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

Proceeding	91152940
Party	Plaintiff SINCLAIR OIL CORPORATION ,
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IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD

In the matter of Trademark Application Serial No. 76/212,011
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SINCLAIR OIL CORPORATION Opposer, v. SUMATRA KENDRICK Applicant.	**OPPOSITION TO APPLICANT'S MOTION FOR EXTENSION FOR TIME** Opposition No. 91152940

In response to an Order mailed July 17, 2006 from the Trademark Trial and Appeal Board ("the Board"), Opposer Sinclair Oil Corporation ("Sinclair"), hereby opposes Applicant's "motion" for an extension of time. Sinclair respectfully submits that Applicant's motions should be denied.

I. APPLICANT'S MOTION TO EXTEND TIME TO ANSWER SHOULD BE DENIED.

A. Applicant's Motion to Extend is Untimely.

Sinclair filed a Motion to for Leave to file an Amended Notice of Opposition which was granted by the Board in an Order dated January 31, 2006 ("the January Order). In its January Order, the Board granted Sinclair's motion to amend and gave Applicant thirty (30) days from the date of the January Oder to file an Answer to Sinclair's Amended Notice of Opposition. As a result, Applicant's Answer to the Amended Notice of Opposition was due March 2, 2006.

It was not until April 3, 2006, however, that Applicant submitted a document or "motion" to the Board allegedly requesting an extension of time. Applicant's request for an extension of time was not submitted until well after the response period set by the Board in its January Order had expired. Consequently, Applicant's "motion" was untimely. Therefore, Applicant's "motion should be denied unless Applicant can meet the required showing of good cause.

B. Applicant has Failed to Show Good Cause.

Applicant did not file her "motion" until after the time period set in the January Order had expired. As a result, Applicant failed to file an Answer to the Amended Notice of Opposition within the specified time period ordered by the Board. In cases where a party fails to file an answer within the time set by the Board, the "motion" or petition "may be decided as in case of default." *See* 37 C.F.R. § 2.114. When confronted with a petition to permit the late filing of an answer, the standard is generally that set forth in Fed. R. Civ. P. 55(c) (i.e., good cause, and not the excusable neglect required by FRCP 6(b)(2)). *See Fred Hayman Beverly Hills Inc. v. Jacques Bernier Inc.*, 21 USPQ2d 1556, 1557 (TTAB 1991). "[G]ood cause is usually found to have been established if the delay in the filing is not the result of willful conduct or gross neglect on the part of the defendant, if the delay will not result in substantial prejudice to the plaintiff, and if the defendant has a meritorious defense." *Id.*

In Applicant's "motion", Applicant was requesting an extension of time because Applicant allegedly had not received the January Order from the Board. In support of

Applicant's "motion", Applicant submitted letters dated August 22, 2005 and January 12, 2006 from the United States Postal Service ("Postal Service"). From the August 22, 2005 letter, it is does appear that at one point in 2005 there may have been problems with Applicant receiving her mail. The January 12, 2006 letter from the Postal Service is not so clear and does not establish that five (5) months later (i.e. at the time of the January Order from the Board) there was still an actual problem with Applicant receiving mail. In fact the letter is specifically discussing Applicant's complaints made in 2005. Even if Applicant was still having problems with her mail, the January 12, 2005 letter shows that the Postal Service was well aware of Applicant's issues. Further, the January 12, 2006 letter shows that the Postal Service was addressing Applicant's complaints for a second time.

In her motion, Applicant is attempting to establish that her failure to file an answer within the time set by the Board was a result of the problems with the Postal Service and rises to the level of good cause. Applicant's claim falls short of the required standard. Applicant made no showing that she was continuing to have problems with mail service. Even if there continued to be problems with the delivery of Applicant's mail prior to the January 12, 2006 letter, the issue that there were alleged problems with delivery of the mail had clearly been brought to the attention of the Postal Service. In any event, the January Order from the Board providing Applicant 30 days to file an Answer to the Amended Notice of Opposition was mailed January 16, 2006, **after** the Postal Service wrote Applicant for the second time. Applicant has failed to show that after the January 16, 2006 letter there continued to be any problems with the mail.

