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

Dunn

Mailed: May 27, 2009

Opposition No. 91187460

Tyler Perry

v.

Edith M. Jebbinson and
Novella S. Brown

Elizabeth A. Dunn, Attorney (571-272-4267):

Opposer's unserved motion, filed May 11, 2009, to extend the deadline for the parties' discovery conference is denied because opposer fails to show the requisite good cause.[1]

Pursuant to the Board's February 2, 2009 order, the discovery conference was to be conducted by April 8, 2009. In support of its motion for extension, opposer asserts that it has made several unsuccessful attempts via email and first class mail to arrange and conduct the conference with applicants.

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[1] In order to expedite this matter, a copy of opposer's motion is forwarded herewith to applicants. Notwithstanding this action by the Board, strict compliance with Trademark Rule 2.119 is required by opposer in all future papers filed with the Board.

This does not constitute good cause for extension. The obligation to confer is a mutual obligation of the parties. *See Guthy-Renker Corporation v. Michael Boyd*, 88 USPQ2d 1701 (TTAB 2008). The Board's rules provide the appropriate response when a party avoids its obligation to schedule and conduct the discovery conference by the Board's deadline. "When a party fails to participate in the required discovery conference, an adverse party may move for entry of sanctions under Trademark Rule 2.120(g)(1) even in the absence of a Board order compelling participation." *Kairos Institute of Sound Healing, LLC v. Doolittle Gardens, LLC*, 88 USPQ2d 1541 fn3 (TTAB 2008).[2]

Opposer is allowed until thirty days from the mailing date of this order to file a motion for sanctions, failing which the Board will assume that the discovery conference has taken place.

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[2] Moreover, a party frustrated in its attempts to meet this obligation may seek Board participation in the conference. Trademark Rule 2.120(a)(2)("A Board Interlocutory Attorney or Administrative Trademark Judge will participate in the conference upon request of any party made after answer but no later than ten days prior to the deadline for the conference."). In its discretion the Board may waive the requirement for ten days notice of a request for Board participation if the reason for the delay was the inability to reach the other party.

In practical terms, if Board participation has been requested, a party's recalcitrance in scheduling the discovery conference would be brought to the Board's attention without the necessity of filing a motion for sanctions.

In view of the circumstances detailed herein, disclosure, discovery and trial dates are reset below:

Initial Disclosures Due	**6/26/09**
Expert Disclosures Due	**10/18/09**
Discovery Closes	**11/17/09**
Plaintiff's Pretrial Disclosures	**1/1/10**
Plaintiff's 30-day Trial Period Ends	**2/15/10**
Defendant's Pretrial Disclosures	**3/2/10**
Defendant's 30-day Trial Period Ends	**4/16/10**
Plaintiff's Rebuttal Disclosures	**5/1/10**
Plaintiff's 15-day Rebuttal Period Ends	**5/31/10**

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing after briefing is not required but will be scheduled upon request of any party, as provided by Trademark Rule 2.129.

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The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses: http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:
http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm