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

Proceeding	92070792
Party	Plaintiff GaryChristopher
Correspondence Address	BRIAN P KINDER THE KINDER LAW GROUP APC 19200 VON KARMAN AVENUE, FOURTH FLOOR IRVINE, CA 92612 UNITED STATES bkinder@tklglaw.com 949-216-3070
Submission	Other Motions/Papers
Filer's Name	Brian P. Kinder
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Signature	/BPK/
Date	05/28/2020
Attachments	2020.05.28 - Motion to Suspend.pdf(500236 bytes)

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

In the Matters of:

Trademark Registration No. 4875276
For the Mark: COOLEST (STANDARD CHARACTER)
Date Registered: December 22, 2015
Trademark Registration No. 4924199
For the Mark: COOLEST (STYLIZED)
Date Registered: March 22, 2016
Trademark Registration No. 4956541
For the Mark: COOLEST (STYLIZED)
Date Registered: May 10, 2016

GARY CHRISTOPHER,

Petitioner,

v.

RYAN GREPPER,

Respondent.

Cancellation No. 92070792

PETITIONER’S MOTION TO SUSPEND

Gary Christopher (“Petitioner”) hereby moves the Board for an Order suspending the proceedings for ninety (90) days.

MEMORANDUM OF POINTS AND AUTHORITIES

I. BACKGROUND

Respondent has publicly announced abandonment of the trademark at issue in these proceedings and is under a June 6, 2020 order from the Department of Justice to return money to persons who paid for, but never received, a product from Respondent. On May 12, 2020, Petitioner filed a motion seeking leave to amend to include a claim of abandonment as well as to extend dates by 180 days (hereinafter “the Earlier Motion”). With the Earlier Motion pending, Petitioner noted that the operative scheduling order (Dkt. 18) sets the conclusion of discovery at

June 4, 2020. In view of the above, and because Petitioner needs to take the deposition of Respondent, Petitioner's counsel reached out to Respondent's counsel on May 14, 2020 with a proposal to either (1) enter a stipulated suspension of the proceedings while the Board decides the Earlier Motion, or (2) make arrangements for the deposition of Respondent to take place prior to the June 4, 2020 discovery cutoff. *See* Kinder Decl., Ex. A.

Petitioner's May 14, 2020 email requested dates of availability for Respondent as well as coordination regarding a location for a video deposition given the current COVID-19 climate in which we are operating. The May 14, 2020 email requested a response by May 19, 2020. Respondent's counsel immediately acknowledged receipt of the May 14, 2020 email and committed to "get back to" Petitioner's counsel. *Id.* Following that communication, however, Respondent's counsel has fallen completely silent and is no longer communicating with Petitioner's counsel. Specifically, Respondent's counsel has not provided dates of availability, has not coordinated on location, and has not responded to any communications from Petitioner's counsel.

After receiving no reply from Respondent's counsel, Petitioner's counsel followed up with Respondent's counsel after the Memorial Day weekend holiday on May 26, 2020. *Id.* Petitioner proposed a thirty day suspension while the Board decides the Earlier Motion and inquired whether Respondent's counsel would stipulate to the suspension or require Petitioner to explain to the Board that Respondent's counsel has fallen completely silent and is no longer communicating with Petitioner's counsel. Petitioner asked for a response by close of business the following day (i.e., May 27, 2020). Petitioner's counsel thought the email would prompt a response, however, Respondent's counsel is still refusing to communicate with Petitioner's counsel. Accordingly, Petitioner has no choice but to file this motion to suspend.

II. LEGAL ARGUMENT

Petitioner is hopeful that the Board will grant the Earlier Motion to allow leave to amend to include a claim for abandonment as well as extend dates for 180 days. However, Petitioner needs to take the deposition of Respondent and given the current June 4, 2020 discovery cutoff, Petitioner does not want to be prejudiced in the event the Board were to deny the requested extension in the Earlier Motion. Pursuant to 37 C.F.R. § 2.117(c), proceedings may be

suspended for good cause upon motion or a stipulation of the parties approved by the Board. Here, Petitioner has timely sought to either suspend or take the deposition, but Respondent's counsel is refusing to communicate with Petitioner's counsel. Accordingly, Petitioner submits that good cause exists for suspension under the circumstances.

III. CONCLUSION

In view of the foregoing, Petitioner hereby moves to suspend the proceedings while the Board consider the Earlier Motion and the request to extend dates for a period of 180 days.

