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Filing date: **03/23/2022**

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

Proceeding no.	92075486
Party	Defendant Hsp Epi Acquisition, LLC dba Entertainment
Correspondence address	ANDREW J GOLDBERG HSP EPI ACQUISITION LLC DBA ENTERTAINMENT 1401 CROOKS ROAD, SUITE 150 TROY, MI 48084 UNITED STATES Primary email: andrew.goldberg@afintechnologies.com 248-455-6555
Submission	Reply in Support of Motion
Filer's name	Gail M. O'Brien
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Signature	/s/ Gail M. O'Brien
Date	03/23/2022
Attachments	HSP Mot excus Neg 3232022.pdf(664795 bytes)

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

AMERICAN AIRLINES, INC.,
Petitioner,

v.

CANCELLATION NO. 92075486

Registration No. 4286631

HSP EPI ACQUISITION, LLC,
Registrant.

GMO, INC.
BY: GAIL M. O'BRIEN
Attorney for Registrant
30512 Jefferson Avenue
St. Clair Shores, MI
(313) 912-6360

**MOTION AND BRIEF IN SUPPORT OF CONSENT TO FILE UNTIMELY
CERTIFICATE OF SERVICE FOR HSP EPI ACQUISITIONS REPLY TO
PETITIONER'S OPPOSITION TO HSP'S MOTION FOR SUMMARY JUDGMENT**

HSP EPI Acquisition, LLC (hereinafter "HSP"), Registrant, brings this motion pursuant to TTMB 502.02(b) which provides:

"These time periods for responding to motions shall apply unless another time is specified by the Board; or the time is extended by stipulation of the parties approved by the Board or by order of the Board on motion for good cause; or the time is reopened by stipulation of the parties approved by the Board **or by order of the Board on motion showing excusable neglect.**"(emphasis added)

HSP EPI ACQUISITIONS REPLY TO PETITIONER'S OPPOSITION TO HSP'S MOTION FOR SUMMARY JUDGMENT was due on March 21, 2022, and was timely filed with the Board on March 18, 2022. The documents were filed early because the undersigned was leaving for vacation on the 20th. However, the undersigned was also traveling at the time of filing the

documents from the Boston airport and inadvertently forgot to serve the documents on Petitioner at that time. HSP received an ESTTA email filing receipt shortly after filing the document on March 18. Opposing counsel was also notified in that manner, which led to the email opposing counsel sent to HSP at 7:00 pm on the 21st requesting a copy of the documents. This email was forwarded to undersigned at or around 8:45 am PST on the 22nd. Subsequently, the undersigned opened an email regarding the lack of service at 9:45 am PST on March 22, 2022. Copies of the documents were sent to opposing counsel 10 minutes later. See attached CERTIFICATE OF SERVICE FOR HSP EPI ACQUISITIONS REPLY TO PETITIONER'S OPPOSITION TO HSP'S MOTION FOR SUMMARY JUDGMENT (Exhibit 1).

Excusable neglect is an equitable doctrine without a precise definition in the Federal Rules. *Pioneer Investment Services Co. v. Brunswick Associates, Ltd. Partnership*, 507 U.S. 380, 395 (1992). In the *Pioneer* case, the U.S. Supreme Court provides guidance on excusable neglect. The Court laid out a four-factor balancing test for what constitutes excusable neglect under either Federal Rule of Civil Procedure Rule 6 or Rule 60. The factors to be considered in excusable neglect are (in no particular order):

1. Whether the delay in filing was within the reasonable control of the movant;
2. The length of the delay and the delay's potential impact on judicial proceedings;
3. The danger of prejudice to the non-moving party; and
4. Whether the movant acted in good faith.

There is no question the delay was within the reasonable control of the undersigned. However, the length of the delay is short – mere hours after the deadline, and the potential impact on the proceedings or danger of prejudice to opposing counsel are negligible. There was also no bad faith on the part of the undersigned to delay receipt to opposing counsel.

More importantly, while reply briefs are generally discouraged if they are merely a re-argument of the points made in the main brief, HSP's reply brief responds to new arguments brought up by Petitioner which were not addressed in HSP's initial brief. As soon as the undersigned was made aware of the error, the documents were expeditiously and in good faith provided to opposing counsel. Although opposing counsel has been contacted to consent to this motion, HSP has not received a response to this request.

HSP respectfully requests that the Board allow the filing of the attached Certificate of Service FOR HSP EPI ACQUISITIONS REPLY TO PETITIONER'S OPPOSITION TO HSP'S MOTION FOR SUMMARY JUDGMENT and consider HSP's reply brief Filed on March 18, 2020.

Respectfully submitted,

/s/ Gail M. O'Brien

Gail M. O'Brien
GMO, Inc
Attorney for HSP EPI Acquisition, LLC.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of MOTION AND BRIEF IN SUPPORT OF CONSENT TO FILE UNTIMELY CERTIFICATE OF SERVICE FOR HSP EPI ACQUISITIONS REPLY TO PETITIONER’S OPPOSITION TO HSP’S MOTION FOR SUMMARY JUDGMENT was served via electronic mail on Petitioner as set forth below:

Eric J. Maiers
GREENBERG TRAURIG LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
maierse@gtlaw.com

Dated: March 23, 2021

/s/ Gail M. O'Brien

Gail M. O'Brien
GMO, Inc
Attorney for HSP EPI Acquisition, LLC.

Exhibit 1

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

AMERICAN AIRLINES, INC.,
Petitioner,

v.

CANCELLATION NO. 92075486

Registration No. 4286631

HSP EPI ACQUISITION, LLC,
Registrant.

CERTIFICATE OF SERVICE

I hereby certify that a true copy of HSP EPI ACQUISITIONS REPLY TO PETITIONER'S OPPOSITION TO HSP'S MOTION FOR SUMMARY JUDGMENT was timely filed with the Board on March 18, 2022, but was inadvertently not served via electronic mail on Petitioner until today March 22, after I received an email notifying me of the lack of service. The time for filing and serving a reply brief ended on March 21, 2022. The aforementioned Reply Brief and this Certificate of Service has been served as set forth below to Petitioner as follows:

Eric J. Maiers
GREENBERG TRAUIG LLP
77 West Wacker Drive, Suite 3100
Chicago, Illinois 60601
maierse@gtlaw.com

Dated: March 22, 2021

/s/ Gail M. O'Brien
Gail M. O'Brien
GMO, Inc
Attorney for HSP EPI Acquisition, LLC.