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Filing date: **04/07/2009**

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

Proceeding	91183753
Party	Defendant Diallo Yassinn Patrice
Correspondence Address	Diallo Yassinn Patrice 2 Square Tribord COURCOURONNES 91080, FRANCE yassinn.diallo@laposte.net
Submission	Opposition/Response to Motion
Filer's Name	Yassinn Patrice Diallo
Filer's e-mail	yassinn.diallo@laposte.fr
Signature	/yassinn patrice diallo/
Date	04/07/2009
Attachments	respondant_answer_to_motion_for_an_extension_of_time.pdf (16 pages) (816876 bytes)

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

HEAVEN HILL DISTILLERIES, INC)	
Opposer,)	Opposition No.91183753
V.)	Serial No. 77/266,196
)	
DIALLO YASSINN PATRICE,)	Intl Class: 033
)	
)	
Respondent,)	

RESPONDENT ANSWER TO MOTION FOR AN EXTENSION OF TIME

Applicant Yassinn Patrice Diallo files this reply in support of his answer to opposer's motion for an extension of time.

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and section 509.01(a) of the TTAB Manual of Procedure, Respondent Yassinn Patrice Diallo asks the TTAB to refuse the extension of time of Opposer Heaven Hill Distilleries in the current proceeding, Opposition number 91183753.

Heaven Hill asked the applicant Yassinn Patrice Diallo on March 13th, 2009 by letter to accept an extension of time to prepare its expert disclosure. Heaven Hill renewed his

request on March 20th, 2009 by mail. On March 20th, 2009, a week after the first request, Yassinn Patrice Diallo refused to accept their call, specifying them to stick to the new dates set by the TTAB following the refusal of the Board to grant the summary judgment of Heaven Hill on February, 24 2009.

This short notice of a week, given the distance between France and the United States and the jet lag, allowed applicant Yassinn Patrice Diallo to read the regulation on the subject in order to prepare his answer to the opposing party.

Moreover, this reply was made in very clear terms as opposed to what affirms the opposing party. Indeed, no aspect of the regulation obliges us to accept the extension of time, which under the rules must meet two requirements, pursuant to the section 509.01(a) of the TTAB Manual of Procedure.:

- First the good faith.
- Secondly a good cause.

A memorandum in support of the answer to this motion is attached

Respectfully submitted

DIALLO YASSINN PATRICE

Applicant

PROOF OF SERVICE

I hereby certify that a true and correct copy of Respondent's answer to Opposer's motion for an extension of time was served on the following counsel for Opposer by deposit in the French Mail, in Paris France, in a sealed envelope, with first class postage fully prepaid this 05 day of April, 2009:

Matthew A. Williams

Wyatt Tarrant & Combs, LLP

500 West Jefferson Street, Suite 2800

Louisville, KY 40202

UNITED STATES

502-562-7378 Telephone

Dated: April 05, 2009

DIALLO YASSINN PATRICE.

Applicant

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

HEAVEN HILL DISTILLERIES, INC)	
)	
Opposer,)	Opposition No.91183753
)	
V.)	Serial No. 77/266,196
)	
DIALLO YASSINN PATRICE,)	Intl Class: 033
)	
Respondent,)	

MEMORANDUM IN SUPPORT OF RESPONDENT ANSWER TO REFUSE THE
OPPOSER’S MOTION FOR AN EXTENSION OF TIME

Respondent Yassinn Patrice Diallo files this Memorandum in support of his answer to opposer’s motion for an extension of time to ask the TTAB to refuse to extend the deadlines in Opposition Number 91183753.

As opposed to what Heaven Hill affirms, they did not make any efforts to contribute in a positive way to advance the procedure. The deadlines reset by the board in its February 24, 2009 Order denying Heaven Hill' s motion for summary judgment did not have an impact on the fact that Heaven Hill was able long time ago to complete discovery and prepare for

trial. Heaven Hill cannot assert that the refusal of Respondent Yassinn Patrice Diallo to accept an extension of time can have consequences on the fact that since April 25th, 2008, the opposing party knew the deadline for expert disclosure then set on December 1st, 2008 (exhibit 1).

In addition, Heaven Hill knew that if the summary judgment would be refused, the procedure requested by itself dated November 4th, 2008 (exhibit 2), Heaven Hill should be able to provide its expert disclosure at a short notice (exhibit 1) (i.e. expert disclosure due December 1, 2008). Taking into account the fact that the opposing party is represented by a professional law firm specialist in the intellectual property, they could not be unaware of the regulation and the procedures.

