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

Proceeding no.	92079337
Party	Defendant Mija, LLC and Mija LLC
Correspondence address	JAMIE R SHELDEN LAW OFFICE OF JAMIE SHELDEN 1760 -F AIRLINE HIGHWAY PMB 220 HOLLISTER, CA 95023 UNITED STATES Primary email: jamie@justtrademarks.com Secondary email(s): sarah@skoszyk.com 831-261-5444
Submission	Opposition/Response to Motion
Filer's name	Jamie Shelden
Filer's email	jamie@justtrademarks.com
Signature	/Jamie Shelden/
Date	02/09/2024
Attachments	240209 Opposition to Motion to Extend MIJA.pdf(129330 bytes) 240209 Exhibits to Opposition to Motion to Extend MIJA.pdf(2245630 bytes)

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

In the Matter of
Trademark Registration No. 6532271
Mark: MIJA

Mija Clean, LLC, <p style="text-align:right">Petitioner,</p> <p style="text-align:center">v.</p> Mija, LLC	Registrant.
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Cancellation No.: 92079337

**OPPOSITION TO PETITIONER’S MOTION TO EXTEND PROCEEDING
DEADLINES**

Petitioner, Mija Clean, LLC (“Petitioner”), has filed a Motion to Extend Proceeding Deadlines for Consideration of Potential Settlement (“Motion to Extend”). Petitioner’s Motion to Extend should be denied because Petitioner failed to provide information sufficient to show good cause to grant its motion. No further extensions are necessary or warranted because Petitioner’s counsel has had ample time to consider Registrant’s settlement proposal and to take testimony during its trial period.

Statement of Facts

Petitioner amended its Petition for Cancellation on April 7, 2023. 12 TTABVUE. This Board set a deadline of November 15, 2023 for the end of Petitioner’s Trial Period. 16 TTABVUE 7. Petitioner then filed a Motion to Compel discovery on September 29, 2023 after having served its discovery on Registrant on the very day discovery closed and in order to order to trigger a suspension of Petitioner’s trial deadlines. 17 TTABVUE. On November 30, 2023, the Board denied Petitioner’s Motion to Compel and again reset deadlines, including Petitioner’s Trial Period. 19 TTABVUE. Petitioner’s Trial Period was set to end on January 22, 2023. 19 TTABVUE 2.

On Sunday, January 21, 2024, the day before Petitioner’s trial period was set to close, Petitioner filed its motion to extend. 20 TTABVUE.

For ease of reference, Registrant notes the following timeline:

Amended Petition for Cancellation filed:	April 7, 2023
Petitioner’s Motion to Compel Discovery:	September 29, 2023
Close of Petitioner’s Trial Period:	November 15, 2023
Board denied Petitioner’s Motion and reset deadlines	November 30, 2023
(Extended) Close of Petitioner’s Trial Period	January 22, 2023
Petitioner filed this Motion to Extend	January 21, 2023

**Petitioner Has not Alleged, Articulated or Substantiated Good Cause
for its Motion to Extend**

Petitioner’s counsel has presented another motion lacking any valid basis seemingly designed to extend deadlines and further delay these proceedings. Petitioner states in its Motion to Extend that the request is to “extend proceeding deadlines...to afford Petitioner the opportunity to consider potential settlement terms proposed by Registrant.” 20 TTABVUE 1. However, Petitioner’s motion is, in fact, a motion to extend Petitioner’s trial period, effectively reopening the party’s time to take testimony, testimony that Petitioner failed to take during its trial period.

A motion to extend must set forth with particularity the facts that allegedly constitute good cause for the requested extension. Mere conclusory statements lacking factual detail are not sufficient. The Board requires that a motion “state with particularity the grounds therefore, including detailed facts constituting good cause.” *Leumme Inc. v. D.B. Plus Inc.*, 53 U.S.P.Q2d 1313, 1314 (T.T.A.B. 1992). The Board will “scrutinize carefully” any motion to extend time for showing of good cause. *Id* at 1760.

Petitioner submits the sparse facts set forth in its motion to extend, that Petitioner “desires the opportunity to evaluate and consider Respondents’ proposed settlement terms in an effort to resolve this matter.” 20 TTABVUE 1. Petitioner’s desire to evaluate a settlement proposal does not constitute good cause for an extension of its trial period, particularly when Petitioner initiated these settlement discussions well into its trial

period, in an apparent attempt to delay the proceedings. Petitioner's sudden interest in settling this matter came only as a result of Petitioner's trial period nearing a close after Petitioner had failed to take any testimony. Registrant's settlement proposal was provided to Petitioner on January 11, 2024, eleven days before the close of Petitioner's trial period. Registrant has still not received a substantive response to its settlement proposal and, especially given the approaching end of the trial period, Petitioner provides no reason it could not have evaluated the proposal immediately, or certainly within a reasonable period of time under the circumstances. Petitioner's claim that it requires additional time to evaluate Registrant's settlement proposal is not supported by any factual detail and there are no facts to explain why Petitioner was not able to evaluate the settlement proposal in the days before the close of Petitioner's trial period.

