

ESTTA Tracking number: **ESTTA96936**

Filing date: **08/30/2006**

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

Proceeding	91168434
Party	Plaintiff HI Limited Partnership HI Limited Partnership 1815 The Exchange Atlanta, GA 30339 UNITED STATES
Correspondence Address	Eric G. Maurer Hill, Kertscher & Wharton, LLP 3350 Riverwood Parkway Suite 800 Atlanta, GA 30339 UNITED STATES egm@hkw-law.com
Submission	Motion to Extend
Filer's Name	Eric G. Maurer
Filer's e-mail	egm@hkw-law.com
Signature	/s/ Eric G. Maurer
Date	08/30/2006
Attachments	Motion #2 for Extension of Discovery.pdf (5 pages)(33916 bytes) 07.21.06 Hooters Ex A.pdf (2 pages)(1343505 bytes) 07.21 Hooters ExB.pdf (1 page)(764791 bytes) 07.21 Hooters Ex C.pdf (1 page)(934367 bytes) 07.21 Hooters Ex D.pdf (2 pages)(2431812 bytes) 07.26.06 from Moore.pdf (1 page)(3969246 bytes)

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

In the Matter of Application Serial No.: 78576472
Mark: SHOOTERS WITH HOOTERS GUN & GOSSIP CLUB
Filed: February 28, 2005
Published: December 6, 2005

HI LIMITED PARTNERSHIP,

Opposer,

vs.

SHOOTERS WITH HOOTERS,

Applicant.

Opposition No. 91168434

OPPOSER'S MOTION TO EXTEND TIME FOR TAKING DISCOVERY

COMES NOW, HI Limited Partnership ("HILP"), Opposer in the above-captioned actions, and pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and 37 C.F.R. § 2.116(a), hereby moves the Board for an additional short extension of time in which to complete the taking of discovery in this matter, respectfully showing the Board that:

1. HILP filed its Opposition in the above-captioned matter on January 5, 2006,
2. Also on January 5, 2006, the Board issued a notice of the filing of the opposition and set the date for the discovery period to close as July 24, 2006.
3. On April 20, 2006, HILP diligently began the process of taking discovery of by serving its First Interrogatories and First Requests for Production of Documents upon Applicant Shooters With Hooters. *See* Certificates of Service, attached hereto as Exhibit A. Likewise, on April 24, 2006, HILP issued to Applicant a Notice of Taking of Deposition of Applicant and setting the date for deposition as June 8, 2006. *See* Certificate of Service, attached hereto as Exhibit B.

4. On May 22, 2006, Applicant, by letter to the Board (received on May 24, 2006), requested an extension of time in which to respond to HILP's first discovery requests. HILP did not oppose Applicant's request for an extension. *See* May 25, 2006, Letter from E. Maurer to D. Moore, attached hereto as Exhibit C. Accordingly, Applicant's request for extension was granted by the Board on July 14, 2006.

5. After receiving and reviewing Applicant's responses to HILP's first requests for written discovery, HILP sent to Applicant on June 6, 2006, correspondence containing (1) an offer of settlement of the opposition proceeding in lieu of further litigation of the opposition, (2) notice that the deposition would be rescheduled pending Applicant's response to the offer, and (3) a request that, in the event Applicant did not accept the offer, Applicant provide available dates for its deposition pursuant to the April 24, 2006, notice. *See* June 6, 2006, Letter from E. Maurer to D. Moore, attached hereto as Exhibit D.

6. On July 21, 2006, having received from Applicant has no response, whatsoever, to HILP's offer or HILP's request for dates available to Applicant for its deposition, HILP moved the Board for an extension of discovery in order to take the duly-noticed deposition of Applicant pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure and complete discovery in this matter.

7. Five days after the filing of HILP's motion, Applicant finally responded to HILP with purported conditions on the manner and available dates for the taking of Applicant's deposition. *See* July 26, 2006, Letter from D. Moore to E. Maurer, attached hereto as Exhibit E. Applicant's response provided that one representative of Applicant would be available for deposition only on August 25, 2006, or August 29-30, 2006.

