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

Proceeding	91184529
Party	Defendant Global Tissue Group, Inc.
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BEFORE THE UNITED STATES
TRADEMARK TRIAL AND APPEAL BOARD

GEORGIA-PACIFIC CONSUMER PRODUCTS LP, Opposer, v. GLOBAL TISSUE GROUP, INC., Applicant.	Opp. No. 91184529 Serial No. 77/364616

APPLICANT'S OPPOSITION TO MOTION TO EXTEND DISCOVERY PERIOD

In its Motion to Extend Discovery Period, Opposer seeks to enlarge the time for discovery for two months without limitation. For the reasons discussed below, Applicant consents to an extension for the limited purpose of scheduling already-noticed depositions in this case, but objects to Opposer's motion to the extent that it would extend discovery for all purposes. Opposer has repeatedly conducted this opposition in a manner that delays the parties' ability to reach a conclusion, conduct that should not be rewarded with a wholesale extension of the trial calendar. Moreover, a continued delay of a resolution of this matter on the merits harms Applicant by prolonging Applicant's ability to adopt the QUILTY mark with some certainty from the Board of its right to do so, and increasing the cost of this Opposition.

The Board routinely exercises its authority to control the discovery process to streamline Opposition proceedings to a fair and expedient resolution. See,

e.g., Guthy-Renker Corp. v. Boyd, 88 USPQ2d 1701, 1704 (TTAB 2008) (the Board's new rules were adopted to "facilitate a smooth and timely conclusion to Board proceedings"); Gaylord Entertainment Co. v. Calvin Gilmore Productions Inc., 59 USPQ2d 1369 (TTAB 2000) (Opposer's motion to reopen discovery denied as a result of Opposer's conduct).

Only by limiting an extension of the discovery period in this case can such an outcome arise, as Opposer has failed to demonstrate why it should be granted an extension of the discovery period for any purpose other than to schedule the depositions of Freydoun Elhekaveh and the Rule 30(b)(6) corporate designee of Applicant.[1] To be clear, Applicant is willing, and hereby consents, to extend the discovery period for the limited purposes of taking those two depositions. Indeed, contrary to the misleading statement in Opposer's Motion that Applicant would not be willing to extend discovery, Applicant already provided Opposer with its consent to extend discovery for the purpose of taking properly noticed depositions. Such consent was given immediately upon Opposer's request for an extension and well prior to Opposer filing this Motion.

Opposer raises two main arguments in support of its motion. First, Opposer claims that a change of counsel contributes to the need for a general discovery extension. Opposer is a large, sophisticated company, and has been represented by competent trademark counsel throughout this Opposition.

[1] On January 8, 2009, Opposer noticed these two depositions for January 29, 2009 without the courtesy of first trying to arrange an agreeable time to conduct them. Applicant made it immediately clear that the travel schedules of Mr. Elhekaveh and its Rule 30(b)(6) designee would prevent depositions on those dates and that they would not be available until the latter part of February. Applicant regrets their unavailability, and understands without question that Opposer should have the right to conduct these depositions.

Opposer's present counsel identified itself to Applicant on November 24, 2008, approximately two months before filing its motion to extend the trial calendar, so there was more than sufficient time for it to manage its discovery calendar.[2] Further, a change of counsel cannot excuse Opposer from its obligation to respect discovery dates and deadlines, particularly when the change in counsel does not stem from a reason related to hardship.

Opposer's characterization that discovery has not been completed because of a dispute over the entry of a protective order is similarly inaccurate and disingenuous. Although the Board's standard protective order remains in place until such time as the parties and/or the Board modify it, Opposer acted as though the parties had no system in place for the production and handling of confidential information and documents. Had Opposer acted according to the Board's rules of practice, discovery would be nearly complete but for the two noticed depositions. Opposer should not be rewarded for its dilatory discovery conduct, particularly at Applicant's expense.

As a practical matter, additional discovery time will offer Opposer no significant benefit. The central issues to the basis of Opposer's Opposition, namely that an unused mark, which is the subject of an intent-to-use application, is confusingly similar to one or more of Opposer's registered marks, are not likely to turn on information learned in discovery obtained from Applicant. Further,

[2] In fact, Opposer's new counsel's took over this matter more than 80 days before the close of discovery and their formal notice of appearance was entered more than 60 days before the close of discovery.

Opposer has already propounded an enormous amount of discovery -- 57 interrogatories and 51 document requests to date.[3]

Accordingly, Applicant urges the Board not to further delay the conclusion of this case by granting a wholesale extension of the discovery period as requested by Opposer. Instead, the Board should extend the discovery period only for the limited purpose of taking already-noticed depositions.[4]

Respectfully submitted,

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Dated: February 4, 2009

[3] As partially referenced in Applicant's Opposition to Opposer's Motion for Protective Order, the overwhelming breadth of these requests certainly gives rise to the inference that Opposer is trying to use the discovery process for purposes other than simply pursuing this Opposition.

[4] Nothing in Applicant's response should be deemed as an argument to limit either party's prospective right to seek additional relief from this Board against the other if a party fails or failed to properly respond to a discovery request that was properly served before the close of discovery.

CERTIFICATE OF SERVICE

I hereby certify that on this 4th day of February, 2009, a true and correct copy of the foregoing Applicant's Opposition to Motion to Extend Discovery was sent by first class mail, postage pre-paid to the following:

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