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

Proceeding	91183352
Party	Plaintiff The Coca-Cola Company
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Submission	Motion to Extend
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Attachments	25040 Motion for Enlargement of Time.PDF ( 5 pages )(130633 bytes )

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

The Coca-Cola Company,	)	
	)	
Opposer,	)	Opposition No.: 91183352
	)	Application Nos.: 76657209 and 76657207
v.	)	Marks: ROLA COLA and ROLA COLA
	)	NATURAL...LY respectively
Rola Cola Inc.	)	
	)	E-FILING
Applicant.	)	
	)	

**MOTION FOR ENLARGEMENT OF TIME UNDER F.R.C.P. 6(B)  
TO EXTEND DISCOVERY AND TESTIMONY PERIODS**

The Coca-Cola Company ("Opposer"), through undersigned counsel, hereby moves the Trademark Trial and Appeal Board ("Board") to extend the discovery and testimony periods in this proceeding by ninety (90) days. This extension of the discovery period is sought to complete the discovery process and is not sought for purposes of delay.

Pursuant to 37 C.F.R. Sections 2.120(a) and 2.121(a)(1), Trademark Trial and Appeal Board Manual of Procedure § 509.01(a) and Federal Rule of Civil Procedure 6(b), the Board is empowered to grant a motion to extend the discovery and testimony periods, even over the objection of a party, upon a showing of good cause. Good cause exists for the requested extension because Opposer has not received Applicant's responses to Opposer's First Set of Interrogatories, Opposer's First Request for Production of Documents, or Opposer's First Request for Admissions, which were due to be served well prior to the close of discovery and which Opposer is entitled to receive before its testimony period opens. Opposer has initiated the "meet and confer" process regarding Applicant's apparent refusal to provide any discovery

responses and Opposer anticipates bringing the matter to the Board's attention at the appropriate time through a motion to compel.

The Board's often stated policy is to be liberal in granting enlargements of time as long as the moving party has not been negligent or guilty of bad faith. American Vitamin Prod. Inc. v. Dow Brands Inc., 22 USPQ2d 1316 (TTAB 1992). The Board has also recognized that extensions of the discovery period are appropriate where a party has not complied with discovery requests served prior to the end of the discovery period. Johnston Pump/General Valve, Inc. v. Chromalloy American Corp., 10 USPQ2d 1671, 1676 (TTAB 1988) (allowing an extension to complete a deposition noticed before expiration of the discovery period). The appropriateness of extending the discovery period is further demonstrated where the extension is needed to complete discovery and the party opposing the motion can point to no specific prejudice that would result from granting the extension. Sunkist Growers, Inc. v. Benjamin Ansehl Co., 229 USPQ 147, 149 (TTAB 1985). The Board has even found good cause for an extension of the discovery period where the party seeking the extension waited until the last day of discovery to serve document requests. Luehrmann v. Kwik Kopy Corp., 2 USPQ2d 1303, 1305 (TTAB 1987) (granting extension for the limited purpose of completing the discovery initiated before the close of the discovery period).

In the present case, Opposer has been neither negligent nor guilty of bad faith. After pursuing settlement discussions for several months, Opposer served its discovery requests on Applicant on December 11, 2008, well prior to the close of the discovery period. Opposer now seeks an extension of the discovery period for the purpose of reviewing Applicant's past due responses to discovery previously initiated by Opposer, promptly serving follow-up discovery,

and noticing and taking appropriate discovery depositions. Opposer has been diligent in initiating and trying to complete discovery before the existing discovery period cutoff. Moreover, Applicant cannot possibly be prejudiced by the requested extension, as Applicant has failed to initiate any form of discovery in this proceeding and has failed to serve its responses to Opposer's outstanding discovery requests which were due before the current date for the close of discovery. To date, Opposer has received no response from Applicant to its inquiries regarding the status of Applicant's discovery responses. Furthermore, Opposer received no response to its request for Applicant's consent to the present motion.

An extension of the discovery period by ninety (90) days should be granted to enable Opposer to complete discovery that has already been initiated, or to pursue a motion to compel, and to allow both parties to initiate further appropriate discovery. Opposer does not anticipate that more than ninety (90) days will be required for this purpose, assuming that Applicant abides by its discovery obligations. The undersigned asserts that the foregoing represents good cause within the meaning of F.R.C.P. 6(b)(1) and TBMP § 509.01(a), and respectfully requests that this motion be granted and that the dates for this proceeding be reset as follows:

- Deadline for Discovery Conference : CLOSED
- Discovery Opens : CLOSED
- Initial Disclosures Due : CLOSED
- Expert Disclosure Due : CLOSED
- Discovery Closes : 05/08/2009
- Plaintiff's Pretrial Disclosures : 03/24/2009
- Plaintiff's 30-day Trial Period Ends : 06/22/2009
- Defendant's Pretrial Disclosures : 08/21/2009
- Defendant's 30-day Trial Period Ends : 10/05/2009
- Plaintiff's Rebuttal Disclosures : 10/20/2009
- Plaintiff's 15-day Rebuttal Period Ends : 11/19/2009

If for any reason the Board will not grant this motion, it is respectfully requested that the undersigned counsel for Opposer be contacted via telephone in accordance with the Board's project for telephone disposition of interlocutory matters.

Respectfully submitted,

SUTHERLAND ASBILL AND BRENNAN LLP

Dated: 2/6/09

By:   
James H. Johnson

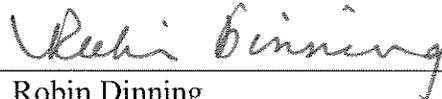
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*Counsel for Opposer  
The Coca-Cola Company*

**CERTIFICATE OF SERVICE**

The undersigned certifies that a true copy of the foregoing MOTION FOR ENLARGEMENT OF TIME UNDER F.R.C.P. 6(B) TO EXTEND DISCOVERY AND TESTIMONY PERIODS was sent on this 6th day of February, 2009 by first class mail, postage pre-paid to the following counsel for Applicant:

Ezra Sutton, Esq.  
Ezra Sutton, P.A.  
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Robin Dinning  
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