

BEFORE THE ILLINOIS POLLUTION CONTROL BOARD

PEOPLE OF THE STATE OF ILLINOIS)
)
 Complainant,)
)
)
 v.)
)
 PACKAGING PERSONIFIED, INC., an)
 Illinois Corporation)
 Respondent.)



ORIGINAL

PCB 04-16
(Enforcement - Air)

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FEB 14 2013

**STATE OF ILLINOIS
Pollution Control Board**

NOTICE OF FILING

TO:

John Therriault
State of Illinois
Illinois Pollution Control Board
100 W. Randolph Street – Suite 11-500
Chicago, Illinois 60601

L. Nichole Cunningham
Assistant Attorney General
Environmental Bureau
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Chicago, Illinois 60602

Christopher Grant
Assistant Attorney General
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PLEASE TAKE NOTICE that on **Thursday, February 14, 2013**, we filed the attached **Packaging's Amended Response In Support Of Complainant's Fourth Request To Extend Record Deadline** attached thereto, via hand delivery with the Clerk of the Illinois Pollution Control Board, copies of which are hereby served upon you.

Respectfully submitted,

PACKAGING PERSONIFIED, INC.

BY: _____

One of Its Attorneys

Roy M. Harsch, Esq.
John A. Simon, Esq.
Drinker Biddle & Reath LLP
191 N. Wacker Drive - Suite 3700
Chicago, Illinois 60606-1698
(312) 569-1000

THIS FILING IS SUBMITTED ON RECYCLED PAPER

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**PACKAGING'S AMENDED RESPONSE IN SUPPORT OF
COMPLAINANT'S FOURTH REQUEST TO EXTEND RECORD DEADLINE**

Respondent Packaging Personified, Inc. ("Respondent and Packaging") through counsel responds in support of Complainant's Fourth Request to Extend Record Deadline as follows:

1. Respondent agrees with Complainant that the record deadline should be extended and joins in the request for an extension subject to one modification. However, Respondent believes that the Pollution Control Board ("Board") should also be presented with Respondent's statement regarding what has happened to date in this matter when it is ruling on this request to extend the record deadline.

2. Respondent has repeatedly expressed concern over the extent of the information sought by Complainant in its various discovery requests. Respondent has timely responded to this discovery and has made available all of the responsive documents that it had in its possession and provided detailed answers to the interrogatories sought by Complainant. The complicating problem is that Respondent does not have records extending back through the relevant time period of 1994 through 2004. The discovery requested documents which span a prior time period that is over eighteen years to twelve years old. This is well beyond the time period for normal corporate record retention, beyond Respondent's record retention policy period

of seven years and is beyond any applicable regulatory requirement for record retention. In some instances the information requested was never maintained in the first instance in the manner sought by Complainant. Respondent's inability to produce these records is also partially the result of its prior switch to a new computerized record system which resulted in records being lost that were on the previous system. Respondent has previously made Complainant of these issues the confidential personal financial information including the compensation received by its owners and senior officers, which is entirely irrelevant to this enforcement action.

3. Respondent strongly objected to Complainant's Motion to Compel production of the Respondent's complete federal tax returns for 1994 through 2004. Respondent pointed out that because Packaging was a Sub Chapter S Corporation Packaging's tax returns "contained personal financial information including the compensation received by its owners and senior officers which is entirely irrelevant to this enforcement action". Despite Respondent's strong objections, the Hearing Officer Order of November 15, 2012 granted Complainant's Motion to Compel production of the complete tax returns. This Order did correctly state that such orders were appealable to the Board.

4. After discussing this Order at length with Mr. Imburgia it was determined that Respondent would try to negotiate with Complainant regarding the production and use of Respondent's tax returns rather than filing an appeal challenging the Order. Counsel for Respondent and Complainant discussed this and ultimately reached what both sides believed they could recommend that their clients accept. Counsel for Respondent presented this agreement to Mr. Imburgia for his review and comment. As noted by Complainant, agreement was further reached regarding this procedure for the production. As will be presented in following paragraphs this review and ultimate agreement has been delayed for reasons that have

been disclosed to Complainant. On Monday of this week Mr. Imburgia informed the undersigned that he was agreeable to providing Complainant Respondent's complete tax returns pursuant to the procedure and draft agreement that counsel have tentatively reached. Counsel for Respondent understands that Respondent has initiated the search for these tax returns. Counsel for Respondent is in the process of finalizing the tentative agreed procedure and document for formal acceptance by Counsel for Complainant.

