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Filing date: **01/25/2024**

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

Proceeding no.	91276953
Party	Plaintiff May Flower International, Inc.
Correspondence address	GE LI KEVIN KERVENG TUNG, P.C. 136-20 38TH AVENUE, SUITE 3D FLUSHING, NY 11354 UNITED STATES Primary email: gli@kktlawfirm.com Secondary email(s): ligouxuan@hotmail.com, ktung@kktlawfirm.com 718-939-8033
Submission	Motion to Extend
Filer's name	Ge Li
Filer's email	gli@kktlawfirm.com
Signature	/Ge Li/
Date	01/25/2024
Attachments	motion to extend discovery.pdf(221021 bytes) Ex. A-C.pdf(692591 bytes)

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

In The Matter Of Application Serial Nos. 90757571
Filed: June 7, 2021



For Mark:

Published in the Official Gazette: May 31, 2022

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May Flower International, Inc.,

Opposer,

Opposition No.: 91276953

v.

Amoy Food Limited,

Applicant.

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**MAY FLOWER INTERNATIONAL, INC.’S MOTION TO EXTEND THE DISCOVERY
DEADLINE AND TO EXTEND THE DEADLINE FOR MAY FLOWER’S WITNESS TO
ATTEND THE RULE 30(b)(6) DEPOSITION**

May Flower International, Inc. (the “May Flower”) hereby moves the Board to extend the close of discovery in this proceeding for a period of thirty (30) days, up to and including **February 25, 2024**. The current discovery close date is January 26, 2024 (See 16 TTABVue 8). May Flower requests that this proceeding be suspended pending disposition of this motion, and that the trial dates be modified as appropriate after this motion is resolved.

May Flower’s undersigned counsel discussed with Amoy Food Limited’s (the “Amoy”) counsel about this request through email communication and telephone meet and confer. In each time, Amoy’s counsel indicated that their clients did not consent to this extension request.

Under Trademark Rule 2.120(a)(2)(iv), 37 C.F.R. § 2.120(a)(2)(iv), limited extensions of the discovery period may be granted upon stipulation of the parties approved by the Board, or on motion granted by the Board, or by order of the Board. Pursuant to Fed. R. Civ. P. 6(b)(1)(A), made applicable to Board proceedings by Trademark Rule 2.116(a), 37 C.F.R. § 2.116(a), the appropriate standard for allowing an extension of a specified time period prior to the expiration of that period is “good cause.”

May Flower’s extension request is based on good causes.

First, on December 27, 2023, the Board granted Amoy’s motion to compel May Flower to attend the 30(b)(6) deposition. See 16 TTABVUE. May Flower had designated Min Liu as May Flower’s Rule 30(b)(6) witness in the course of discovery. 12 TTABVUE 23. After receiving the order, the undersigned contacted Min Liu about her availability of attending the Rule 30(b)(6) deposition. Min Liu advised she had suffered from migraine attack lately and was unable to attend the Rule 30(b)(6) deposition because of the migraine condition. The undersigned asked Min Liu to provide a doctor’s note as proof of her illness. Min Liu provided the doctor’s note on January 10, 2024. The doctor diagnosed that Min Liu “has an active migraine attack and cervicogenic headache” and asked her to “rest and avoid stress and overworkings [sic].” The doctor’s note is not attached to this motion for privacy reason. Min Liu further advised that in her past experience the migraine would go away within 1-2 months after taking treatment and during the migraine attack period she could not work because that would cause more stress and migraine pain.

The undersigned thereafter monitored Min Liu’s condition on a daily basis. On January 18, 2024, seeing no sign of recovery before the January 26, 2024 deadline, the undersigned contacted Amoy’s counsel requesting an extension of the discovery deadline to complete the

Rule 30(b)(6) deposition. Amoy's counsel refused to give consent. See a copy of the email exchanges between counsel attached hereto as **Exhibit A** for the Board's consideration.

On January 23, 2024, the undersigned requested a telephone meet and confer with Amoy's counsel. A telephone meet and confer was conducted between the undersigned and Amoy's counsel. In the meet and confer, the undersigned once again stated that Min Liu was currently physically unfit to attend the deposition due to the migraine attack and an extension of 30 days was required to accommodate her recovery. Amoy's counsel still advised that Amoy refused to give consent and Amoy's intention to move for sanction.

May Flower is not asking here to preclude the Rule 30(b)(6) deposition altogether. The 30-day extension requested is reasonably short and will not cause any prejudice to Amoy's case.

