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

Proceeding	92074292
Party	Plaintiff T Butler Brown
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Submission	Motion to Extend
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Date	07/27/2021
Attachments	PETITIONER - Motion to Dismiss or Suspend - Memo.pdf(133651 bytes)

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

Registration No: 4,969,251
Mark: TURTLEY
Registration Date: May 31, 2016

T. BUTLER BROWN,)	
)	
Petitioner,)	
)	CANCELLATION NO: 92074292
v.)	
)	
GOING VENTURES, LLC.,)	
)	
Registrant.)	
)	
)	

**PETITIONER’S MOTION FOR VOLUNTARY DISMISSAL WITHOUT
PREJUDICE, OR, IN THE ALTERNATIVE, FOR SUSPENSION OR
CONTINUANCE OF CURRENT SCHEDULE**

Petitioner T. Butler Brown (“Petitioner”) hereby submits this motion against Registrant Going Ventures, LLC (“Registrant”).

I. INTRODUCTION

In December 2019, Petitioner filed an intent-to-use application for the mark “TURTLEY VEGAN” for use in connection with cook books under Serial No. 88729906. In March 2020, an office action was issued in Petitioner’s application refusing registration based on Registrant’s trademark registration for the mark

“TURTLEY” for use in connection with cook books. Thus, May 2020, Petitioner initiated this cancellation proceeding.

However, before Petitioner engaged in her cook book project, she was involved in a serious automobile accident that caused her serious personal injuries for which Petitioner underwent medical treatment and rehabilitation for about a year. Since the filing of her trademark application and this proceeding, Petitioner’s cook book project has faced challenges due to the COVID-19 global pandemic and substantial set backs in Petitioner’s health. In fact, on June 30, 2021, Petitioner was required to undergo an unanticipated surgery due to deterioration of her health. Petitioner is now undergoing physical therapy that is expected to last several months and that is expected to consume most of Petitioner’s time and resources. Therefore, Petitioner has been forced to cease work on her cook book project for an undetermined period of time but at least until her physical therapy is completed and her health improves. In fact, since filing her ITU application and initiating this proceeding, Petitioner has not yet used the “TURTLEY VEGAN” mark in commerce as a trademark.

Accordingly, Petitioner now wishes to dismiss this proceeding without prejudice so that Petitioner can focus on her physical therapy and health for the foreseeable future. In the alternative, Petitioner wishes to suspend this proceeding or extend the pending deadlines by at least 150 days from the decision of this Request. Under the current unforeseen circumstances of Petitioner’s health, Petitioner is currently unable to devote any time or resources to this proceeding.

II. ARGUMENT

A. Voluntary Dismissal Without Prejudice is Proper

Fed.R.Civ.P. 41(a)(2) expressly states as follows:

“Except as provided in Rule 41(a)(1), an action may be dismissed at the plaintiff’s request only by court order, on terms that the court renders proper.”

Dismissal pursuant to Rule 41(a)(2) is within the court’s discretion and is generally allowed unless “the defendant will suffer some plain legal prejudice other than

the mere prospect of a second lawsuit.” See *Hyde v. Hoffmann-La Roche, Inc.*, 511 F.3d 506, 509 (5th Cir. 2007). “[M]otions for voluntary dismissal should be freely granted unless the non-moving party will suffer some plain legal prejudice . . .” See *Elbaor v. Tripath Imaging, Inc.*, 279 F.3d 314, 317 (5th Cir. 2002). “That [the] plaintiff may obtain some tactical advantage over the defendant in future litigation is not ordinarily a bar to dismissal.” See *Hyde*, 511 F.3d at 509.

In the present case, Petitioner seeks a dismissal of this proceeding as a direct result of her deteriorating health and recent surgery that she underwent on June 30, 2021, which will require months of physical therapy. In addition, Petitioner seeks dismissal of this proceeding as a direct result of the fact that she has not been able to get her cook book business under the “TURTLEY VEGAN” mark off the ground and is now being forced to cease spending her time and resources to such effort for an undetermined period of time. After all, Petitioner has not yet used the “TURTELY VEGAN” mark in commerce as a trademark.

Essentially, Petitioner does not seek to voluntarily dismiss this proceeding for an improper purpose, cause undue delay, or avoid an adverse ruling. Even more, a voluntary dismissal of this proceeding will not cause Registrant any plain legal prejudice. As such, dismissal of this proceeding without prejudice is proper.

Based on the foregoing, Petitioner respectfully requests this proceeding be dismissed without prejudice.

B. Alternatively, Suspension or Continuance of Proceeding Deadlines is Proper

In the alternative, if the Board does not dismiss this proceeding without prejudice, Petitioner respectfully request the pending deadlines in this Proceeding be suspended or continued by at least 150 days from the decision on this Motion. Such continuance will allow Petitioner some time to focus on her health before resuming use of her time and resources in this proceeding. Such time to focus on her health is necessary at the present time in light of Petitioner’s unanticipated surgery on June 30, 2021 for which she is now required to devote several months in physical therapy. Given Petitioner’s current health

condition and the current state of her cook book business, Petitioner is unable to devote a proper amount of time and resources to this proceeding at the present time based on the current trial schedule.

Based on the foregoing, if the Board decides not to dismiss this proceeding without prejudice, Petitioner respectfully requests the Board to suspend or continue this proceeding by at least 150 days from the date a decision on this Motion is entered.

III. CONCLUSION

Based on the foregoing, Petitioner respectfully requests this Board to dismiss this proceeding without prejudice. In the alternative, Petitioner respectfully requests this Board to suspend or continue this proceeding by at least 150 days from the date a decision on this Motion is entered.

DATED: July 26, 2021

Respectfully submitted,



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