5. As previously stated the decision to produce Respondent's complete tax returns has been delayed by several events. First the undersigned counsel was stricken with the flue to the extent that he was absent from the office for all but portions of several days over three weeks in January. During this time period his attention was also required to draft and finalize a brief in another matter before the Board plus dealing with rescheduling other day to day issues. This illness, absence from the office and press of other matters that had to be rescheduled greatly limited the ability to discuss with Mr. Imburgia the production of Respondent's tax returns.

6. During this same time period, Mr. Imburgia who resides in Florida during the winter months has had a totally unexpected family illness that continues to this day that has resulted in the hospitalization of the family member in very grave condition. Mr. Imburgia's attention and availability have been directed to this family member and not to resolution of this case and the production of the tax returns. Counsel for Complainant has previously been made aware of this delay.

7. This family member's illness will continue to delay the ability of Responded to produce Respondent's tax returns. At Mr. Imburgia's direction, Packaging personnel have looked through potential locations where copies of these old returns could possibly be located and have not found any such copies. Accordingly Mr. Imburgia will have to travel back to

Chicago to access his locked security files to obtain them for production. This will occur after the family member illness situation is resolved.

8. Finally the undersigned counsel has informed the Hearing Officer and Complainant that he would possibly be unavailable for hearing in March upon his return from a previously scheduled vacation because of possible need for surgery which would occur in mid-March given the availability of the surgeon. The decision regarding this surgery will be made at a scheduled doctor exam next week.

9. Complainant is entitled pursuant to the Hearing Officer Order to have access to the requested tax returns and Respondent has agreed to make them available for disclosure pursuant to the tentatively agreed upon manner. Respondent will produce these returns when Mr. Imburgia is able to schedule travel back to Chicago as his family member's illness allows and physically has access to them. Respondent will continue to keep both the Hearing Officer and Counsel for Complainant apprised when this is expected to occur.

10. Respondent recognizes that the Board is frustrated by the lack of progress in moving forward with what it apparently believed to be a simple straight forward hearing. Hopefully with this additional information, the Board will gain some understanding of the reasons for the delay and agree to extend the record deadline. Because of the necessity that Mr. Imburgia personally will need to come back to Chicago from Florida and the family illness matter to which he is currently attending to in Florida, requiring that production occur within seven days of entry of the Board Order in response to Complainant's motion is not reasonable. Respondent would respectfully request that the Board order that production of the tax returns occur within thirty days from the date of the Board Order with the remaining dates to follow those requested by Complainant.

WHEREFORE, for all the foregoing reasons, Respondent respectfully requests that the Board grant Complainant's Forth Motion to Extend Record Deadline with the change to reflect production of the Respondent's returns within thirty days of such Board Order.

Respectfully submitted,

PACKAGING PERSONIFIED, INC.

By: 

One of Its Attorneys

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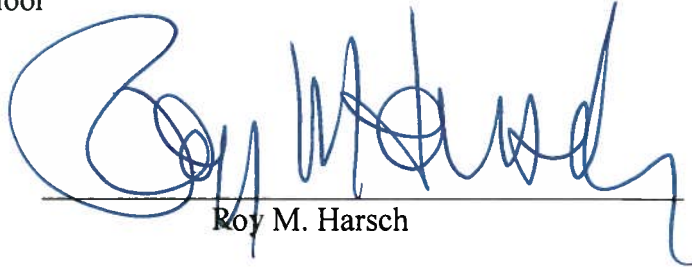
CERTIFICATE OF SERVICE

The undersigned certifies that a copy of the foregoing **Packaging's Amended Response**
In Support Of Complainant's Fourth Request To Extend Record Deadline was filed via
hand delivery with the Clerk of the Illinois Pollution Control Board and served upon the parties
below by U.S. First Class Mail and electronically on **Thursday, February 14, 2013.**

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