Second, an extension of time is needed for Eric Liu's deposition. On August 9, 2023, May Flower served a notice of deposition for Eric Liu through Amoy's counsel. See **Exhibit B**. Eric Liu is an officer of Amoy and Amoy's subsidiary company Amoy Asian Foods North America. Eric Liu has personal knowledge of the subject matters of this proceeding. On August 22, 2023, May Flower received an objection to Eric Liu's deposition from Amoy's counsel stating that because Amoy is a foreign party, its designee should be deposed through written questions. See a copy of the objection attached as **Exhibit C**. However, May Flower was not noticing a Rule 30(b)(6) deposition of Amoy in **Exhibit B**. Instead, May Flower was seeking to depose Eric Liu as an individual officer of Amoy under Fed. R. Civ. P. 30(b)(1). And Eric Liu is an individual residing in the U.S.

Immediately after the objection to the notice of deposition of Eric Liu, Amoy filed a motion to compel on August 28, 2023 (12 TTABVUE). The proceeding is suspended pending the motion to compel. 13 TTABVUE. After the proceeding was reopened, May Flower requested

a meet and confer with Amoy's counsel regarding Eric Liu's deposition. Amoy's counsel advised that Amoy would not produce Eric Liu but he needed to confirm with Amoy (located in Hong Kong) about this position. As of the time and date this motion is filed, the undersigned has not received any confirmation from Amoy's counsel regarding the production of Eric Liu.

Therefore, May Flower needs additional time to meet and confer with Amoy re Eric Liu's deposition or additional time to file a motion to compel Eric Liu's deposition.

Third, in the meet and confer, the undersigned also advised Amoy's counsel that Amoy's U.S. distributor sued May Flower in a New York state court located in New York County, New York and that case has bearings on the outcome of this proceeding and the state court case was going to be resolved in the near future and a short extension of this proceeding might be helpful for the resolution of this proceeding. Amoy's counsel still refused to give consent for this extension. As stated above, a short extension of this proceeding and to allow Min Liu to be deposed in this extension might help a resolution of this proceeding because of the outcome of the state court case.

This is May Flower's first request to extend the discovery deadline without consent. May Flower does not anticipate any further extension for the discovery deadline.

WHEREFORE, May Flower respectfully requests the Board grant this extension of time set forth above.

Dated: Queens, New York
January 25, 2024

KEVIN KERVENG TUNG, P.C.
Attorneys for May Flower

/s/ Ge Li
Ge Li, Esq.
Queens Crossing Business Center
136-20 38th Avenue, Suite 3D
Flushing, New York 11354
(718) 939-4633

TO:

Otto O. Lee, Esq.
Kevin Viau, Esq.
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Tel: (408) 286-8933
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CERTIFICATE OF SERVICE

I hereby certify that the foregoing document is being served upon Attorneys for Amoy via electronic mail the 25th day of January 2024.

/s/ Ge Li

Exhibit “A”

Re: May Flower v. Amoy, TTAB Case No. 91276953

From: Ge Li (gli@kktlawfirm.com)

To: kviau@iplg.com

Cc: tm@iplg.com; hsong@kktlawfirm.com

Date: Tuesday, January 23, 2024 at 06:27 PM EST

Hi Kevin:

Are you available tomorrow for a meet and confer for Min Liu's deposition and also for Eric Liu's deposition? Please advise. Thank you.

Ge (Gordon) Li, Esq.
Partner | Kevin Kerveng Tung, P.C.
Attorneys At Law
136-20 38th Avenue, Suite 3D
Flushing, NY 11354
Tel: (718)939-8033

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On Friday, January 19, 2024 at 02:30:37 PM EST, Kevin Viau <kviau@iplg.com> wrote:

Dear Gordon,

It is not reasonable for May Flower to identify a witness, then immediately make that witness unavailable for claimed health reasons. Since the Board's order compelling the deposition, there has been ample time and opportunity for May Flower to notify us of any issues, to schedule around Ms. Liu's condition, to arrange any necessary accommodations, and to designate an alternative. Instead, we receive another apparent attempt to delay the matter, over three weeks after the Board's order and our correspondence attempting to schedule the deposition and only just over a week before the January 26 date. We have received no other communication from you since the date of the Board's order until this late moment, so we only have notice of a supposed problem from your end now that we are getting up against the deadline.