In addition, allowing Applicant to file an Answer to the Amended Notice will cause prejudice to Sinclair. Sinclair has gone to the expense and effort of filing a summary judgment motion in an attempt to resolve this case. If Applicant is now, six months later, allowed to suddenly come forward with an Answer, it changes the whole complexity of the litigation and could make the motion for summary judgment properly filed by Sinclair to have been a waste of time and money. Sinclair having properly submitted a Motion for Summary Judgment in an effort to resolve the case, should not be faced with a party such as Applicant being able to come

in at a late date after having ignored the deadlines set by this Board. Further, Defendant does not have a meritorious defense to the amended Complaint.

Accordingly, Sinclair respectfully submits that Applicant has failed to make a showing of good cause sufficient to grant the untimely "motion" to extend the time for filing an Answer.

II. APPLICANT HAS FAILED TO ESTABLISH GOOD CAUSE AND HER MOTION TO EXTEND TIME TO OPPOSE SINCLAIR'S MOTION FOR SUMMARY JUDGMENT SHOULD BE DENIED.

As previously indicated, Sinclair filed a Motion for Summary Judgment on March 1, 2006. Pursuant to the applicable rules, Applicant's opposition was due on April 5, 2006. Sinclair's motion was duly served on Applicant at the address of record. Applicant then filed, **two days before her opposition was due**, her alleged "motion" requesting "an extension of time to file an amendment to the FRAUD allegations." It strains all credibility to believe that Applicant just coincidently filed the "motion" a mere two days before the due date. Further, after two letters from the Postal Service, it appears that as of January 12, 2006, Applicant's issue of not receiving her mail was apparently resolved. In any event, as shown by the January 12, 2006 letter from the Postal Service, the matter had been addressed well before Sinclair filed its motion for Summary Judgment.

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) and TBMP Section 509. While the Board is liberal in granting an extension of time when the extension if filed prior to the expiration of the time period, this is only when "the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused." *American Vitamin Prods., Inc. v. DowBrands, Inc.*, 22 USPQ2d 1313, 1316 (TTAB 1992). The party moving for an extension bears the burden of proof, and must "state with particularity the grounds therefore, including detailed facts constituting good cause." *Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999); *HKG Industries, Inc. v. Perma-Pipe, Inc.*, 49 USPQ2d 1156, 1158 (TTAB 1998) (motion to

reopen denied because movant failed to provide detailed factual information in support of requested relief). Waiting until the last minute to file a motion for an extension of time when the circumstances necessitating the extension were known well before the motion was filed fails to constitute "good cause." *See Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1851 (TTAB 2000).

Sinclair's motion was filed on March 1, 2006. Somehow Applicant, who allegedly did not receive the Board's January Order and was not receiving her mail, apparently did receive Sinclair's Motion for Summary Judgment filed a little over a month later. Further, Applicant waited until nearly the end of the response period to now request an extension of time because of an alleged failure of the Postal Service in 2005. As with the January Order, Sinclair's motion was served after the January 2006 letter from the Postal Service addressing for the second time that the mail delivery issue had been resolved. Applicant has failed to explain how an alleged past problem with mail delivery in 2005 effects the service of the motion for summary judgment, which occurred after the second letter from the Postal Service. As a result, Applicant has failed to establish good cause and her motion should be denied.

III. CONCLUSION.

Sinclair respectfully submits that Applicant's motion for an extension of time to file a response to the Amended Notice of Opposition is untimely and Applicant has failed to meet the required showing of cause. Therefore Applicant's "motion" to extend time to file an Answer should be denied. Likewise, Applicant's motion for extension of time to oppose Sinclair's Motion for Summary Judgment should be denied because Applicant has failed to establish good cause.

DATED this 7th day of August, 2006.

By /s/ Robyn L. Phillips

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CERTIFICATE OF SERVICE

The undersigned hereby certifies that a copy of the foregoing **OPPOSITION TO APPLICANT'S MOTION FOR EXTENSION OF TIME** was served on Applicant by mailing a true copy thereof, by First Class Mail, postage prepaid, this 7th day of August, 2006, in an envelope addressed as follows:

Sumatra Kendrick
P.O. Box 21055
El Sobrante, California 94820

/s/ Robyn L. Phillips

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