Petitioner has simply sat on the settlement proposal and now requests that this Board extend Petitioner's trial period, not for time to evaluate the settlement proposal, but to turn back the clock and take testimony that it simply failed to take during Petitioner's trial period.

Petitioner Has Not Acted in Good Faith and Has not Diligently Attempted to Schedule and Take Testimony

TBMP 509.01(a) requires a party seeking an extension of deadlines to demonstrate that the extension of time is not necessitated by the party's own lack of diligence or unreasonable delay. Petitioner has failed to do so.

Petitioner's Trial Period was reset by this Board on November 30, 2023 with a deadline of January 22, 2024. 19 TTABVUE 2. This gave Petitioner a period of up to fifty-three days to schedule and take testimony of witnesses. On December 15, 2023 Petitioner's counsel contacted Registrant's counsel indicating that they would like to schedule a time to take testimony during the first two weeks of January. Attached as Exhibit 1 is a copy of Petitioner's counsel's email. This communication did not notice any depositions, nor did it specify which individuals Petitioner wished to take testimony from, but only served as an informal notification that Petitioner "would like" to take testimony during the first two weeks of January. Registrant's counsel replied to that email the same day, asking for clarification of which parties Petitioner wished to depose.

Attached as Exhibit 2 is a copy of Registrant's counsel's reply email. Registrant's counsel received no response.

Registrant's counsel, *not* Petitioner's counsel, was proactive in attempting to schedule depositions. On January 2, 2024, after receiving no further communication regarding scheduling depositions, Registrant's counsel sent a follow up email indicating that they had a vacation booked for the week of January 13-22, 2024 and would not be available that week. In response, apparently only then recognizing that any deposition should have been noticed much earlier, Petitioner's counsel requested a call for the claimed purpose of discussing the possibility of settlement. Attached as Exhibit 3 is a copy of Petitioner's counsel's email of January 3, 2024. A phone conference was held on January 8, 2024. Registrant's counsel followed up that call with an email on January 11, 2024 proposing settlement terms. Petitioner's counsel responded to that email on January 15, 2024 requesting Registrant's consent to a 60-day extension of deadlines, but with no substantive reply to Registrant's settlement proposal. Attached as Exhibit 4 is a copy of Petitioner's counsel's email of January 15, 2024.

As for Petitioner's claim that a "key witness" disclosed his limited availability due to international travels in January, at no time did Petitioner attempt to notice the deposition of this non-party or seek a subpoena of this non-party. Moreover, this non-party's disclosure of his limited availability in January was made to Petitioner in December, well before the close of Petitioner's trial period. Petitioner could have requested an extension of its trial period as soon as it became known that this witness would be unavailable for a portion of Petitioner's trial period.

Petitioner claims that it has "acted in good faith in attempting to schedule and take testimonies from key witnesses in this proceeding". 20 TTABVUE 1. But Petitioner's attempt to characterize a single email message to Registrant's counsel as a good faith attempt to schedule and take depositions is disingenuous at best. No such good faith exists where Petitioner simply "dropped the ball" in scheduling depositions.

Ultimately, at no time during Petitioner's trial period did Petitioner's counsel notice any depositions. Petitioner had more than ample time to take testimony, but failed

to do so and now requests an extension of their trial period. Testimony could have been scheduled any time around Registrant's counsel's vacation week. Petitioner's request for a phone conference to discuss settlement options was made well into Petitioner's trial period and after any reasonable time to notice and take depositions prior to the end of Petitioner's trial period. Registrant's counsel has been the sole party actively pushing for progress in this matter and attempting to coordinate the scheduling of depositions. Petitioner's counsel now presents another groundless motion at the eleventh hour to postpone Petitioner's Trial Period and delay the trial generally. This is the second such motion filed by Petitioner's counsel to stall these proceedings. The lack of communication and initiative on the part of the Petitioner in scheduling and taking testimony during the allocated testimony period should not be a basis for disrupting the established timeline. Furthermore, an extension would prejudice Registrant who has been diligently cooperating and seeking resolution. Granting an extension under these circumstances would reward the Petitioner for their inaction and compromise the efficiency and fairness of these proceedings.

For these reasons, Registrant respectfully requests that the Board deny Petitioner's Motion to Extend and resume the present proceedings.

Signed,

Date: February 9, 2024

By: /Jamie Shelden/

Jamie Shelden
Law Office of Jamie Shelden
1760-F Airline Highway, PMB 220
Hollister, CA 95023
Telephone: 858-777-5545


Attorney for Registrant, Mija, LLC

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the **OPPOSITION TO PETITIONER'S MOTION TO EXTEND PROCEEDING DEADLINES** is being served upon Petitioner by email to Kerianne Strachan at KStrachan@fitcheven.com this 9th day of February 2024.

