

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

Mailed: September 30, 2009

Opposition No. 91183753

Heaven Hill Distilleries, Inc.

v.

Yassinn Patrice Diallo

**Robert H. Coggins,**  
**Interlocutory Attorney:**

On August 19, 2009, proceedings were suspended in this opposition proceeding pending a response from opposer in Opposition No. 91173767 (between the same parties to the instant opposition and concerning virtually identical marks and goods). On September 17, 2009, opposer filed a motion in Opposition No. 91173767 asking that Opposition No. 91173767 be dismissed as moot. Shortly thereafter the Board granted the motion and dismissed Opposition No. 91173767 without prejudice as moot. In view thereof, the Board now takes up opposer's outstanding motion (filed March 24, 2009) to extend the deadline for expert disclosures in the instant opposition by ninety days from the date of this order. The motion is fully briefed.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is good cause. See Fed. R. Civ. P. 6(b)(1) and TBMP Section 509.01 (2d ed. rev. 2004). Ordinarily, the Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. *American Vitamin Products Inc. v. Dow Brands Inc.*, 22 USPQ2d 1312, 1314 (TTAB 1992). The party moving for an extension bears the burden of proof, and must "state with particularity the grounds therefor, including detailed facts constituting good cause." *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999). See also, Trademark Rule 2.127(a); 4B C.A. Wright and A.R. Miller, Fed. Prac. & Proc. Civ.3d §1165 (2007 update); *HKG Industries, Inc. v. Perma-Pipe, Inc.*, 49 USPQ2d 1156, 1158 (TTAB 1998); and *Johnston Pump/General Valve Inc. v. Chromally American Corp.*, 13 USPQ2d 1719, 1720 n.3 (TTAB 1989). 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); and *Luemme, Inc., supra*.

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. See *Luemme, Inc., supra* 1760-61; and *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1851 (TTAB 2000). The Board will "scrutinize carefully" any motion to extend time, to determine whether the requisite good cause has been shown. See *Miscellaneous Changes to Trademark Trial and Appeal Board Rules*, 63 FR at 48086 (1998), 1214 TMOG at 149 (September 29, 1998). See also *Luemme, supra*.

In support of the motion extend, opposer states that the schedule set by the Board upon denial of opposer's motion for summary judgment does "not allow" opposer "sufficient time to complete discovery and prepare for trial." Specifically, opposer claims that the expert disclosure deadline, reset for "a mere five (5) weeks following the Board's denial" of the motion for summary judgment, does "not provide [opposer] with sufficient time to properly prepare its case for trial."

While opposer states that it believed that this case would be disposed of upon determination of its motion for summary judgment, and that it did not proceed with trial preparation after filing the motion for summary judgment, opposer does not state what actions it took to prepare for trial prior to filing that motion. Opposer is conspicuously silent on what activities it engaged in or how it prepared this case for trial prior to filing its motion for summary judgment. Opposer's motion to extend and reply in support

thereof are devoid of facts to support opposer's conclusion that the trial schedule, as reset, does not allow opposer "sufficient time to properly prepare" for trial.

Expert disclosures, as originally scheduled, were due in this case on December 1, 2008. When opposer filed its motion for summary judgment on November 4, 2008, there were twenty-seven days remaining before the deadline for expert disclosures. Upon denial of opposer's motion for summary judgment (approximately three and a half months after it was filed), the Board resumed proceedings and reset the trial schedule to allow the parties thirty-five days before the deadline for expert disclosures. This schedule provided the parties with more time than they had going into the motion.

Moreover, it is noted that opposer waited until only fifty-seven days remained in the discovery period before filing its motion for summary judgment. Upon resumption of proceedings, the Board reset discovery to close sixty-five days later. Again, the parties gained time.

Opposer's motion provides no facts and dates upon which it took any action prior to the filing of the motion for summary judgment. And, notably, the only facts and dates opposer does provide in its motion to extend show only that it attempted to contact applicant to seek an extension of time after the Board denied the motion for summary judgment and

opposer had determined that, in its opinion, it did not have sufficient time to prepare for trial.

Opposer appears to portray applicant as uncooperative because applicant would not consent to the extension of time desired by opposer. However, applicant is under no obligation to consent to a motion to extend time.<sup>1</sup> Opposer filed this opposition against applicant, and it is opposer's obligation to move forward toward trial.

This being opposer's first request for an extension of time, it cannot be said that opposer has abused the privilege of extension. There is also no evidence of bad faith on the part of opposer in requesting the extension. However, opposer has provided only mere conclusory allegations lacking in factual detail. Opposer has not provided detailed facts, that is, stated with particularity, the grounds for the extension sought. Moreover, opposer has not demonstrated that the requested extension of time is not necessitated by its own lack of diligence or unreasonable delay.

On balance, opposer's sparse motion does not meet the burden of showing good cause to extend the deadline for expert disclosure. Accordingly, opposer's motion is denied.

---

<sup>1</sup> The Board recognizes that parties frequently consent to extensions of time as a courtesy to each other and when such extensions are warranted. While the Board appreciates cooperation among the parties to Board proceedings, and appreciates the parties' efforts to resolve matters without resorting to motion practice, the Board is mindful that one party

However, because of the procedural nature of this opposition vis-à-vis Opposition No. 91173767 (which involved the same parties and virtually identical marks and goods), because it has taken the Board several months to take up the issue of extension herein, and because it appears that opposer attempted in good faith to resolve the extension issue without resorting to motion practice, the Board exercises its discretion and resets expert disclosure deadlines on the following schedule.<sup>2</sup>

Expert Disclosures Due	10/21/2009
Discovery Closes	11/20/2009
Plaintiff's Pretrial Disclosures	1/4/2010
Plaintiff's 30-day Trial Period Ends	2/18/2010
Defendant's Pretrial Disclosures	3/5/2010
Defendant's 30-day Trial Period Ends	4/19/2010
Plaintiff's Rebuttal Disclosures	5/4/2010
Plaintiff's 15-day Rebuttal Period Ends	6/3/2010

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).

---

need not capitulate where there is no explanation offered for an act sought by the opposing party.

<sup>2</sup> It has been six months since opposer originally filed its motion for an extension of time. The Board presumes that opposer has made good use of its time since then to mitigate the issue of not having "sufficient time to complete discovery and prepare for trial."

Opposition No. 91183753

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.