That is why Respondent Yassinn Patrice Diallo respectfully requests the board to deny the Motion for year extension of time, and to stick to the deadlines set by the board in this proceeding dated February 24, 2009.

STATEMENT OF FACTS

On August 28, 2007 Yassinn Patrice Diallo filed Application Serial 77/196 to register the mark for specific alcoholic beverages in class 033. On April 8, 2008, after a letter of protest from the Opposing Party to avoid the publication of the application of the mark HYPNOTIZER, Heaven Hill was unable to prevent the publication of the mark HYPNOTIZER because the Board denied their request.

Since filing this Opposition on April 25, 2008, Heaven Hill attempted to stop the proceeding. On November 4, 2008, Heaven Hill attempted to stop the proceeding of this case by filing its Motion for Summary Judgment. The Board subsequently issued year order to stay on the proceedings on November 13, 2008, pending a decision on the motion. On February 24, 2009, the Board issued an order denying Heaven Hill's motion. In this Order, the Board also reset the remaining deadlines in these proceedings. Heaven Hill Distilleries are represented in this case by a major law firm in the intellectual property WYATT, TARRANT & COMBS, LL.

The argument is not admissible that Matthew A Williams, the counsel of Heaven Hill Distilleries, was unaware that it was necessary to prepare the defense of their client (Heaven Hill) since the early knowledge of the expert disclosure's dates set by the TTAB on 25th April 2008 (i.e. on 1st December 2008) then postponed to 31st March 2009 as a result of the procedure for summary judgment, requested by them on 04 November 2008. They could not ignore the fact that if their Motion for Summary Judgment was refused the procedure would continue.

The opposing party sent an e-mail on March 11th, 2009 and a letter corresponding to this e-mail on March 13th, 2009 by Federal Express to Mr Yassinn Patrice Diallo. The counsel of Heaven Hill tried to join Mr Yassinn Patrice Diallo also by telephone on March 13th and March 18th 2009 to discuss the request for extension of time.

Not able to reach Mr. Yassinn Patrice Diallo by telephone, the counsel of Heaven Hill again reiterated his request with Mr. Yassinn Patrice Diallo by e-mail dated March 18th, 2009 followed by a letter sent by Federal Express and received in date March 20th, 2009.

On March 20th, 2009, the counsel of heaven Hill received a response by electronic mail refusing his request from Mr Yassinn Patrice Diallo. Matthew A Williams, the counsel of Heaven Hill and lawyer specialist in the intellectual property, seems not to take into account two factors while trying to make believe that the answer to his request was late. First element, the distance between France and Kentucky is 8000 kilometers and 6 hours of jet lag. Second element my activities. It is therefore obvious that having also activities I would not be obliged to be in my residence, when Matthew A Williams decides to call me at a time stipulated by him, and especially when I am not present.

For these reasons I needed approximately one week to prepare my answer after having read the documentation of the TTAB Manual Procedure on the subject. This time in reply does not seem to me too long taking into account the information to which reference was made above.

As a result of my refusal, Heaven Hill asked me again me to reconsider my position, which I had no reason to change since Heaven Hill and its counsel Matthew A Williams, knew the deadline since April 25th, 2008 the date of their opposition filed and the date of Notice and Trial set by the Board (expert disclosure due on December 1st, 2008).

On November 13th, 2008 the Board issued the order regarding the proceedings while waiting for the result of motion for summary judgment. The opposing party and its counsel could not ignore that the dates would be again effective if motion for summary judgment was rejected. I could not thus accept the fact and the argument according to which, a law firm specialist in the intellectual property having great and long experience of these procedures, could ignore these deadlines and claims to be caught in time.

ARGUMENT

Pursuant to section 509.1 of the Trademark Trial and Appeal Board Manual of Procedure (« TBMP »), and especially to section 509.01(a) Motions to Extend Time: « « A motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension; mere conclusory allegations lacking in factual detail are not sufficient. {See, e.g., *Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479, 1480 (TTAB 2000)}

Moreover, a party moving to extend time must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor. The Board will «scrutinize carefully» any motion to extend time, to determine whether the requisite good cause has been shown. «

Contrary of what Heaven Hill tries to affirm, the opposing party has been guilty of negligence and of bad faith: the opposing party wrote his argument in Opposer's motion of extension of time dated March 24, 2009 that: « *Heaven Hill previously moved for summary judgment on the belief that there were no disputed issues of material fact. Upon the suspension of the proceeding for the Board to consider its motion, Heaven Hill reasonably and justifiably **suspended its efforts to prepare the case for trial** since such efforts would have been unnecessary if its motion had been granted* ».

