

UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451

wbc

Mailed: January 5, 2015

Opposition No. 91164764

Brink's Network, Incorporated

v.

The Brinkmann Corporation

**Wendy Boldt Cohen, Interlocutory Attorney:**

Upon request of Opposer, on December 30, 2014, the Board convened a teleconference between the parties regarding Opposer's motion to extend proceedings, presented orally in the telephone conference. Participating in the call were Opposer's counsel, Alan Cooper, Applicant's counsel, Susan Hwang and Board interlocutory attorney, Wendy Boldt Cohen. Applicant, during the conference call, provided its consent to the motion to extend.

Because Opposer filed his motion for extension prior to expiration of its testimony period, it need only establish "good cause" for the requested extension. Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509 (2014). Generally, "the Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused." *American Vitamin Products Inc. v. DowBrands Inc.*, 22 USPQ2d 1313, 1315 (TTAB 1992); *cf.*

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*Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479, 1480 (TTAB 2000) (mere existence of settlement negotiations or proposals, without more, would not justify delay in proceeding with testimony).

As discussed in the Board's October 28, 2014 order, these proceedings have been suspended since at least September 18, 2012 for settlement negotiations and the opposition was instituted April 1, 2005. The parties have indicated that despite the long periods of suspension and that the terms of a settlement agreement have been agreed to, Applicant has not yet executed the agreement.<sup>1</sup> Applicant's counsel has indicated that she will diligently follow-up with her client regarding the settlement agreement.

In view thereof and as discussed in the telephone conference, Opposer's motion to extend is **granted** albeit for a shorter time than requested.<sup>2</sup> The parties must take all steps necessary to comply with the reset trial schedule herein. As noted in the telephone conference, the Board has generously granted this extension request and expects this to be the last request for extension or suspension made in this proceeding. To be clear, in view of the very long proceeding history, the Board, in its inherent authority to control its docket, will not entertain any further motions to extend or suspend, whether consented to or not. *See* TBMP §§ 509.01 and 510.03. If the parties

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<sup>1</sup> It has not escaped the Board's notice that, as alleged by Opposer which Applicant does not dispute, Applicant has had a settlement document from Opposer since September 2014.

<sup>2</sup> Opposer, in its motion to extend, sought an extension of time for a period of sixty days.

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are unable to settle this matter, the parties should be prepared and will be expected to proceed with trial under the schedule set herein.

Dates are reset as follows:

30-day testimony period for party in position of plaintiff  
in the cancellation to close: January 26, 2015

30-day testimony period for defendant in the cancellation  
and as plaintiff in the counterclaim to close: March 27, 2015

30-day testimony period for defendant in the counterclaim  
and its rebuttal testimony as plaintiff in the  
cancellation to close: May 26, 2015

15-day rebuttal testimony period for plaintiff in the  
counterclaim to close: July 10, 2015

Briefs shall be due as follows:  
[See Trademark rule 2.128(a)(2)].

Brief for plaintiff in the cancellation shall be due: September 8, 2015

Brief for defendant in the cancellation and as  
plaintiff in the counterclaim shall be due: October 8, 2015

Brief for defendant in the counterclaim and its reply  
brief (if any) as plaintiff in the cancellation  
shall be due: November 7, 2015

Reply brief (if any) for plaintiff in the  
counterclaim shall be due: November 22, 2015

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. *See* Trademark Rule 2.125; 37 C.F.R. § 2.125.

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