Jamie Sheldon
Jamie R. Sheldon

Exhibit 1

From: Kerianne A. Strachan KStrachan@fitcheven.com 
Subject: RE: Petitioner's Pretrial Disclosures
Date: December 15, 2023 at 10:13 AM
To: JAMIE SHELDEN jamie@justtrademarks.com
Cc: Alexander Thimons AThimons@fitcheven.com

KS

Hello Jamie,

We would like to schedule time to take testimony during the 1st or 2nd week of January. Please provide your availability at your earliest convenience.

Thank You,
Kerianne

Kerianne Strachan | Associate



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From: Kerianne A. Strachan
Sent: Friday, December 8, 2023 12:12 PM
To: JAMIE SHELDEN <jamie@justtrademarks.com>
Cc: Joseph Nabor <Jtnabo@fitcheven.com>
Subject: Petitioner's Pretrial Disclosures


Hi Jamie,

Please see the attached Pretrial Disclosures.

Thank You,
Kerianne

Kerianne Strachan | Associate

Exhibit 2

From: Jamie Shelden jamie@justtrademarks.com 
Subject: Re: Petitioner's Pretrial Disclosures
Date: December 15, 2023 at 10:42 AM
To: Kerianne A. Strachan KStrachan@fitcheven.com
Cc: Alexander Thimons AThimons@fitcheven.com



Hi Kerianne,

Which individuals were you wanting to schedule for testimony and how were you planning on taking the testimony...in person or via Zoom? Let me know and I will check with my client regarding her schedule.

Best,
Jamie



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On Dec 15, 2023, at 10:12 AM, Kerianne A. Strachan <KStrachan@fitcheven.com> wrote:

Hello Jamie,

We would like to schedule time to take testimony during the 1st or 2nd week of January. Please provide your availability at your earliest convenience.

Thank You,
Kerianne

Kerianne Strachan | Associate


<image001.png>

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From: Kerianne A. Strachan
Sent: Friday, December 8, 2023 12:12 PM

Exhibit 3

From: Kerianne A. Strachan KStrachan@fitcheven.com 
Subject: RE: Petitioner's Pretrial Disclosures
Date: January 3, 2024 at 10:40 AM
To: Jamie Shelden jamie@justtrademarks.com
Cc: Alexander Thimons AThimons@fitcheven.com



Hi Jamie,

Apologies for the delay. In response to your question, we intend to take testimony from Ms. Sara Koszyk.

Prior to proceeding with any testimony, please advise whether you are available for another call to discuss the possibility of settlement at this point of the proceedings. We are available any time early next week.

Thank You,
Kerianne

Kerianne Strachan | Associate

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From: Jamie Shelden <jamie@justtrademarks.com>
Sent: Tuesday, January 2, 2024 11:18 AM
To: Kerianne A. Strachan <KStrachan@fitcheven.com>
Cc: Alexander Thimons <AThimons@fitcheven.com>
Subject: Re: Petitioner's Pretrial Disclosures

Hi Kerianne,

I haven't had a reply to my message below. If you intend to take testimony from my client, please note that I will out of the country on vacation and unavailable from January 13 - 22.

Best,
Jamie



1760-F Airline Highway, PMB 220

Exhibit 4

From: Kerianne A. Strachan KStrachan@fitcheven.com 
Subject: RE: MIJA Trademark- Protected Communication Under Rule 408 of the Federal Rules of Evidence
Date: January 15, 2024 at 5:25 PM
To: JAMIE SHELDEN jamie@justtrademarks.com

KS

Hi Jamie,

We are currently in the process of discussing the settlement terms proposed below with our client. Since Plaintiff's 30-day trial period ends on January 22, 2024, please confirm whether you consent to a 60-day extension while we complete discussions with our client.

Thank You,
Kerianne

Kerianne Strachan | Associate

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From: JAMIE SHELDEN <jamie@justtrademarks.com>
Sent: Thursday, January 11, 2024 6:23 PM
To: Joseph Nabor <Jtnabo@fitcheven.com>; Kerianne A. Strachan <KStrachan@fitcheven.com>
Subject: MIJA Trademark- Protected Communication Under Rule 408 of the Federal Rules of Evidence

Protected Communication Under Rule 408 of the Federal Rules of Evidence

Hi Joseph and Kerianne,

Following up on our phone call last week, I have now had a chance to discuss settlement possibilities with my client. It is Mija, LLC's preference to settle this matter and reach an agreement that allows both parties to move forward without further legal action. However, I need to emphasize that my client is fully prepared to continue defending its position should settlement not be reached. Your client's allegation of fraud lacks *any* evidence of intent by Mija, LLC to deceive the USPTO. As you are no doubt aware, without evidence of intent, Mija Clean's fraud claim will fail.

My client is committed to protecting their rights in the MIJA trademark and avoiding any additional confusion in the marketplace and will take all necessary steps to prevent the weakening of their rights by other parties using the same or similar mark, *especially* in connection with overlapping goods. Mija, LLC has been briefed on the costs associated