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

Proceeding	92058950
Party	Plaintiff PDR Cigars USA Inc.
Correspondence Address	FRANK HERRERA H NEW MEDIA LAW 480 HIBISCUS STREET, SUITE 103 WEST PALM BEACH, FL 33401 UNITED STATES Email: fherrera@hnewmedia.com, a.hoffman@hnewmedia.com
Submission	Motion to Extend
Filer's Name	Gustavo Sardina
Filer's email	g.sardina@hnewmedia.com, fherrera@hnewmedia.com, k.noyes@hnewmedia.com
Signature	/Gustavo Sardina/
Date	06/13/2018
Attachments	Motion to Compel and for Extension of Time.pdf(584642 bytes)

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

Reg. No. 3,973,382

For the mark FLOR DE FLOREZ

Registered on the Official Registry June 07, 2011

PDR CIGARS USA, INC.,

Petitioner,

v.

CANCELLATION NO 92058950

VARIETY HOUSE DIST., LLC,

Registrant.

_____ /

MOTION TO COMPEL AND/OR TO EXTEND THE TRIAL DATES

Petitioner, PDR Cigars USA, Inc. (“PDR”), by and through undersigned counsel, and pursuant to TBMP §509 and §523, moves to compel the trial testimony depositions of Variety House Dist., LLC (D.E. 47) and Kim Ullrich Flores (D.E. 48) and to suspend this action pending resolution of this Motion, and/or in the alternative to otherwise to extend the Trial Dates as set in Docket Entry No. 46 by sixty (60) days to allow the parties an opportunity to re-schedule the previously noticed and agreed upon trial testimony depositions of Variety House Dist., LLC (D.E. 47) and Kim Ullrich Flores (D.E. 48) or otherwise for the Petitioner to seek relief from the United States District Court for the Southern District of Florida pursuant to TBMP §703.01(f)(2), and in support thereof states as follows:

On May 14, 2018, the Board reset the time for conducting trial, including by setting Plaintiff’s 30-day trial period to end on June 13, 2018. (D.E. 46). On May 18, 2018, PDR set the trial testimony of the Registrant (D.E. 47) and Kim Ullrich Flores (D.E. 48) to be taken on June 11, 2018 at 9:00am and 11:00am respectively. On June 7, 2018, counsel for PDR sent an email to

Mrs. Flores asking that she confirm her attendance for the two depositions.¹ On June 10, 2018, Mrs. Flores confirmed that she would be attending. However, on June 11, 2018, Mrs. Flores did not appear. On June 11, 2018 at approximately 9:48am, the court reporter in attendance entered a Certificate of Non-Appearance, and left counsel's office. See Exhibit A. Mrs. Flores later advised that she was planning to attend at 11:00am. Whether Mrs. Flores was confused about her time for attendance or not, PDR reasonably relied on Mrs. Flores's representation that she would attend the testimony depositions, and then acted reasonably when, after waiting for 48 minutes, determined that Mrs. Flores would not be appearing despite her previous assurances.

In light of the circumstances, the undersigned requests that the proceedings be stayed pending disposition of this Motion, that the Registrant and Mrs. Flores be compelled to attend the testimony deposition, or, that in the alternative, the trial dates be extended by sixty (60) days, or such other reasonable period of time, in order to allow the testimony depositions to be rescheduled and/or to allow PDR to avail itself of the jurisdiction of the United States District Court for the Southern District of Florida.²

MEMORANDUM OF LAW

“When an act may or must be done within a specified time, the court may, for good cause, extend the time: (A) with or without motion or notice if the court acts, or if a request is made, before the original time or its extension expires.” See Fed.R.Civ.P. 6(b)(1). PDR's trial testimony period has not yet expired. PDR acted diligently in setting the Registrant and Mrs. Flores for testimony depositions. PDR acted reasonably in relying on Mrs. Flores's representations that she would attend the noticed trial depositions. PDR acted reasonably when it concluded, after waiting

¹ Mrs. Flores would be sitting for deposition in her personal capacity as well as the corporate representative designated to testify for the Registrant.

² Both the Registrant and Mrs. Flores reside within the Southern District of Florida.

48 minutes, that Mrs. Flores would not be attending the testimony depositions. PDR will be prejudiced if the relief requested herein is not granted since the primary issue in the case is abandonment/non-use by the Registrant, and the Registrant and its principal (i.e., Mrs. Flores) are critical trial witnesses on these issues. PDR does not request the instant relief merely for delay or for improper purpose. Given the above, PDR has shown good cause for the Board to grant the relief sought herein.

WHEREFORE, Petitioner, PDR Cigars USA, Inc., respectfully requests that the Board: 1) stay the proceedings pending disposition of this motion, 2) that the Registrant and Mrs. Flores be compelled to attend the testimony deposition, or, that in the alternative, 3) the trial dates be extended by sixty (60) days, or such other reasonable period of time, in order to allow the testimony depositions to be rescheduled and/or to allow PDR to avail itself of the jurisdiction of the United States District Court for the Southern District of Florida, and 4) such other reasonable relief as the Board deems just and proper.

June 13, 2018

Respectfully submitted,

By: s/Gustavo Sardiña

Frank Herrera

Florida Bar No. 484801

fherrera@hnewmedia.com

Gustavo Sardiña

Florida Bar No. 31162

g.sardina@hnewmedia.com

H New Media Law

809 North Dixie Highway,

Suite 202

West Palm Beach, Florida 33401

Tel.: (561) 841-6380

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that on this 13th day of June, 2018 a true and correct copy of the foregoing was served via email and US Mail on Registrant to:

VARIETY HOUSE DIST., LLC
3450 S OCEAN BLVD
PALM BEACH, FL 33480
Kimmarielflores@outlook.com,
kmullrichflores@gmail.com

By: s/Gustavo Sardiña
Gustavo Sardiña
Florida Bar No. 31162
g.sardina@hnewmedia.com

EXHIBIT A

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

PDR Cigars USA, Inc.)
)
v.)
)
)
Variety House Dist, LLC.)
)
)
_____)

Cancellation No:
92058950

CERTIFICATE OF NON-APPEARANCE

I, Maria C. Powers, Florida Professional Reporter and Notary Public in and for the State of Florida at Large, was duly designated to take the recorded statement of the witness(es):

KIM ULLRICH FLORES

I hereby certify that aforesaid witness(es) did not appear before me on 11th day of June, 2018 from 9:00 a.m. to 9:48 a.m. Present was Frank Herrera, Esquire.

Dated this 11th day of June, 2018.

Maria C. Powers, Court Reporter
Notary Public, State of Florida At Large
Signature Court Reporting, Inc.