We have further reviewed the doctor's note which recommends to "rest, and avoid stress and overworking." The note does not state Ms. Liu is totally disabled or unable to engage in desk/office based work. We believe the deposition we have planned and noticed accommodates Ms. Liu's condition. The deposition is to be conducted via Zoom (or other teleconference), which Ms. Liu may take from her own home or other comfortable location. Ms. Liu has had many months to consider the topics and prepare given the notice was served on May 30, 2023, so there will not be any shock or surprise about the deposition content. Further, the deposition should not last more than 4 hours or so.

We again demand that May Flower produce its witness for deposition to occur by January 26, 2024 in accordance with the Board's order compelling the deposition. At this time, we understand that you are not putting forward Ms. Liu for deposition by January 26. If we do not hear from you, we will take it that you are not complying with the Board's order compelling May Flower to produce its witness for deposition by January 26, and we will be seeking sanctions.

Best regards,
Kevin Viau

On Thu, Jan 18, 2024 at 12:51 PM Kevin Viau <kviau@iplg.com> wrote:

Dear Gordon,

We are disappointed to hear this. We are evaluating your request and will let you know our position shortly.

Best regards,
Kevin Viau

On Thu, Jan 18, 2024 at 11:22 AM Ge Li <gli@kktlawfirm.com> wrote:

Hi Kevin:

May Flower designates Min Liu as the 30(b)(6) witness. However, because Min Liu suffers from migraine lately and the doctor suggests she should not work (**see attached doctor's note**), Min Liu is unable to testify before the January 26, 2024 deadline because of the constant migraine. I believe the Board will not force anyone in her condition to testify. I am asking for your consent of **a 30-day extension of the deadlines**. I follow up on her condition on daily basis right now and will give you dates for her deposition once her medical condition is allowed her to attend the deposition. Thank you for your courtesy in advance. We can have a phone call to discuss if you think necessary.

Ge (Gordon) Li, Esq.
Partner | Kevin Kerveng Tung, P.C.
Attorneys At Law
136-20 38th Avenue, Suite 3D
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On Wednesday, December 27, 2023 at 03:13:47 PM EST, Kevin Viau <kviau@iplg.com> wrote:

Dear Counsel,

Per the attached order issued today, the Board has compelled the attendance of May Flower's witness for deposition. Please identify May Flower's Rule 30(b)(6) designee(s), and provide available dates prior to the Board's January 26, 2024 deadline. As previously noticed, we intend to take the deposition by videoconference for the convenience of all parties.

Best regards,
Kevin Viau

INTELLECTUAL PROPERTY LAW GROUP LLP
Attorneys for Applicant
San Jose Office (Silicon Valley)
1871 The Alameda, Suite 250
San Jose, CA 95126
Tel: 408-286-8933
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Exhibit “B”

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

In the Matter of Application No. 90757571
Filed: June 7, 2021



For the mark:

Published in the Official Gazette: May 31, 2022

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May Flower International, Inc.,

Opposer,

v.

Amoy Food Limited,

Applicant.

Opposition No.: 91276953

**NOTICE TO TAKE
DEPOSITION UPON ORAL
EXAMINATION
OF ERIC LIU**

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PLEASE TAKE NOTICE, that pursuant to Fed. R. Civ. P. 30(b), defendant, by its attorneys, KEVIN KERVENG TUNG, P.C., will, before an officer authorized to administer oaths, take the deposition upon oral examination of Eric Liu, as the Senior Sales and Marketing Director of Amoy Food Limited. The deposition shall be taken on August 28, 2023, at 10:30 a.m. EST, through video conference, or at the offices of KEVIN KERVENG TUNG, P.C., 136-20 38th Avenue, Suite 3D, Flushing, New York 11354, and will continue from day to day until completed.

Dated: August 9, 2023

KEVIN KERVENG TUNG, P.C.
Attorneys for Opposer



Ge Li, Esq.
136-20 38th Avenue, Suite 3D
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gli@kktlawfirm.com

To:

Otto O. Lee, Esq.
Kevin Viau, Esq.
INTELLECTUAL PROPERTY LAW
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1871 The Alameda, Suite 250
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Tel: (408) 286-8933
Fax: (408) 286-8932
Email: tm_docket@iplg.com

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this day a true and correct copy of the foregoing was served on all counsel of record by email addressed as follows:

Otto O. Lee, Esq.
Kevin Viau, Esq.
INTELLECTUAL PROPERTY LAW
GROUP LLP
1871 The Alameda, Suite 250
San Jose, CA 95126
Tel: (408) 286-8933
Fax: (408) 286-8932
Email: tm_docket@iplg.com

Dated: August 9, 2023

/s/ Ge Li
Ge Li, Esq.

Exhibit “C”

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

MAY FLOWER INTERNATIONAL, INC.,

Opposer,

v.

AMOY FOOD LIMITED,

Applicant.

Mark: AMOY

Opposition No.: 91276953

Serial No.: 90757571

**OBJECTION TO NOTICE OF
DEPOSITION OF ERIC LIU**

Pursuant Fed. R. Civ. P. 26 and 30 and TBMP § 404, Applicant AMOY FOOD LIMITED hereby objects to the Notice of Deposition of Eric Liu served by Opposer MAY FLOWER INTERNATIONAL, INC.

According to TBMP § 404.03(b), the deposition of a foreign party or its officer, director, managing agent, or Rule 30(b)(6) designee shall occur at the foreign party's location upon written questions. The Board will not order a party residing in a foreign country to come to the United States for the taking of their discovery deposition. *See id.* Applicant is organized and located in Hong Kong. Opposer has attempted to set the deposition of Eric Liu in Flushing, NY. However, as Applicant's Senior Sales and Marketing Director, Eric Liu's deposition is to occur only upon written questions at Applicant's location, Hong Kong. Neither Opposer nor the Board may compel a foreign party to come to the United States for deposition. Opposer's noticed deposition is accordingly improper, and Eric Liu is not available for the oral deposition as noticed by Opposer, either in Flushing, NY or by video conference.

Further, Opposer has failed to provide adequate and reasonable notice of the deposition. First, Opposer has not designated a place for the deposition as required under Rule 30(b)(1) as Opposer's notice

specifies “through video conference, or at the offices of KEVIN KERVENG TUNG, P.C.” as the location. By designating essentially two locations for the deposition, neither Applicant nor its witness can know the precise location of the deposition. Second, Opposer noticed the deposition just nineteen days before the scheduled date and the end of the discovery period and without first contacting Applicant for scheduling. The Board provides that “It is strongly recommended that the deposing party contact the party sought to be deposed (or whose officer, director, etc., is sought to be deposed) well in advance of the proposed deposition in order to arrange a mutually convenient time for the deposition. The closing of a party’s discovery period does not constitute a compelling need for failing to provide reasonable notice of deposition.” TBMP § 404.05. Finally, Opposer attempts to take the deposition of Applicant’s witness, yet has failed to make its own witness available for deposition by Applicant pursuant to Applicant’s reasonable and proper notice of deposition under Rule 30(b)(6). Applicant served Opposer’s deposition on May 30, 2023, noticed for June 23, 2023, yet Opposer never provided availability for its witness despite affirmatively stating to Applicant on June 13, 2023 that it would provide availability for deposition in the month of July 2023 and despite Applicant’s numerous attempts to meet and confer. Opposer cannot reasonably expect to notice and proceed with Applicant’s deposition when it has flagrantly disregarded its obligations to participate in discovery and make its witness available.

Applicant reserves the right to make all further objections to the deposition of any witness of Applicant, including without limitation to subject matter, relevance, competence, and materiality, before or during any deposition.

Dated: August 22, 2023

By: /Kevin Viau/
Otto O. Lee
Kevin Viau
INTELLECTUAL PROPERTY LAW GROUP LLP
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San Jose, CA 95126
Tel: (408) 286-8933
Fax: (408) 286-8932
Email: tm_docket@iplg.com

Attorneys for Applicant

CERTIFICATE OF SERVICE

I am over the age of 18 and am not a party to this action. I am employed in the County of Santa Clara, California, and my business address is 1871 The Alameda, Suite 250, San Jose, California 95126.

I certify that on August 22, 2023, I served the foregoing **OBJECTION TO NOTICE OF DEPOSITION OF ERIC LIU** on Opposer via email by sending the document to the person(s) at the email addresses listed below.

GE LI
KEVIN KERVENG TUNG, P.C.
136-20 38TH AVENUE, SUITE 3D
FLUSHING, NY 11354
UNITED STATES
gli@kktlawfirm.com, ligouxuan@hotmail.com, ktung@kktlawfirm.com

Attorneys for Opposer

Dated: August 22, 2023

By: /Kevin Viau/
Kevin Viau