Notice of Deposition" of Albert Trummer, which was to be taken on October 12, 2011. A true and accurate copy of the "Second Amended Notice of Deposition" is attached hereto and incorporated herein by reference as Exhibit 3.

5. A true and accurate copy of a chain of e-mail correspondence between Applicant's counsel and I that was exchanged between October 6, 2011 and November 15, 2011 is attached hereto and incorporated herein as Exhibit 4. Included in this chain of correspondence are e-mails that I sent to Applicant's counsel on November 2, 2011 and November 15, 2011 in a continuing good faith effort to schedule Applicant's deposition and the deposition of individual opposer and Trummer Bar, LLC's Federal Rule 30(b)(6) designee Heather Tierney. In my November 15th e-mail I also advised Applicant's attorneys that, "unless you provide us with available dates for Mr. Trummer's deposition shortly, we will have little choice but to move the Board to compel you to do so."

6. Applicant has failed to provide any response to our November 2nd and 15th e-mails or any available dates for his deposition to take place.

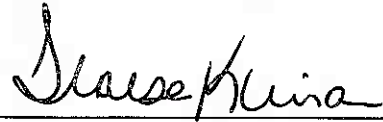
I declare under penalty of perjury that the foregoing is true and correct.

Executed this 2nd day of December, 2011 at New York, New York.


Michael J. Pampalone, III

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing "Declaration of Michael Pampalone in Support of Opposers' Combined Motion to Compel Discovery Deposition and Motion to Extend Discovery" has been forwarded via First Class Mail, postage prepaid, to Applicant's Attorneys, Yuval H. Marcus, Leason Ellis LLP, One Barker Avenue, Fifth Floor, White Plains, New York 10601-1526, this 2nd day of December 2011.

A handwritten signature in cursive script, appearing to read "Teresa Kiernan", written over a horizontal line.

Teresa Kiernan

EXHIBIT 1

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

----- X

TRUMMER BAR, LLC, HEATHER TIERNEY,	:	
CHRISTOPHER TIERNEY and ERIC LOPEZ,	:	Opposition No. 91192645
	:	Serial No. 77/584,448
Opposers,	:	
	:	
v.	:	
	:	
ALBERT TRUMMER,	:	<u>NOTICE OF DEPOSITION</u>
	:	
Applicant.	:	
	:	

----- X

TO APPLICANT AND HIS ATTORNEYS OF RECORD:

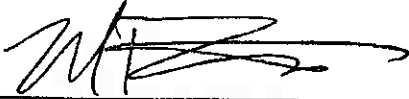
PLEASE TAKE NOTICE THAT, pursuant to Rules 26 of the Federal Rules of Civil Procedure, opposers Trummer Bar, LLC, Heather Tierney, Christopher Tierney and Eric Lopez will take the deposition of applicant, **ALBERT TRUMMER**, on **June 14, 2011, at 10:00 a.m.**, at the offices of COLUCCI & UMANS, 218 East 50th Street, New York, New York 10022.

The deposition will be taken upon oral examination and may be recorded by video before a Notary Public or other officer duly authorized to administer oaths and shall continue from day to day until completed, weekends and holidays excepted, with such adjournments as to time and place that may be necessary.

You are hereby invited to attend and cross-examine.

Dated: New York, New York
May 2, 2011

COLUCCI & UMANS

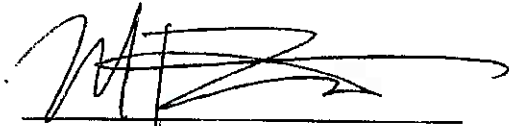
By: 

Michael J. Pampalone, III
218 East 50th Street
New York, NY 10022
Telephone: 212-935-5700
Facsimile: 212-935-5728
mpampalone@colucci-umans.com

Attorneys for Opposers

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing "Notice of Deposition" has been forwarded via First Class Mail, postage prepaid, to applicant's attorneys, Yuval H. Marcus, Leason Ellis LLP, 81 Main Street, Suite 503, White Plains, New York 10601, this 2nd day of May 2011.

A handwritten signature in black ink, appearing to read 'Michael Pampalone', written over a horizontal line.