In addition, it seems difficult to believe that such a firm like Heaven Hill in its good faith has so much difficulty as he affirmed it: « to **determine(d) what proof it would need to present at trial and how to gather that proof, and evaluated its ability to prepares its case for trial** under the deadlines as reset by the Board in the Order». And to add that:

« Within two (2) weeks of the Order being issued, Heaven Hill realized that it would not be able to prepare its case for trial within the reset deadlines».

Heaven Hill and its counsel had sufficient time to determine whether they wish to engage one or more experts to support their case. Heaven Hill should identify and have engaged the experts, and provide the required expert disclosure before the deadline.

In fact they knew a long time before that this expert disclosure was coming since 25 April 2008, in despite of their efforts to stop it. They knew that the summary judgment could be rejected, and they would have to be ready to continue the procedure.

Heaven Hill has not been diligent in its prosecution of this matter and has sought to delay the proceedings and in consequence acted in bad faith and in a dilatory manner to save time. Each act posed by Heaven Hill demonstrates.

Having not shown good cause for the extension of time and not demonstrated that Heaven Hill has not been negligent or acted in bad faith and not having shown that Yassinn Patrice Diallo will not be unduly prejudiced by an extension, Yassinn Patrice Diallo respectfully requests that the Board sticks to the Deadlines reset by the Board on February 24, 2009.

The counsel of Heaven Hill is familiar with this proceeding as specialist law firm. He is supposed to know the laws and the rules better than the respondent who is neither a counsel nor a specialist in the intellectual property.

Heaven Hill's situation is the result of bad faith and inexcusable negligence, and its counsel should have made the right thing on the right time as a professional, i.e. a law firm specialist in the matter.

SUMMARY

Heaven Hill acted with bad faith and in a dilatory manner to save time in this proceeding. Heaven Hill has not been diligent in its prosecution and knew that he should be ready for the continuation of proceeding if its motion for summary judgment was denied. Moreover Heaven hill's counsel knew the deadlines a long time before, and as professional and specialist law firm in the intellectual property, he should be ready for expert disclosure. Heaven Hill has not shown good cause thus the Board should not grant Heaven Hill motion for an extension of time that will delay the end of the trial.

Respectfully submitted

DIALLO YASSINN PATRICE

Applicant

PROOF OF SERVICE

I hereby certify that a true and correct copy of Respondent's answer to the memorandum of the opposing party in their support of a motion for an extension of time was served on the following counsel for Opposer by deposit in the French Mail, in Paris France, in a sealed envelope, with first class postage fully prepaid this 05 day of April, 2009:

Matthew A. Williams

Wyatt Tarrant & Combs, LLP

500 West Jefferson Street, Suite 2800

Louisville, KY 40202

UNITED STATES

502-562-7378 Telephone

Dated: April 05, 2009

DIALLO YASSINN PATRICE.

Applicant

EXHIBIT 1

EXH. BT 1

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

Mailed: April 25, 2008

Opposition No 91183753
Serial No. 77266196

Diallo Yassinn Patrice
2 Square Tribord
COURCOURONNES 91080, FRANCE

Heaven Hill Distilleries, Inc.

v.

Diallo Yassinn Patrice

Matthew A. Williams
Wyatt, Tarrant & Combs, LLP
500 W. Jefferson Street, Suite 2800
Louisville, KY 40202 UNITED STATES

Millicent Canady, Paralegal Specialist

A notice of opposition to the registration sought by the above-identified application has been filed. A service copy of the notice of opposition was forwarded to applicant (defendant) by the opposer (plaintiff). An electronic version of the notice of opposition is viewable in the electronic file for this proceeding via the Board's TTABVue system: <http://ttabvue.uspto.gov/ttabvue/>.

Proceedings will be conducted in accordance with the Trademark Rules of Practice, set forth in Title 37, part 2, of the Code of Federal Regulations ("Trademark Rules"). These rules may be viewed at the USPTO's trademarks page: <http://www.uspto.gov/main/trademarks.htm>. The Board's main webpage (<http://www.uspto.gov/web/offices/dcom/ttab/>) includes information on amendments to the Trademark Rules applicable to Board proceedings, on Alternative Dispute Resolution (ADR), Frequently Asked Questions about Board proceedings, and a web link to the Board's manual of procedure (the TBMP).

