

UNITED STATES DEPARTMENT OF COMMERCE
Patent and Trademark Office
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Baxley

Mailed: August 7, 2002

Opposition No. 91/117,309

HOUSE OF BLUES BRANDS CORP.

v.

SYLVIA WOODS, INC.

Andrew P. Baxley, Interlocutory Attorney:

This case now comes up for consideration of: (1) applicant's motion (filed October 9, 2001) to extend its testimony period, and (2) applicant's counsel's request (filed October 17, 2001) to withdraw as applicant's counsel of record in this case. Opposer has filed a brief in opposition to the motion to extend.¹

Turning first to applicant's motion to extend, applicant states therein that it seeks a two-month extension of its testimony period to enable it to submit evidence and testimony. In its counsel's request to withdraw, applicant's counsel further contends that it has been unable to communicate with applicant.

¹ Inasmuch as the Trademark Rules of Practice prohibit the filing of surreplies, opposer's supplemental brief in opposition to the motion to extend has received no consideration. See Trademark Rule 2.127(a).

In opposition to the motion to extend, opposer contends that applicant has not shown good cause for the extension it seeks and asks that such motion be denied.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is "good cause." See Fed. R. Civ. P. 6(b)(1); *American Vitamin Products, Inc. v. Dow Brands, Inc.*, 22 USPQ2d 1313 (TTAB 1992); and TBMP Section 509. A motion to extend must state with particularity the grounds therefor, including detailed facts constituting good cause. See Fed. R. Civ. P. 6(b); Trademark Rule 2.127(a); *Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758 (TTAB 1999). If a motion to reschedule testimony periods is denied, the testimony periods may remain as last reset. See Trademark Rule 2.121(a)(1).

The Board finds that applicant has not set forth facts that constitute good cause for the extension it seeks. Inasmuch as applicant shares a duty with its counsel to remain diligent in defending this case, applicant's failure to communicate with its counsel will not yield it another day in court. Cf. *Williams v. The Five Platters, Inc.*, 510 F.2d 963, 184 USPQ 744 (CCPA 1975), *aff'g* 181 USPQ 409 (TTAB 1974).

In view thereof, applicant's motion to extend is hereby denied. Applicant's testimony period is deemed to have closed on October 14, 2001.²

With regard to the request to withdraw as counsel, such request is in compliance with the requirements of Trademark Rule 2.19(b) and Patent and Trademark Rule 10.40, and is accordingly granted. Robert C. Faber and the law firm of Ostrolenk Faber Gerb & Soffen no longer represents applicant in this proceeding.

In view of the withdrawal of applicant's counsel, and in accordance with standard Board practice, proceedings herein are suspended, and applicant is allowed until **thirty days** from the mailing date of this order to appoint new counsel, or to file a paper stating that applicant chooses to represent itself. If applicant files no response, the Board may issue an order to show cause why default judgment should not be entered against applicant based on applicant's apparent loss of interest in the case.

The parties will be notified by the Board in the event that proceedings are resumed. Such resumption shall commence with applicant's time to file its brief on the case.

A copy of this order has been sent to all persons listed below.

²Opposer's main brief on the case (filed January 28, 2002) is noted.

cc: Robert C. Faber
Ostrolenk Faber Gerb & Soffen
1180 Avenue of the Americas
New York, NY 10036

Kirt S. O'Neill
Akin Gump Strauss Hauer & Feld, LLP
300 Convent Street, Suite 1500
San Antonio, TX 78205

Sylvia Woods, Inc.
c/o Van Deward Woods
512 Alane Avenue
Lake City, SC 29560