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

Proceeding	92045147
Party	Plaintiff Metro Q Metro Q ,
Correspondence Address	Kenneth R. Glaser Gardere Wynne Sewell, LLP 1601 Elm Street, Suite 3000 Dallas, TX 75201-4761 UNITED STATES ip@gardere.com, lhempfill@gardere.com
Submission	Motion to Extend
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Signature	/Lisa R. Hemphill/
Date	06/18/2007
Attachments	MetroQ v. Gay & Lesbian Yellow Pages - Motion to Extend Deadlines.pdf (13 pages)(339957 bytes)

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

METRO Q,

Petitioner,

v.

GAY & LESBIAN YELLOW PAGES, INC.,

Respondent/Registrant.

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Cancellation No. 92045147
Registration No. 2,119,139

PETITIONER'S MOTION TO EXTEND DEADLINES

Petitioner, MetroQ ("MetroQ"), moves the Trademark Trial and Appeal Board ("TTAB") for a ninety (90) day extension of the discovery period (and other) deadlines. In support of this motion, Petitioner MetroQ would show the TTAB as follows:

1. Until very recently, the parties have been actively (and cordially) engaged in settlement discussions. *See* e-mails between the parties' counsel attached hereto as Exhibit A evidencing the most recent settlement communications from mid-January 2007 until June 13, 2007.

2. As a consequence of these discussions, and out of professional courtesy, MetroQ voluntarily suspended its discovery efforts while the parties attempted to negotiate a settlement so that neither party would incur needless expenses. In addition, on April 19, 2007, MetroQ filed an unopposed motion to extend the discovery deadline until June 18, 2007, to allow time for the parties to culminate settlement. On May 29, 2007, the TTAB granted this motion as conceded.

3. Unfortunately, the aforementioned settlement discussions reached an unexpected impasse on June 13, 2007, only five days before the expiration of the current June 18 discovery deadline. Then, in a move which caught Petitioner's attorney off guard, Respondent's attorneys, which up to then had been very cooperative, indicated that not only were the settlement talks

over, but that Respondent would oppose any request for an additional extension of the discovery deadline by Petitioner MetroQ. *See* Ex. B. MetroQ's counsel is disappointed in this action by Respondent's counsel which, it is assumed, is only in response to their client's instructions since it is out of character for these lawyers.

4. The additional time for discovery is necessitated by the fact that a review of Respondent's responses to Petitioner's written discovery reflects the need for oral depositions of not only Respondent, but also of certain third parties having knowledge relevant to the issues involved in this proceeding.

5. It is noted that the approval of Petitioner MetroQ's last request for a sixty (60) day extension of time was not formally granted until a few weeks before the expiration of the requested deadline. Therefore, given the anticipated delay in full briefing of this motion, and anticipated delays due to potential summer vacations of the deponents, Petitioner MetroQ has requested a ninety (90) day extension of the current deadlines.

6. It is represented that this request is submitted for good cause and is not filed merely for purpose of delay.

7. If the extension is granted by the Board, the following deadlines would then apply:

Discovery Period to Close:	September 16, 2007
30-day testimony period for party in position of plaintiff to close	December 16, 2007
30-day testimony period for party in position of defendant to close:	January 15, 2008
15-day rebuttal testimony period for plaintiff to close:	January 14, 2008

Respectfully submitted,

Date: June 18, 2007



Kenneth R. Glaser

Lisa R. Hemphill

GARDERE WYNNE SEWELL LLP

3000 Thanksgiving Tower

1601 Elm Street, Suite 3000

Dallas, Texas 75201-4761

Tel: 214-999-3000

Fax: 214-999-4667

ATTORNEYS FOR PETITIONER

CERTIFICATE OF SERVICE

This is to certify that on the 18th day of June, 2007, a true and correct copy of the above and foregoing document, PETITIONER'S MOTION TO EXTEND DEADLINES, was served on Respondent's attorney via email and via U.S. first class mail, postage prepaid, addressed as follows:

L. Jeremy Craft
Egbert Law Offices
State National Building
412 Main Street, 7th Floor
Houston, TX 77002



Lisa R. Hemphill

Exhibit A

GLASER, KENNETH

From: GLASER, KENNETH
Sent: Monday, January 29, 2007 12:55 PM
To: 'Jeremy Craft'
Subject: RE: TM Cancellation for "GAY YELLOW PAGES"

Thank you.

-----Original Message-----

From: Jeremy Craft [mailto:jcraft@egbertlawoffices.com]
Sent: Monday, January 29, 2007 12:22 PM Central Standard Time
To: GLASER, KENNETH
Subject: RE: TM Cancellation for "GAY YELLOW PAGES"

Ken,

I spoke with Mr. Egbert about this and we have no problem with the addition you suggested. Feel free to propose any language additions you would like, keeping in mind our preference to not over-lawyer the agreement.

Jeremy

"GLASER, KENNETH" <kglaser@gardere.com> wrote:

Jeremy - I need your position on the matter discussed below. That obviously is a deal breaker. Please let me know.