Plaintiff must notify the Board when service has been ineffective, within 10 days of the date of receipt of a returned service copy or the date on which plaintiff learns that service has been ineffective. Plaintiff has no subsequent duty to investigate the defendant's whereabouts, but if plaintiff by its own voluntary investigation or through any other means discovers a newer correspondence address for the

EXHIBIT 1

defendant, then such address must be provided to the Board. Likewise, if by voluntary investigation or other means the plaintiff discovers information indicating that a different party may have an interest in defending the case, such information must be provided to the Board. The Board will then effect service, by publication in the Official Gazette if necessary. See Trademark Rule 2.118. In circumstances involving ineffective service or return of defendant's copy of the Board's institution order, the Board may issue an order noting the proper defendant and address to be used for serving that party.

Defendant's ANSWER IS DUE FORTY DAYS after the mailing date of this order. (See Patent and Trademark Rule 1.7 for expiration of this or any deadline falling on a Saturday, Sunday or federal holiday.) **Other deadlines the parties must docket or calendar are either set forth below (if you are reading a mailed paper copy of this order) or are included in the electronic copy of this institution order viewable in the Board's TTABVue system at the following web address: <http://ttabvue.uspto.gov/ttabvue/>.**

Defendant's answer and any other filing made by any party must include proof of service. See Trademark Rule 2.119. **If they agree to, the parties may utilize electronic means, e.g., e-mail or fax, during the proceeding for forwarding of service copies.** See Trademark Rule 2.119(b)(6).

The parties also are referred in particular to Trademark Rule 2.126, which pertains to the form of submissions. **Paper submissions, including but not limited to exhibits and transcripts of depositions, not filed in accordance with Trademark Rule 2.126 may not be given consideration or entered into the case file.**

Time to Answer	6/4/08
Deadline for Discovery Conference	7/4/08
Discovery Opens	7/4/08
Initial Disclosures Due	8/3/08
X Expert Disclosures Due	12/1/08
Discovery Closes	12/31/08
Plaintiff's Pretrial Disclosures	2/14/09
Plaintiff's 30-day Trial Period Ends	3/31/09
Defendant's Pretrial Disclosures	4/15/09
Defendant's 30-day Trial Period Ends	5/30/09
Plaintiff's Rebuttal Disclosures	6/14/09
Plaintiff's 15-day Rebuttal Period Ends	7/14/09

As noted in the schedule of dates for this case, the parties are required to have a conference to discuss: (1) the nature of and basis for their respective claims and defenses, (2) the possibility of settling the case or at least narrowing the scope of claims or defenses, and (3) arrangements relating to disclosures, discovery and introduction of evidence at trial, should the parties not agree to settle the case. See Trademark Rule 2.120(a)(2). Discussion of the first two of these

EXHIBIT 2

Exhibit 2



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TTABVUE. Trademark Trial and Appeal Board Inquiry System

v1.4

Opposition

Number: 91183753

Filing Date: 04/25/2008

Status: Pending

Status Date: 04/25/2008

Interlocutory Attorney: ROBERT COGGINS

Defendant

Name: Diallo Yassinn Patrice

Correspondence: Diallo Yassinn Patrice
 2 Square Tribord
 COURCOURONNES 91080,
 yassinn.diallo@laposte.net

Serial #: 77266196 Application File

Application Status: Opposition Pending

Mark: HYPNOTIZER

Plaintiff

Name: Heaven Hill Distilleries, Inc.

Correspondence: Matthew A. Williams
 Wyatt, Tarrant & Combs, LLP
 500 W. Jefferson Street, Suite 2800
 Louisville, KY 40202
 mwilliams@wyattfirm.com, mcapiro@wyattfirm.com

Serial #: 76519929 Application File **Registration #:** 2834133

Application Status: Registered

Mark: HPNOTIQ

Serial #: 76519684 Application File **Registration #:** 2834130

Application Status: Registered

Mark: HPNOTIQ

Serial #: 76463356 Application File **Registration #:** 2822475

Application Status: Registered

Mark: HPNOTIQ HQOPN

Serial #: 76372289 Application File **Registration #:** 2642855

Application Status: Section 8 and 15 - Accepted and Acknowledged

Mark: HPNOTIQ

Prosecution History

#	Date	History Text	Due Date
11	03/24/2009	P'S MOTION FOR AN EXTENSION OF TIME	
10	02/24/2009	MOTION FOR SUMMARY JUDGMENT DENIED	
9	01/15/2009	D'S REPLY IN SUPPORT OF MOTION	
8	12/08/2008	P'S REPLY IN SUPPORT OF MOTION	
7	11/18/2008	D'S OPPOSITION/RESPONSE TO MOTION	
6	11/13/2008	SUSPENDE PENDING DISP OF OUTSTNDNG MOT	
X 5	11/04/2008	P'S MOTION FOR SUMMARY JUDGMENT	
4	06/03/2008	ANSWER	
3	04/25/2008	PENDING, INSTITUTED	