

ESTTA Tracking number: **ESTTA167219**

Filing date: **10/05/2007**

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

Proceeding.	91160944
Applicant	Plaintiff RED BULL GMBH
Other Party	Defendant Tequila Cuervo La Rojena, S.A. De C.V.

Motion for an Extension of Discovery or Trial Periods With Consent

The Close of Discovery is currently set to close on 11/04/2007. RED BULL GMBH requests that such date be extended for 60 days, or until 01/03/2008, and that all subsequent dates be reset accordingly.

Discovery Period to Close : 01/03/2008
 Thirty-day testimony period for party in position of plaintiff to close : 04/02/2008
 Thirty-day testimony period for party in position of defendant to close : 06/01/2008
 Fifteen-day rebuttal testimony period to close : 07/16/2008

The grounds for this request are as follows:

- *Parties are engaged in settlement discussions*
- *The Board's Order of 8/6/2007 indicated that the Board will only entertain requests for further extensions or suspension, even though consented to by the parties, with a showing of extraordinary circumstances. Opposer and Applicant jointly request a further - and hopefully final 60 day extension of the time for Opposer to file an answer to Applicant's counterclaim, now due 10/5/2007, to 12/4/2007. In addition, the parties jointly request that the close of discovery and testimony periods be similarly extended by 60 days as follows: 01/03/2008 Close of Discovery 04/02/2008 30 Day Testimony Period for Party in Position of Plaintiff to Close 06/01/2008 30 Day Testimony Period for Party in Position of Defendant to Close 07/16/2008 15 Day Rebuttal Testimony Period to Close By way of explanation of the extraordinary circumstances leading to this request, the undersigned previously reported that extensive negotiations had led to what appears to be an agreement on and resolution of all outstanding substantive issue. When the parties previously requested a 60 day extension to allow time to complete the process of drafting and exchanging a written settlement agreement reflecting those terms, it was fully expected that this could be completed within the 60 days requested. The undersigned explained that there had been unusual and extraordinary delays in that process due to the undersigned's urgent hospitalization and major surgery in late July, which resulted in a lengthy absence from the office (including pre-op testing, doctor's visits, in-hospital time and home-bound recovery time) and a sharply cut-back schedule during recuperation. While the undersigned believed on 08/05/2007 that his recuperation was then nearly complete and that the undersigned would be returning to the office on a full time basis, that prognosis was overly optimistic. (Again, details of this medical situation and surgery will be provided on a confidential basis out of the public record should the Board so desire). Because of this, it was not possible to complete the drafting and review process on the schedule anticipated. As noted earlier, the settlement agreement being drafted full resolves the instant U.S. dispute in conjunction and coordination with similar disputes in Canada, Switzerland and all 27 countries of the European Union. In addition, the inclusion of additional marks in the settlement will further avoid - with near certainty - several additional U.S. oppositions which would have otherwise been necessary. The settlement includes, as explained in the prior reports, a common, acceptable framework for resolving issues relating to the design features of certain labels, how to deal with the color on the labels (and in particular, the color of the bulls or bovine animals on the labels), certain additional label color limitation issues, letters of consent to additional marks, and use of house marks on the labels to minimize further conflict. The parties would again note that they are each major and substantial worldwide beverage companies with National fame and reputation, and including widespread*

U.S. and international interests, that each is represented by experienced legal counsel and are not motivated by any desire to delay these proceedings, that because the settlement now involves multiple jurisdictions the draft settlement terms must be separately reviewed by counsel in multiple jurisdictions, and that the parties themselves are each foreign entities (Mexico and Austria), which factors unfortunately do delay the review and ultimate response. The full settlement terms, which are now being incorporated in a comprehensive settlement agreement, will avoid additional conflicts both in the U.S. and abroad, and the parties respectfully request and appreciate the Board's indulgence and patience while they finalize this complex settlement. In view of this and for the additional unavoidable extraordinary circumstances relating to the post-surgical medical recovery, Applicant has graciously consented and the parties are jointly requesting a further 60 day, and presumably final, extension/resetting of all dates.

RED BULL GMBH has secured the express consent of all other parties to this proceeding for the extension requested herein.

RED BULL GMBH has provided an e-mail address herewith for itself and for the opposing party so that any order on this motion may be issued electronically by the Board.

Certificate of Service

The undersigned hereby certifies that a copy of this paper has been served upon all parties, at their address record by Facsimile or email (by agreement only) on this date.

Respectfully submitted,
/Martin R Greenstein/
Martin R. Greenstein
MRG@TechMark.com, MPV@TechMark.com
MAMastrovito@lawabel.com
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