

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
2900 Crystal Drive
Arlington, Virginia 22202-3513

Mailed: December 15, 2003

Opposition No. 91120453

HEARST COMMUNICATIONS, INC.
AND HEARST MAGAZINES PROPERTY,
INC.

v.

CHARLES BROWNING WILSON

Cheryl Goodman, Interlocutory Attorney:

This case now comes up on opposers' motions to extend testimony, filed May 29, 2003 and July 10, 2003.

Opposers' consented motion to extend, filed May 29, 2003, is granted.

The Board now turns to opposers' unconsented motion to extend their testimony period, filed July 10, 2003.

Applicant has opposed the motion.

In support of their motion to extend, opposers request additional time to take the deposition of witness Nikki Koval (hereinafter "Koval"). Opposers advise that full participation is required of Hearst's inside counsel Barry Agdern (hereinafter "Agdern") to strategize and prepare Koval for deposition but that Agdern has been unable to prepare Koval for deposition due to a move from Hearst's quarters in May 2003 to temporary quarters; that the move

was outside the control of Agdern; that the move caused disruption in that Agdern's files were boxed for the move and Agdern has yet to finish unpacking; that Agdern's participation with respect to the deposition of Koval is "essential to the orderly conduct and prosecution"; that Agdern requires additional time to review and locate files so as to prepare witness Koval; and that opposers only require Agdern's assistance for the trial testimony of Koval since opposers have already timely filed their notice of reliance during their testimony period. Opposers assert that applicant will suffer no prejudice by extending the testimony period and advises that opposers have no intention of filing any further requests to extend their testimony period, beyond the instant motion.

In response, applicant argues that opposers have not shown good cause for extending their testimony period; that Agdern's inability to plan and prepare due to the move should not serve as an excuse for further delay since Agdern well aware of the testimony dates; and that applicant has accommodated prior requests to extend but is "unwilling to condone further dilatory tactics."

In reply, opposers argue that both parties requested and filed consented extensions during this proceeding; that additional evidence (e-mails) has only recently been produced by applicant, and opposers should be allowed to

amend their notice of reliance to include this evidence; and that opposers need a brief extension of the testimony period not only to introduce this additional e-mail evidence but to take the deposition testimony of Koval.

To prevail on its motion to extend, opposers must establish good cause for the requested extension of time. See Fed.R.Civ.P. 6(b)(1); *American Vitamin Products, Inc. v. DowBrands, Inc.*, 22 USPQ2d 1316 (TTAB 1992); and TBMP Section 509.

Upon consideration of the parties' arguments, the Board finds that opposers have established good cause to warrant an extension of time of their testimony period.

Accordingly, opposers motion is granted to the extent that opposers testimony period is extended solely for the limited purpose of submitting a supplemental notice of reliance to include the recently produced discovery (e-mails) and taking the deposition of witness Koval.

Trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE:	CLOSED
30-day testimony period for party in position of plaintiff to close:	February 11, 2004
30-day testimony period for party in position of defendant to close:	April 11, 2004
15-day rebuttal testimony period for party in position of plaintiff to close:	May 26, 2004

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.