8. On August 23, 2006, the Board granted HILP's motion for an extension,

providing that the discovery period would be extended until August 31, 2006.

9. Due to a previously noticed and scheduled deposition in Southfield, Michigan, in a patent infringement case currently pending before the U. S. District Court for the Eastern District of Texas (Civil Action File No. 5:05cv230) and other similar litigation conflicts, HILP's counsel were not able to (a) schedule Applicant's deposition in the week between the granting of the extension and the expiry of discovery or (b) take the deposition of Applicant in Sebastopol, California on any of the four days proposed by Applicant.

10. Title 37 C.F.R. § 2.120(a) provides that "The discovery period may be extended . . . upon motion granted by the Board, or by order of the Board." HILP will be unable to secure Applicant's discovery deposition testimony prior to the currently scheduled close of discovery and, showing good cause, seeks an additional brief extension of the time for taking Applicant's prior-noticed deposition through and until August 31, 2006. *See Health Food Associates, Inc. Naturalife Eco Vite Laboratories, Inc.*, 2005 WL 2451676, *1 (TTAB 2005) (granted motion to extend discovery to allow petitioner to complete discovery). The Board is well within its discretion to grant a motion to extend the discovery period file before the expiry of the time for taking discovery. *See American Vitamin Products, Inc. v. DowBrands, Inc.*, 22 USPQ2d 1313 (TTAB 1992) (the Board is liberal in granting extensions of time requested before the period of time to act has elapsed, as long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused); *Mattel, inc. v. Super Duper, Inc.*, 2005 WL 1505382, *3 (TTAB 2005).

8. Accordingly, HILP in good faith requests an additional short extension of the time for taking discovery in order to take the duly-noticed deposition of Applicant pursuant to Rule 30(b)(6) of the Federal Rules of Civil Procedure and complete discovery in this matter.

9. HILP has previously sought one extension of the Board's deadlines set in this matter, which motion was unopposed by Applicant. HILP has consented to each of Applicant's requests for extension in this matter.

WHEREFORE, HILP respectfully prays that:

- a. the Board GRANT HILP's motion in its entirety;
- b. issue an ORDER extending the time for taking discovery through October 31, 2006; and
- c. award to HILP such other relief as the Board deems just and proper.

This 30st day of August, 2006.

HILL, KERTSCHER & WHARTON, LLP

By: /Eric G. Maurer/

Peter F. Schoenthaler
Eric G. Maurer
3350 Riverwood Parkway
Suite 800
Atlanta, Georgia 30339
Telephone: 770-953-0995
Facsimile; 770-953-1358

*Attorneys for Opposer HI Limited
Partnership*

Explore Litigation Insights

Docket Alarm provides insights to develop a more informed litigation strategy and the peace of mind of knowing you're on top of things.

Real-Time Litigation Alerts



Keep your litigation team up-to-date with **real-time alerts** and advanced team management tools built for the enterprise, all while greatly reducing PACER spend.

Our comprehensive service means we can handle Federal, State, and Administrative courts across the country.

Advanced Docket Research



With over 230 million records, Docket Alarm's cloud-native docket research platform finds what other services can't. Coverage includes Federal, State, plus PTAB, TTAB, ITC and NLRB decisions, all in one place.

Identify arguments that have been successful in the past with full text, pinpoint searching. Link to case law cited within any court document via Fastcase.

Analytics At Your Fingertips



Learn what happened the last time a particular judge, opposing counsel or company faced cases similar to yours.

Advanced out-of-the-box PTAB and TTAB analytics are always at your fingertips.

API

Docket Alarm offers a powerful API (application programming interface) to developers that want to integrate case filings into their apps.

LAW FIRMS

Build custom dashboards for your attorneys and clients with live data direct from the court.

Automate many repetitive legal tasks like conflict checks, document management, and marketing.

FINANCIAL INSTITUTIONS

Litigation and bankruptcy checks for companies and debtors.

E-DISCOVERY AND LEGAL VENDORS

Sync your system to PACER to automate legal marketing.