

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

Mailed: June 18, 2012

Opposition No. 91198483

PsyBar LLC

v.

David Mahony, Ph.D., ABPP

Ann Linnehan, Interlocutory Attorney

On May 2, 2012, applicant filed a motion to extend his time to file a response to opposer's motion for summary judgment.¹ The Board interlocutory attorney assigned to this case determined that resolution of the motion to extend by telephone conference was appropriate.

The telephone conference was held on June 12, 2012 at 5:00 p.m. EST among applicant, Dr. Mahony, opposer's

¹ The Board notes that opposer's motion (filed April 4, 2012) for summary judgment fails to indicate proof of service on applicant as required by Trademark Rule 2.119. In order to expedite this matter, applicant may view a copy of the filing on the Board's TTABVue website. Notwithstanding, strict compliance with Trademark Rule 2.119 is required by opposer in all future papers filed with the Board.

attorney, Mr. Kretsch, and the assigned interlocutory attorney.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is good cause. Fed. R. Civ. P. 6(b)(1); TBMP Section 509.01 (3d ed 2012). The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. See, e.g., *American Vitamin Products, Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313 (TTAB 1992).

In support of its motion, applicant argues that his stepfather was hospitalized for a medical condition and he was unable to file a response to opposer's motion for summary judgment by the deadline set.

After carefully considering the parties' arguments in this instance, the Board finds that the circumstances herein are appropriate for granting applicant's motion to extend. The motion to extend is hereby granted and applicant is allowed time to file a brief in response. Accordingly, the Board now acknowledges and accepts the

response brief/cross-motion for summary judgment filed by applicant on June 5, 2012.²

In view thereof, opposer's motion to strike is moot and opposer's May 18, 2012 filing will receive no further consideration.

Under the circumstances and because of the Board's delay in acting on the motion to extend, the Board finds it appropriate to reset the parties' time to file the appropriate remaining briefs to opposer's motion for summary judgment and applicant's cross-motion for summary judgment. The Board deems the date of service of these two filings to be the date set forth in the caption of this order. A combined response to the cross-motion for summary judgment and reply to the motion for summary judgment should be due thirty days from the date set forth in the above caption of this order. A reply brief to the cross-motion for summary judgment (if any) is due in accordance with Trademark Rule 2.119 and 2.127(e)(1).

Rule 2.119 is required by opposer and applicant in all future papers filed with the Board.

² The Board notes that applicant's combined response brief and cross-motion (filed June 5, 2012) for summary judgment fail to indicate proof of service on opposer as required by Trademark Rule 2.119. In order to expedite this matter, opposer may view a copy of the filing on the Board's TTABVUE website. Notwithstanding, strict compliance with Trademark Rule 2.119 is required by applicant in all future papers filed with the Board.

The Board notes that opposer seeks summary judgment on the claim of dilution, but such claim is not set forth in the amended notice of opposition. The parties should note that a party may not obtain summary judgment on an issue that has not been pleaded. See TBMP Section 528.07 and the cases cited therein for further information. To the extent the dilution claim was not pleaded, the motion for summary judgment as it relates to dilution will receive no consideration.