Respectfully submitted,

Dated: May 28, 2020

THE KINDER LAW GROUP, APC



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Attorneys for Petitioner

**DECLARATION OF BRIAN P. KINDER IN SUPPORT OF REQUEST
FOR RECONSIDERATION OF BOARD ORDERS GRANTING I.M.
WILSON, INC.'S REQUESTS FOR EXTENSION OF TIME**

I, Brian P. Kinder, declare and state that:

1. I am legal counsel to Petitioner Gary Christopher (“Petitioner”). I have personal knowledge of the facts stated in this declaration and the documents attached hereto are true and accurate copies.

2. Attached hereto as **Exhibit A** is a true and accurate copy of an email chain between myself and counsel for Respondent.

On this May 28, 2020, and pursuant to 28 U.S.C. § 1746, I declare, under penalty of perjury, that the foregoing is true and correct to the best of my knowledge.



Brian P. Kinder

EXHIBIT A

Brian Kinder

From: Brian Kinder
Sent: Tuesday, May 26, 2020 2:34 PM
To: 'O'Brien, Sean'
Subject: RE: Deposition of Ryan Grepper

Sean:

I am following up on my email from two weeks ago concerning dates of availability. I completely appreciate that things are a bit crazy for everyone right now, but as you know there are deadlines looming. So, given the silence, I feel it is necessary to file a motion to suspend for 30 days while we continue to work things out.

Will you stipulate to such a motion, or will I need to file a formal motion with the Board explaining the situation?

Please let me know by the close of business tomorrow.

Thank you.


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From: Brian Kinder
Sent: Friday, May 15, 2020 2:14 PM
To: 'O'Brien, Sean' <sean.obrien@millernash.com>
Subject: RE: Deposition of Ryan Grepper

Okay, sounds good.

Thanks Sean.....have a great weekend.


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From: O'Brien, Sean <sean.obrien@millernash.com>

Sent: Friday, May 15, 2020 2:03 PM

To: Brian Kinder <bkinder@tklglaw.com>

Subject: RE: Deposition of Ryan Grepper

Brian:

I will reach out to my client about your email and get back to you.

With regards,
Sean

Sean D. O'Brien

Partner

Miller Nash Graham & Dunn LLP

3400 U.S. Bancorp Tower | 111 S.W. Fifth Avenue | Portland, Oregon 97204

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*We are monitoring the legal and regulatory landscape in response to the **COVID-19** crisis. To visit our resource page, [please click this link](#).*

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From: Brian Kinder <bkinder@tklglaw.com>

Sent: Thursday, May 14, 2020 3:40 PM

To: O'Brien, Sean <sean.obrien@millernash.com>

Subject: Deposition of Ryan Grepper

Sean:

As you know, we filed a motion with the Board requesting leave to amend the pleadings to include the claim for abandonment as well as to extend dates by 180 days. Under the circumstances, I do not anticipate the Board denying the motion (leave to amend is freely granted and the extension is appropriate given, among others, the DOJ deadline). That being said, the discovery period is presently set to end on June 4, 2020.

In light of the above, I would like to propose one of two things. We can either proceed with Mr. Grepper's deposition before June 4, 2020, or, alternatively, we can stipulate to a suspension while the Board rules on the motion. If you wish to proceed with the deposition, I will simply need you to provide me with dates of availability for you and Mr. Grepper. In terms of location, I would be happy to arrange for a video deposition at a court reporting service (I presume you and Mr. Grepper will prefer something nearby your firm?). Also, I would take the deposition under a reservation of rights to recall Mr. Grepper on topics relating to abandonment in the event the Board grants the motion for leave and extension of time.

Please let me have your response by no later than May 19, 2020 so that I will have time to make arrangements.

TKLG
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CERTIFICATE OF TRANSMISSION AND SERVICE

I certify that on May 28, 2020, the foregoing PETITIONER’S MOTION TO SUSPEND is being electronically filed via the Trademark Trial and Appeal Board’s Electronic System for Trademark Trials and Appeals (“ESTTA”).

It is further certified that on May 28, 2020, the foregoing PETITIONER’S MOTION TO SUSPEND is being served by emailing a copy thereof to:

Sean D. O’Brien
Miller Nash Graham & Dunn LLP
3400 U.S. Bancorp Tower
111 S.W. Fifth Ave.
Portland, Oregon 97204

sean.obrien@millernash.com

Executed this 28th day of May, 2020, in Irvine, California.



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