

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

Mailed: December 20, 2006

Opposition No. **91167945**

Laurice El Badry Rahme Ltd Db  
Laurice & Co.

v.

Asprey Holdings Limited

**Ann Linnehan, Interlocutory Attorney**

This case now comes up for consideration of opposer's motion (filed November 7, 2006) to suspend proceedings for purposes of settlement or, in the alternative, for ninety-day extension of the discovery period. The motion has been fully briefed.

As an initial matter, the Board notes that, according to opposer's reply brief (filed December 14, 2006), applicant has refused opposer's settlement offer and the parties are no longer engaged in settlement discussions. Accordingly, the motion to suspend is moot.

Turning to consider opposer's motion to extend the discovery and testimony periods, the Board finds that in support of its motion opposer argues that it never received the Board's order of July 13, 2006 wherein the Board granted applicant's petition for cancellation in view of opposer's

voluntary surrender of its involved registration, found applicant's motion for summary judgment to be moot, lifted the suspension, and resumed proceedings setting November 3, 2006 as the close of discovery. Opposer contends that it only became aware of such order on October 30, 2006 while performing a routine status check on this proceeding. Consequently, opposer argues, opposer "has not had ample opportunity to prepare discovery" and a ninety-day extension of the discovery and testimony periods is warranted.

In response, applicant argues that opposer has not demonstrated there is good cause for extending the discovery deadline because the delay was caused by opposer's own lack of diligence in pursuing discovery and opposer's failure to monitor the deadlines in the proceeding. Specifically, applicant contends that opposer failed to take discovery in the three and half months after discovery initially opened in this proceeding and failed to take discovery within the three and half months after the Board lifted the suspension and resumed proceedings in its July 13, 2006 order. Applicant further contends that when opposer responded to applicant's motion for summary judgment by surrendering its registration certificate applicant "should have known that it would be only a short time before the Board cancelled the registration and lifted the suspension." Applicant asserts

that opposer could have checked the status of this proceeding at any time "by running a search on TTABVUE."

In reply, opposer asserts that it has demonstrated good cause for extending the discovery and testimony dates; that because opposer did not receive the Board's July 13, 2006 order until October 30, 2006, it had only four days to prepare discovery prior to the expiration of the new discovery deadlines set by the Board, and thus it did not have ample time to conduct discovery; and that opposer had no obligation to conduct discovery early on in the proceeding and so its decision to not take discovery during the initial few months of this proceeding does not establish lack of diligence or undue delay. Opposer further explains that because the Board does not "impose on counsel a 'Due Diligence-Duty to Monitor,'" opposer typically monitors the status of applications, registrations, and trademarks that are the subject of Board proceedings every six months. Therefore, because opposer filed its voluntary surrender of registration on June 5, 2006 it normally would not have followed up to ascertain the status of this proceeding until December 5, 2006. However, according to opposer, prior to a November 2, 2006 meeting regarding the case, a routine check of the Board's website revealed the Board's July 13, 2006 order wherein discovery was reset to close on November 3, 2006.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is good cause. Fed. R. Civ. P. 6(b)(1). The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. See, e.g., *American Vitamin Products, Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313 (TTAB 1992).

After carefully reviewing the parties' arguments and given the Board's liberal application of the Rule 6(b) standard, the Board finds that the circumstances herein are appropriate for granting opposer's motion to extend the discovery and testimony periods by ninety-days. In particular, the Board finds that opposer's assigned counsel's non-receipt of the Board's July 13, 2006 order constitutes good cause for granting the extension sought. In addition, the Board finds that there is no evidence of negligence or bad faith on the part of opposer, that opposer has not abused the privilege of extensions, and that applicant has pointed to no actual prejudice beyond a delay of these proceedings.

In view thereof, opposer's motion to extend time is granted. In accordance with the its inherent authority to manage the scheduling of cases on its docket, the Board deems the filing of opposer's motion to extend the discovery

and testimony periods to have tolled the running of all dates herein. Proceedings are hereby resumed. The parties are allowed **thirty days** from the mailing date set forth in the above caption to serve responses to any outstanding discovery requests.<sup>1</sup> Discovery and trial dates are reset as follows:

DISCOVERY PERIOD TO CLOSE: **3/23/2007**

Plaintiff's 30-day testimony period to close: **6/21/2007**

Defendant's 30-day testimony period to close: **8/20/2007**

Plaintiff's 15-day rebuttal testimony period to close: **10/4/2007**

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.

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<sup>1</sup> In view thereof, opposer's motion (filed December 14, 2006) for a thirty-day extension of time to respond to applicant's discovery requests is moot.