

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

Baxley

Mailed: April 20, 2009

Opposition No. **91176744**

DC Comics and Marvel
Characters, Inc.

v.

Michael Craig Silver

Andrew P. Baxley, Interlocutory Attorney:

On April 8, 2009, opposers filed a motion to extend testimony periods herein.¹ Inasmuch as such motion may not be fully briefed until after the commencement of opposers' testimony period as last reset, the Board determined that such motion should be resolved by telephone conference. See Trademark Rule 2.120(i)(1); TBMP Section 502.06(a) (2d ed. rev. 2004). On April 20, 2009, such conference was held between opposers' attorneys Jonathan D. Reichman and Michelle C. Morris, applicant Michael Craig Silver, and Board attorney Andrew P. Baxley.

In their motion, opposers request a thirty-day extension of their testimony period, which was last reset in

¹ When filing an unconsented motion to extend in a Board proceeding, a movant should contact the Board attorney assigned to that proceeding as soon as possible to alert the attorney to the filing thereof and to commence the process of scheduling of a telephone conference to resolve that motion.

the Board's February 20, 2009 order to close on June 15, 2009, prior to the commencement of their testimony period as last reset. Opposers seek the extension because their trial attorney is on maternity leave through mid-June and because one of opposers' key witnesses is unavailable during the first two weeks of June.

In response, applicant contends that at least four attorneys have worked for opposers on this case; that another attorney could take opposers' testimony depositions during the testimony period as currently set; and that granting the extension will delay resolution of the case and impede his ability to move forward with his business plans.

In reply, opposers contend that it has prepared this case from its New York, New York office using a team of three attorneys and used an attorney from its San Jose, California office for the limited purpose of taking a discovery deposition of applicant.²

Opposers must show that good cause exists for the extension sought. See Fed. R. Civ. P. 6(b)(1). The Board is generally liberal in granting extensions before the period to act has lapsed, provided that the moving party has

² Opposers stated that they may file a motion for summary judgment on its claim that applicant did not have a bona fide intent to use the mark in commerce when he filed his intent-to-use application. However, as often stated by the Board, factual questions involving intent are particularly unsuited to disposition on summary judgment. See *Copelands' Enterprises Inc.*

not been guilty of negligence or bad faith and the privilege of extensions is not abused. See, e.g., *American Vitamin Products, Inc. v. DowBrands Inc.*, 22 USPQ2d 1313 (TTAB 1992). Ordinarily, extended maternity leave is sufficient to establish good cause to justify an extension of time. See *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1851 (TTAB 2000).

The Board finds that, because opposers' trial attorney will be out of the office on maternity leave until mid-June and because one of their key witnesses will not be available for a testimony deposition during the first two weeks of June, there is good cause for the extension sought. Further, extending their testimony period to accommodate the availability of their trial attorney will not unreasonably delay resolution of this case.³

In view thereof, the motion to extend is granted. Testimony periods are reset as follows.

Plaintiff's 30-day testimony period to close:	July 15, 2009
Defendant's 30-day testimony period to close:	September 13, 2009
Plaintiff's 15-day rebuttal testimony period to close:	October 28, 2009

v. CNV Inc., 945 F.2d 1563, 20 USPQ2d 1295, 1299 (Fed. Cir. 1991).

³ In view of applicant's objections, however, the Board will not grant any further extensions of opposers' testimony period without either applicant's consent or a showing of extraordinary circumstances.

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

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.