Michael Pampalone

EXHIBIT 2

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

----- X

TRUMMER BAR, LLC, HEATHER TIERNEY, :
CHRISTOPHER TIERNEY and ERIC LOPEZ, : Opposition No. 91192645
: Serial No. 77/584,448

Opposers,

v.

ALBERT TRUMMER,

Applicant.

:
:
: **FIRST AMENDED**
: **NOTICE OF DEPOSITION**
:
:
:

----- X

TO APPLICANT AND HIS ATTORNEYS OF RECORD:

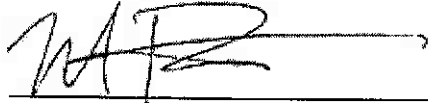
PLEASE TAKE NOTICE THAT, pursuant to Rules 26 of the Federal Rules of Civil Procedure, opposers Trummer Bar, LLC, Heather Tierney, Christopher Tierney and Eric Lopez will take the deposition of applicant, **ALBERT TRUMMER**, on **September 1, 2011, at 10:00 a.m.**, at the offices of COLUCCI & UMANS, 218 East 50th Street, New York, New York 10022.

The deposition will be taken upon oral examination and may be recorded by stenographic and audio/video means before a Notary Public or other officer duly authorized to administer oaths and shall continue from day to day until completed, weekends and holidays excepted, with such adjournments as to time and place that may be necessary.

You are hereby invited to attend and cross-examine.

Dated: New York, New York
July 20, 2011

COLUCCI & UMANS

By:  _____

Michael J. Pampalone, III
218 East 50th Street
New York, NY 10022
Telephone: 212-935-5700
Facsimile: 212-935-5728
mpampalone@colucci-umans.com

Attorneys for Opposers

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing "First Amended Notice of Deposition" has been forwarded via e-mail and First Class Mail, postage prepaid, to applicant's attorneys, Cameron S. Reuber, Yuval H. Marcus, Leason Ellis LLP, 81 Main Street, Suite 503, White Plains, New York 10601, Marcus@LeasonEllis.com, Reuber@LeasonEllis.com, this 20th day of July 2011.

A handwritten signature in black ink, appearing to read 'M Pampalone', written over a horizontal line.

Michael Pampalone

EXHIBIT 3

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

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TRUMMER BAR, LLC, HEATHER TIERNEY,	:	
CHRISTOPHER TIERNEY and ERIC LOPEZ,	:	Opposition No. 91192645
	:	Serial No. 77/584,448
Opposers,	:	
	:	
v.	:	
	:	
ALBERT TRUMMER,	:	SECOND AMENDED
	:	<u>NOTICE OF DEPOSITION</u>
Applicant.	:	
	:	

----- X

TO APPLICANT AND HIS ATTORNEYS OF RECORD:

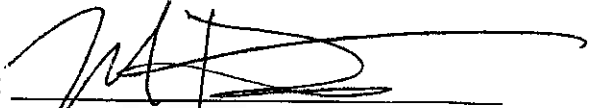
PLEASE TAKE NOTICE THAT, pursuant to Rules 26 of the Federal Rules of Civil Procedure, opposers Trummer Bar, LLC, Heather Tierney, Christopher Tierney and Eric Lopez will take the deposition of applicant, **ALBERT TRUMMER**, on **October 12, 2011, at 10:00 a.m.**, at the offices of COLUCCI & UMANS, 218 East 50th Street, New York, New York 10022.

The deposition will be taken upon oral examination and may be recorded by stenographic and audio/video means before a Notary Public or other officer duly authorized to administer oaths and shall continue from day to day until completed, weekends and holidays excepted, with such adjournments as to time and place that may be necessary.

You are hereby invited to attend and cross-examine.

Dated: New York, New York
October 3, 2011

COLUCCI & UMANS

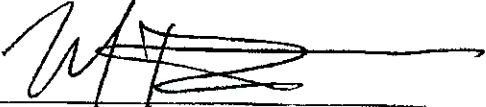
By: 

Michael J. Pampalone, III
218 East 50th Street
New York, NY 10022
Telephone: 212-935-5700
Facsimile: 212-935-5728
mpampalone@colucci-umans.com

Attorneys for Opposers

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing "Second Amended Notice of Deposition" has been forwarded via e-mail and First Class Mail, postage prepaid, to applicant's attorneys, Yuval H. Marcus, Cameron S. Reuber, Leason Ellis LLP, One Barker Avenue, Fifth Floor, White Plains, New York 10601, Marcus@LeasonEllis.com, Reuber@LeasonEllis.com, this 3rd day of October 2011.



