

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

Mailed: May 14, 2012

Opposition No. 91197669

Opposition No. 91197670

TYR Sport, Inc.

v.

Marc Dushey

Cheryl S. Goodman, Interlocutory Attorney:

This case now comes up on applicant's motion, filed March 5, 2012, to extend discovery.¹ Opposer has filed a response in opposition thereto.

Applicant seeks a 60-day extension of time to "complete a proper deposition" and to "complete final discovery." He advises that he is seeking to "hold the deposition during the week of April 16 thru the 22nd." Applicant submits that he does "not have enough time to complete my discovery and will leave me unprepared in this case." [sic].

In response, opposer argues that this is the third extension of time sought for the discovery period and that the Board has already granted applicant "an extra 120 days of discovery." Opposer also complains about other delays in the case.

¹ As last reset, discovery was set to close on March 12, 2012.

The standard for granting an extension of time is good cause. See Fed. R Civ. P. 6(b) and TBMP § 509.01(a) (3d ed. 2011) and authorities cited therein. A motion to extend should 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. TBMP 509.01(a). A motion to extend time must set forth the facts in sufficient detail to establish good cause for an extension. *Id.*

In this case, discovery opened on February 10, 2011, with discovery set to close on August 9, 2011. On July 28, 2011, a stipulation to extend was filed and granted which set discovery to close on November 7, 2011. The basis for that extension was the parties needed additional time for discovery. When proceedings were consolidated, on September 26, 2011, the close of discovery remained November 7, 2011. On September 27, 2011, when applicant's counsel sought withdrawal, counsel advised that "the parties are presently engaged in discovery." At the time of suspension for applicant's counsel's withdrawal, on October 4, 2011, thirty-four days remained for discovery. After seeking a number of extensions to appoint new counsel, which were granted, applicant advised on January 6, 2012, that he would represent himself. The Board then resumed proceedings on January 13, 2012, and reset dates with discovery set to

close on March 12, 2012; the Board provided the parties with 59 days to complete discovery. On the basis of the extensions in this case, applicant has had nearly 10 months to take and complete discovery.

The Board finds that applicant's motion to extend is vague and provides no detailed factual information. In particular, applicant has not provided any specific information about what discovery was taken during the nearly 10 month discovery period, why the necessary discovery was not or could not be completed during the time already allotted, and what discovery remains uncompleted and outstanding, so as to support an extension of the discovery period.² With regard to the taking of depositions, applicant has not explained his efforts to complete the depositions prior to proceedings being suspended for withdrawal of counsel, nor has he explained his efforts to schedule and complete the depositions after proceedings resumed in January 2012.

Thus, no information has been provided by applicant to establish his diligence in taking discovery during the nearly 10 month discovery period nor has applicant provided any detailed factual information to explain his need for an additional sixty days to complete discovery.

² Clearly the parties were engaged in the exchange of discovery, as indicated by the filings of applicant's former counsel on July 28, 2011 and September 27, 2011.

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Based on the information provided by applicant in his motion, the Board finds that applicant has failed to make a showing of good cause to extend the discovery period. In view thereof, the motion to extend is denied.

The Board notes that opposer filed a motion to suspend for settlement negotiations for a two week period, without consent, on April 26, 2012. The motion advises that opposer is seeking applicant's consent and opposer "will advise the Board if consent to the motion is received. Accordingly, consideration of this motion is deferred pending confirmation from opposer regarding consent, and/or the period for applicant to file a response advising of his consent or opposing the motion has passed.

Dates remain as last reset (January 13, 2012 order).