

ESTTA Tracking number: **ESTTA305507**

Filing date: **09/10/2009**

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

Proceeding	91179897
Party	Plaintiff Information Builders, Inc.
Correspondence Address	Howard F. Mandelbaum Levine & Mandelbaum 222 Bloomingdale Road, Suite 203 White Plains, NY 10605 UNITED STATES mail@levman.com
Submission	Motion to Extend
Filer's Name	Howard F Mandelbaum
Filer's e-mail	mail@levman.com
Signature	/Howard F Mandelbaum/
Date	09/10/2009
Attachments	IBI_6490US Moton to Extend Tetimony Period.pdf ( 5 pages )(12393 bytes ) IBI_6490US HFM Dec in Motion to Extend Tetimony Period.pdf ( 5 pages ) (12888 bytes )



In the course of the conversation, opposer's attorney inquired as to whether the applicant was interested in discussing settlement of the matter. Opposer's attorney suggested that the principals of both parties speak directly and offered to ask his principal to contact applicant's attorney's principal in an effort to explore the possibility of settlement of the opposition. Applicant's attorney said that he would confer with his client and get back to opposer's attorney.

When the attorneys next spoke, applicant's attorney told opposer's attorney that his client was not interested in speaking with opposer and wanted opposer to propose terms for a settlement to be communicated between the attorneys.

Opposer's attorney suggested that it might be possible to propose an amendment to the applicant's identification of goods if opposer's attorney had more information about the nature of the goods on which the mark was being used. Applicant's attorney said that he did not have sufficient knowledge of the goods to more specifically describe them but would try to get the requested information from his client and then get back to opposer's attorney.

Having not heard from applicant's attorney, and with the close of opposer's testimony impending, opposer's

attorney telephoned applicant's attorney on September 8, 2009 to learn whether he had obtained the requested information about the nature of the goods from his client. Applicant's attorney then informed opposer's attorney, for the first time, that his client was not interested in amending his identification and would only settle the matter for a cash payment of \$200,000.

Opposer's attorney replied to Applicant's attorney that his client would not be willing to make the requested payment and that the opposition would have to be tried, and asked for his consent to a 30 day extension of the opposer's testimony period. Applicant's attorney replied that he could not give his consent to an extension because his client would not allow it.

Opposer's attorney explained to applicant's attorney what opposer's attorney believed to be the unreasonableness and unfairness of his refusal to consent after allowing opposer's testimony period to almost lapse pending his promised response. Applicant's attorney replied that he would talk to his client and see if he could get permission to give the requested consent.

At 3:10 P.M. on September 10, 2009, applicant's attorney telephoned opposer's attorney and said that his client had just sent him an email message instructing him

not to consent to the extension. Opposer's attorney told Applicant's attorney that opposer's attorney would, therefore, be making this motion for the extension.

Good cause for the extension is provided by opposer's good-faith efforts to reach an amicable settlement including deferring the taking of testimony while waiting for the promised response of applicant. Accordingly, favorable action on this request for an extension is believed appropriate and is respectfully requested.

Respectfully submitted,

Dated: September 10, 2009  
White Plains, NY

/Howard F. Mandelbaum/  
Howard F. Mandelbaum

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Motion To Extend Opposer's Testimony Period has been forwarded, this September 10, 2009 by first class mail to:

Roger L. Belfay, Esq.  
829 Tuscadora Avenue  
Saint Paul, Minnesota 55102

/Howard F. Mandelbaum/  
Howard F. Mandelbaum



4. On August 19, 2009, shortly after opposer's testimony period opened, I telephoned applicant's attorney, Roger L. Belfay, Esq., as a courtesy, to arrange mutually convenient dates for the testimony of opposer's President before serving a notice to take testimony.

5. In the course of our conversation, I inquired as to whether the applicant was interested in discussing settlement of the matter. I suggested that the principals of both parties speak directly and offered to ask my principal to contact Mr. Belfay's principal in an effort to explore the possibility of settlement of the opposition. Mr. Belfay said that he would confer with his client and get back to me.

6. When we next spoke, Mr. Belfay told me that his client was not interested in speaking with my client and wanted my client to propose terms for a settlement to be communicated between the attorneys.

7. I suggested that it might be possible to propose an amendment to the applicant's identification of goods if I had more information about the nature of the goods on which the mark was being used. Mr. Belfay said that he did not have sufficient knowledge of the goods to more specifically describe them but would try to get the

requested information from his client and then get back to me.

8. Having not heard from Mr. Belfay, and with the close of opposer's testimony impending, I telephoned Mr. Belfay on September 8, 2009 to learn whether he had obtained the requested information about the nature of the goods from his client. Mr. Belfay then informed me, for the first time, that his client was not interested in amending his identification and would only settle the matter for a cash payment of \$200,000.

9. I replied to Mr. Belfay that my client would not be willing to make the requested payment and that we would have to try the opposition, and asked for his consent to a 30 day extension of the opposer's testimony period. Mr. Belfay replied in a that he could not give his consent to an extension because his client would not allow it.

10. I explained to Mr. Belfay what I believed to be the unreasonableness and unfairness of his refusal to consent after allowing opposer's testimony period to almost lapse pending his promised response. Mr. Belfay replied that he would talk to his client and see if he could get permission to give the requested consent. In response to my specific inquiry, Mr. Belfay said that he would soon call me back with an answer.

11. At 3:10 P.M. on September 10, 2009, Mr. Belfay telephoned me and said that his client had just sent him an email message instructing him not to consent to the extension. I told Mr. Belfay that I would, therefore, be making this motion for the extension.

12. Good cause for the extension is provided by opposer's good-faith efforts to reach an amicable settlement including deferring the taking of testimony while waiting for the promised response of applicant.

The undersigned being warned that willful false statements and the like are punishable by fine or imprisonment, or both, under 18 U.S.C. 1001, and that such willful false statements and the like may jeopardize the validity of the application or document or any registration resulting therefrom, declares that all statements made of his/her own knowledge are true; and all statements made on information and belief are believed to be true.

Dated: September 10, 2009  
White Plains, NY

/Howard F. Mandelbaum/  
Howard F. Mandelbaum

CERTIFICATE OF SERVICE

It is hereby certified that a copy of the foregoing Declaration Of Howard F. Mandelbaum In Support Of Motion To Extend Opposer's Testimony Period has been forwarded, this September 10, 2009 by first class mail to:

Roger L. Belfay, Esq.  
829 Tuscadora Avenue  
Saint Paul, Minnesota 55102

/Howard F. Mandelbaum/  
Howard F. Mandelbaum