Michael Pampalone

EXHIBIT 4

Michael Pampalone

From: Michael Pampalone
Sent: Tuesday, November 15, 2011 6:44 PM
To: 'Yuval Marcus'
Cc: 'Cameron Reuber'; 'Sergey A. Lysenko'
Subject: RE: Trummer Bar, LLC, et al. v. Albert Trummer
Follow Up Flag: Follow up
Flag Status: Completed

Yuval –

Our calendar is beginning to fill up and, despite representing that you would provide available dates for Mr. Trummer's deposition to take place, we have yet to receive any. While we would like to avoid having to involve the Board, December is fast approaching and, unless you provide us with available dates for Mr. Trummer's deposition shortly, we will have little choice but to move the Board to compel you to do so.

Absent a non reschedulable commitment, Ms. Tierney will make herself available on the day prior to Mr. Trummer's deposition, as she has repeatedly done in the past (or on an alternative available date, as necessary). Accordingly, we, again, ask that you provide us with available dates for Mr. Trummer's deposition without further delay.

Michael Pampalone

Colucci & Umans

218 East 50th Street | New York, New York 10022-7681

Tel. No.: (212) 935-5700 | Fax: (212) 935-5728

Email: mpampalone@colucci-umans.com | www.colucci-umans.com

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From: Michael Pampalone
Sent: Wednesday, November 02, 2011 3:16 PM
To: 'Yuval Marcus'
Cc: Cameron Reuber; Sergey A. Lysenko
Subject: RE: Trummer Bar, LLC, et al. v. Albert Trummer

Yuval –

Further to our below correspondence, we ask that you provide us with solid available dates for Mr. Trummer's deposition as soon as possible so that we can avoid having to delay his deposition, yet again.

Thank you in advance,

Michael

Michael Pampalone

Colucci & Umans

218 East 50th Street | New York, New York 10022-7681

Tel. No.: (212) 935-5700 | Fax: (212) 935-5728

12/2/2011

Email: mpampalone@colucci-umans.com | www.colucci-umans.com

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From: Yuval Marcus [mailto:Marcus@leasonellis.com]
Sent: Monday, October 17, 2011 7:31 PM
To: Michael Pampalone
Cc: Cameron Reuber; Sergey A. Lysenko
Subject: RE: Trummer Bar, LLC, et al. v. Albert Trummer

Michael,

I confirm that I will file the motion on consent by tomorrow's deadline and I will get back to you with dates in early December.

Regards,

Yuval

Please note our new address

Yuval H. Marcus
LEASON ELLIS .
Intellectual Property Attorneys
One Barker Avenue, Fifth Floor
White Plains, New York 10601
Marcus@LeasonEllis.com
T.914.821.9075
F.914.288.0023

www.linkedin.com/in/yuvalmarcus

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From: Michael Pampalone [mailto:MPampalone@Colucci-Umans.com]
Sent: Monday, October 17, 2011 7:00 PM
To: Yuval Marcus
Cc: Cameron Reuber; Sergey A. Lysenko
Subject: RE: Trummer Bar, LLC, et al. v. Albert Trummer

Yuval –

We have a trial that is scheduled to begin in Arizona in mid-November, which precludes us from being able to schedule the depositions between November 15th and November 30th. In light of your representation that no dates between now and November 15th are feasible, it appears that the earliest we will be able to re-schedule the

12/2/2011

depositions for is the first week of December. Accordingly, it will be necessary to obtain a two month extension of the discovery period. Please confirm that you will proceed to file the motion on consent by tomorrow.

Please also advise us of Mr. Trummer's availability during the first week of December.

Thank you,

Michael Pampalone

Colucci & Umans

218 East 50th Street | New York, New York 10022-7681

Tel. No.: (212) 935-5700 | Fax: (212) 935-5728

Email: mpampalone@colucci-umans.com | www.colucci-umans.com

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From: Yuval Marcus [mailto:Marcus@leasonellis.com]
Sent: Monday, October 17, 2011 4:26 PM
To: Michael Pampalone
Cc: Cameron Reuber; Sergey A. Lysenko
Subject: RE: Trummer Bar, LLC, et al. v. Albert Trummer

Michael,

Sorry I was not able to get back to you last week. I was out of the office starting Wednesday afternoon for the rest of the week due to my observance of the Jewish holidays and could not get the dates before I left. We are unable to find dates in October that work and the only dates that work for both Albert and our schedule are November 15 and 16. Please confirm that these are acceptable. If any discovery issues arise as a result of the depositions, we will know about them prior to the extended cutoff date.

Thanks,

Yuval

Please note our new address

Yuval H. Marcus
LEASON ELLIS .
Intellectual Property Attorneys
One Barker Avenue, Fifth Floor
White Plains, New York 10601
Marcus@LeasonEllis.com
T.914.821.9075
F.914.288.0023

www.linkedin.com/in/yuvalmarcus

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From: Michael Pampalone [mailto:MPampalone@Colucci-Umans.com]
Sent: Friday, October 14, 2011 4:38 PM
To: Yuval Marcus
Cc: Cameron Reuber; Sergey A. Lysenko
Subject: RE: Trummer Bar, LLC, et al. v. Albert Trummer

Yuval –

We have still not received any available dates for Mr. Trummer's deposition in October and, as you know, discovery is scheduled to close this Tuesday, October 18th. As we indicated in our prior correspondence, we are not willing to unnecessarily extend discovery for purposes other than Mr. Trummer and Ms. Tierney's depositions (and any requisite follow-up discovery based upon their testimony).

Accordingly, please provide us with Mr. Trummer's earliest availability to be deposed and we will agree to consent to a 30 day extension of the discovery period, which should provide us with more than an ample amount of time to complete the depositions and any requisite follow-up discovery.

Thank you,

Michael Pampalone
COLUCCI & UMANS

From: Yuval Marcus [mailto:Marcus@leasonellis.com]
Sent: Friday, October 07, 2011 4:17 PM
To: Michael Pampalone
Cc: Cameron Reuber; Sergey A. Lysenko
Subject: RE: Trummer Bar, LLC, et al. v. Albert Trummer

Michael,

Attached is the letter requiring Albert to perform community service on October 11-12. I will get back to you next week with alternate dates.

Regards,

Yuval

Please note our new address

Yuval H. Marcus
LEASON ELLIS .
Intellectual Property Attorneys
One Barker Avenue, Fifth Floor
White Plains, New York 10601
Marcus@LeasonEllis.com
T.914.821.9075
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www.linkedin.com/in/yuvalmarcus

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From: Michael Pampalone [mailto:MPampalone@Colucci-Umans.com]
Sent: Thursday, October 06, 2011 5:07 PM
To: Yuval Marcus
Cc: Cameron Reuber; Sergey A. Lysenko
Subject: RE: Trummer Bar, LLC, et al. v. Albert Trummer

Dear Yuval –

We are not willing to consent to a further two month extension of all discovery deadlines. As you know, we consented to the last 90 day extension of the discovery period on the condition that it would not delay these depositions, which were then scheduled to take place over a month ago.

Please provide us with documentation evidencing Mr. Trummer's court ordered public service on October 12th and we will agree to an extension of the discovery period for the sole purpose of proceeding with Ms. Tierney and Mr. Trummer's depositions. We would like to complete these depositions as soon as possible, so we ask that you provide us with alternative available dates for Mr. Trummer's deposition to take place in October.

Michael Pampalone

Colucci & Umans

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From: Yuval Marcus [mailto:Marcus@leasonellis.com]
Sent: Thursday, October 06, 2011 4:09 PM
To: Michael Pampalone
Cc: Cameron Reuber; Sergey A. Lysenko
Subject: Trummer Bar, LLC, et al. v. Albert Trummer

Dear Michael,

Further to my voicemail messages of today, I just learned that Albert Trummer is no longer available for his deposition on October 12 because he has Court ordered public service on that date. We should therefore reschedule both his and Trummer Bar LLC/Heather Tierney's depositions so that we can reschedule them both on consecutive dates. Please advise of available dates. We do not have any availability prior to the October 18 discovery deadline. Please confirm that you consent to a further 2 month extension of all discovery deadlines.

Regards,

Yuval

12/2/2011

Please note our new address

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