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

Mailed: February 9, 2011

Opposition No. 91194772

Cannery Casino Resorts, LLC

v.

Omri S. Shellef

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

Motion to Extend Time

On December 30, 2010, opposer filed a motion to extend the trial schedule in this proceeding as was previously set in the Board's institution order mailed on May 5, 2010. Applicant, *pro se*, did not respond specifically to opposer's motion. Rather, applicant filed a request on January 5, 2011 for the Board "to expedite trademark registration," which does not address opposer's motion to extend. Instead, applicant asserts, *inter alia*, that due to opposer's conduct since prior to the filing of the notice of opposition, little progress has been made to resolve this matter. Based on applicant's various assertions, applicant requests that the Board "take matters … back into its own hands and accelerate the registration process" for his mark. In response, opposer essentially argues that applicant's motion

should not be considered inasmuch as it fails to request relief that is recognized under the applicable Trademark Rules.

Inasmuch as applicant's response to opposer's motion to extend was submitted within the time period allowed for a response to a motion, and applicant does not concede opposer's motion to extend, the Board does not deem opposer's motion to be conceded and considers opposer's motion on its merits.

As a basis for its motion, opposer explains that the parties have been engaged in settlement discussions; that it sent a draft settlement agreement to applicant on July 17, 2010; that it did not receive applicant's purported "initial disclosures" until October 2010; and that, in view of the apparent, yet unexpected failure of settlement negotiations, opposer did not serve discovery requests or schedule applicant's deposition until on or about December 29, 2010. Opposer specifically seeks an additional ninety days to complete discovery in order to prepare for the testimony periods.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is good cause, and a motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension. *See* Fed. R. Civ. P. 6(b)(1). *See also Luemme*

Inc. v. D.B. Plus Inc., 53 USPQ2d 1758 (TTAB 1999). The Board will scrutinize carefully any such motions in determining whether good cause has been shown, including the diligence of the moving party, and whether the moving party is guilty of negligence or bad faith and whether the privilege of extensions has been abused. *Id. See also American Vitamin Products, Inc. v. DowBrands Inc.,* 22 USPQ2d 1316 (TTAB 1992).

Here, opposer filed its motion to extend time within a few days of having received applicant's "request to expedite trademark registration," and before the close of the discovery period. There is no evidence that opposer is acting in a dilatory manner or in bad faith, and this is opposer's first request for an extension of time in this proceeding. Further, it is apparent that the forward progress of this proceeding has been delayed partly as a result of applicant's *pro se* status.

For these reasons, opposer has shown good cause so as to warrant an extension of the discovery period and subsequent trial dates. Accordingly, opposer's motion to extend the discovery period for ninety days is <u>granted</u>. In view of the parties' stipulation to suspend these proceedings pending their settlement negotiations, trial dates will be reset at the conclusion of this order.

Joint Motion for Suspension

The Board also notes the parties' stipulation (filed February 8, 2011) to suspend this proceeding so that the parties can conduct their settlement negotiations. Said motion is granted. *See* Trademark Rule 2.127(a). Accordingly, this proceeding is **SUSPENDED** for ninety days from the mailing date of this action, subject to the right of either party to request resumption at any time. *See* Trademark Rule 2.117(c).

Applicant's Request "To Expedite Trademark Registration"

In view of the parties' joint motion to suspend this proceeding for settlement negotiations, applicant's request is moot and will be given no further consideration.

However, in view of the nature of applicant's motion, applicant is required to contact the assigned Interlocutory Attorney to request a joint conference with the Board and opposer's counsel *before* he submits another motion or request with the Board. Additionally, applicant is reminded that **strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.**

Trial Schedule Reset

In the event that there is no word from either party concerning the progress of their negotiations, upon

conclusion of the ninety-day suspension period, this proceeding shall resume on May 11, 2011, without further notice or order from the Board, upon the schedule set out below.

Proceeding Resumes	**5/11/2011**
Expert Disclosures Due	**7/9/2011**
Discovery Closes	**8/8/2011**
Plaintiff's Pretrial Disclosures	**9/22/2011**
Plaintiff's 30-day Trial Period Ends	**11/6/2011**
Defendant's Pretrial Disclosures	**11/21/2011**
Defendant's 30-day Trial Period Ends	**1/5/2012**
Plaintiff's Rebuttal Disclosures	**1/20/2012**
Plaintiff's 15-day Rebuttal Period Ends	**2/19/2012**

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

If, during the suspension period, either of the parties or their attorneys should have a change of address, the Board should be so informed.

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