From: GLASER, KENNETH
Sent: Tuesday, January 23, 2007 2:47 PM
To: 'Jeremy Craft'
Subject: RE: TM Cancellation for "GAY YELLOW PAGES"

Mr. Craft - I have only taken a quick look at this, and will need to send it to my client for review. However, the one thing that jumps out at me is that if your client is reserving the right to object to Gay Pages in print form, which I have no problem with, my client also needs to reserve its right to defend against those claims, including the right to contest your client's trademarks, if she decides to sue them. I assume you have no problem with that, but I want to get confirmation before I send to my client.

Kenneth R. Glaser
Gardere Wynne Sewell LLP
Suite 3000, Thanksgiving Tower
1601 Elm Street

Dallas ,Texas 75201
(214) 999 - 4352
(214) 999 - 3352(fax)
kglaser@gardere.com

From: Jeremy Craft [mailto:jcraft@egbertlawoffices.com]
Sent: Wednesday, January 17, 2007 11:27 AM
To: GLASER, KENNETH
Subject: TM Cancellation for "GAY YELLOW PAGES"

Dear Mr. Glaser:

Attached hereto is a settlement agreement that we have prepared outlining what we feel is a proper set of agreements for the parties in this case. Importantly, our client has indicated that she will sign this agreement upon acceptance by your client. Hopefully, this agreement can put an end to the controversy between the parties.

If this agreement is acceptable to your client as written, please have them sign and date the document at the indicated locations and return this agreement to our offices.

If you have any comments or questions, please feel free to contact me at any time.

Sincerely,

L. Jeremy Craft ¹⁰³
Egbert Law Offices
State National Building
412 Main Street, 7th Floor
Houston, Texas 77002
Voice: 713-224-8080
Fax: 713-223-4873
EMAIL: jcraft@egbertlawoffices.com

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GLASER, KENNETH

From: GLASER, KENNETH
Sent: Tuesday, May 29, 2007 12:40 PM
To: 'Kevin Wilson'; 'Jeremy Craft'
Subject: RE: GAY YELLOW PAGES Cancellation

Okay - the only addition that we will have is to add language to the effect that in the (hopefully unlikely) event that an uncured breach by your client occurs, entitling Borschow to reinstitute the cancellation proceeding, the proceeding will pick up where we left off.

I will await your confirmation of the acceptability of the remainder of the agreement.

From: GLASER, KENNETH
Sent: Tuesday, May 29, 2007 10:57 AM
To: 'Kevin Wilson'; Jeremy Craft
Subject: FW: GAY YELLOW PAGES Cancellation

Kevin/Jeremy - attached is my revised version of the settlement agreement, in which the rights and obligations of the respective parties are the same. As you can see, this allows each of our clients to go their separate ways without interference by the other.

I look forward to receiving your comments. To save time, I am simultaneously sending this revised version to my client, so he may have additional questions or comments.

My secretary is at the doctor's this morning, and therefore I was not able to send you a redline.

Kenneth R. Glaser
Gardere Wynne Sewell LLP
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1601 Elm Street
Dallas, Texas 75201
(214) 999 - 4352
(214) 999 - 3352(fax)
kglaser@gardere.com

From: Kevin Wilson [mailto:kwilson@egbertlawoffices.com]
Sent: Friday, May 25, 2007 3:54 PM
To: GLASER, KENNETH
Subject: RE: GAY YELLOW PAGES Cancellation

I converted the document to WORD from Word Perfect. That is why there may be format errors.

5/29/2007

However, all the content is there.

Sincerely,
Kevin Wilson

"GLASER, KENNETH" <kglaser@gardere.com> wrote:

your close, but not completely. Resend the agreement to me electronically in Word, and I will make the changes that I can recommend to my client, and send them to you.

From: Kevin Wilson [mailto:kwilson@egbertlawoffices.com]
Sent: Friday, May 25, 2007 3:06 PM
To: GLASER, KENNETH
Cc: Jeremy Craft
Subject: GAY YELLOW PAGES Cancellation

Dear Mr. Glaser:

You mentioned that your client would be happy if we took out the offensive sentence in Paragraph 3 of our proposed Settlement Agreement. It is our opinion that Paragraph 3 can be taken out completely, and that the parties could then go ahead and sign the agreement. We would not change any other part of the Agreement. Please let me know if you think your client would have any objections to that, and if so, why your client objects.

Just looking at the Agreement, I think it is set up as fair as possible "as is." As you know, our client already has both print and online business, and she is not planning on getting out of the online business. If this fact is going to prevent your client from signing any Agreement, please let us know that at this time.

Sincerely,
Kevin Wilson

Egbert Law Offices
State National Building
412 Main St., 7th Floor
Houston, TX 77002
Tel: (713) 224-8080 Ext. 212
Fax: (713) 223-4873

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412 Main St., 7th Floor
Houston, TX 77002
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Fax: (713) 223-4873

5/29/2007

GLASER, KENNETH

From: Kevin Wilson [kwilson@egbertlawoffices.com]
Sent: Thursday, June 07, 2007 3:26 PM
To: GLASER, KENNETH
Cc: Jeremy Craft
Subject: Re: Metro Q v. GLYP

Dear Mr. Glaser:

I have discussed the settlement agreement with Mr. Egbert. It is apparent that we have come to an impasse with the settlement negotiations. We cannot agree with the additions to paragraph 3 that you have made. The addition of print media in that sentence goes toward use of the trademark, something above and beyond the scope of this cancellation proceeding.

If your client is willing to accept the settlement agreement that was attached to our email dated September 17, 2007, that would still be acceptable. As stated in our previous email, we would be open to complete removal of paragraph 3 and all references to that paragraph's exception found in paragraphs 4 and 8. We would also accept the paragraph 9 that you added in your version.

Please see the answers and responses to discovery served in December 2006. If there is any particular discovery that you feel is has not been responded to, please let us know and we will determine if supplementation is required.

Sincerely,
Kevin Wilson

"GLASER, KENNETH" <kglaser@gardere.com> wrote:

Gentlemen - I need to hear from you no later than close of business tomorrow regarding the settlement documents I sent you. Otherwise, we need to get on with getting your client's discovery responses we had put on hold.

Ken

Kenneth R. Glaser
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1601 Elm Street
Dallas ,Texas 75201
(214) 999 - 4352
(214) 999 - 3352(fax)
kglaser@gardere.com

6/9/2007

GLASER, KENNETH

From: GLASER, KENNETH
Sent: Saturday, June 09, 2007 1:36 PM
To: 'Kevin Wilson'; Jeremy Craft
Subject: RE: Metro Q v. GLYP

Gentlemen - I just want to make certain before we transition into a different phase for this matter that the parties have definitively reached impasse, in principle, and that we are not just talking about semantics of a document. Therefore, let me state the fundamental principles that my draft settlement document was intended to capture :

1. My client will never object to your client's use and registration of any phrase using "Gay Yellow Pages" for whatever business your client chooses to engage in.
2. Conversely, your client will never object to my client's use and registration of any phrase using "Gay Pages" for whatever business my client chooses to engage in.
3. My client will never use the phrase Gay Yellow Pages as the title of any business.
4. Conversely, your client will never use "Gay Pages" as the title of any business. (at least while one or the other is still around).

Now, my current understanding (or, misunderstanding if that is what it turns out to be) is that your client objects to paragraph 2. [As an aside, that is somewhat surprising in that there are a number of companies that use the "Gay Pages" phraseology, and your client has never objected - so why is it picking on our client?]

However, whatever it is, it is. I just need to make certain that we are indeed at impasse in principle. If so, we need to get on and finish discovery. We want to schedule your client's deposition sometime in June or July that accommodates everyone's schedule. Please give me alternate dates? We will obviously also need to extend the discovery deadline - what is your preference , 60 or 90 days? My paralegal will prepare a draft stipulated extension to send to you.

Looking forward to hearing from you.

Exhibit B

RICKETSON, INGRID

Subject: FW: Metro Q v. GLYP

From: Kevin Wilson [mailto:kwilson@egbertlawoffices.com]
Sent: Wednesday, June 13, 2007 10:48 AM
To: GLASER, KENNETH
Subject: RE: Metro Q v. GLYP

Dear Mr. Glaser:

I have contacted our client once more regarding your input, but at this time we believe the proceeding will continue. I will let you know if anything changes. We will oppose any motion for continuance in this case since discovery is complete. You have sent two sets of discovery, and we have sent the only set of discovery we will be serving. We will be happy to accomodate the deposition of Ms. Villagran at our offices. If you feel such a deposition is necessary, please send us dates the dates you are interested in coming down to Houston.

Sincerely,
Kevin Wilson

"GLASER, KENNETH" <kglaser@gardere.com> wrote:

Gentlemen - I just want to make certain before we transition into a different phase for this matter that the parties have definitively reached impasse, in principle, and that we are not just talking about semantics of a document. Therefore, let me state the fundamental principles that my draft settlement document was intended to capture :

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2. Conversely, your client will never object to my client's use and registration of any phrase using "Gay Pages" for whatever business my client chooses to engage in.
3. My client will never use the phrase Gay Yellow Pages as the title of any business.
4. Conversely, your client will never use "Gay Pages" as the title of any business. (at least while one or the other is still around).

Now, my current understanding (or, misunderstanding if that is what it turns out to be) is that your client objects to paragraph 2. [As an aside, that is somewhat surprising in that there are a number of companies that use the "Gay Pages" phraseology, and your client has never objected - so why is it picking on our client?]

However, whatever it is, it is. I just need to make certain that we are indeed at impasse in principle. If so, we need to get on and finssh discovery. We want to schedule your client's deposition sometime in June or July that accomodates everyone's schedule. Please give me alternate dates? We will obviously also need to extend the discovery deadline - what is your preference , 60 or 90 days? My paralegal will prepare a draft stipulated extension to send to you.

6/18/2007