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

Proceeding	91199035
Party	Plaintiff D.C. One Wholesaler, Inc.
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Signature	/Matthew Von Schuch/
Date	02/01/2012
Attachments	Petitioners' Motion and Brief in Support Thereof to Extend The Case Deadlines.pdf (5 pages)(176629 bytes)

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

D.C. ONE WHOLESALER, INC.,)	
)	
Petitioner,)	Opposition No. 91199035
)	Ser. No. 77/92853
v.)	Mark: I ♥DC
)	
JONATHAN E. CHIEN dba)	
I LOVE DC, LLC,)	
)	
Respondent.)	

consolidated with

D.C. ONE WHOLESALER, INC.,)	
)	
Petitioner,)	Cancellation No. 92053919
)	Reg. No. 3759575
v.)	Mark: I ♥DC
)	
JONATHAN E. CHIEN dba)	
I LOVE DC, LLC,)	
)	
Respondent.)	

**PETITIONER’S MOTION
AND BRIEF IN SUPPORT THEREOF TO EXTEND THE CASE DEADLINES**

Petitioner D.C One Wholesaler, Inc. (“D.C. One”), through its undersigned counsel, pursuant to 37 C.F.R. § 2.120(a) and Fed. R. Civ. P. 6(b), moves to extend the case schedule by thirty days. Good cause exists for this extension due to Respondent Mr. Chien’s ongoing failure to timely respond to D.C. One’s discovery requests. That failure has prevented D.C. One from being able to make timely expert disclosures and to meet the other case deadlines. In further support of its motion, D.C. One states as follows:

1. A deadline may be extended for good cause shown. *National Football League, NFL Properties LLC v. DNH Management, LLC*, 85 U.S.P.Q. 1852, *1 (TTAB 2008). The Board is generally liberal in granting extensions of time so long as the movant has not been negligent, acted in bad faith, or abused the privilege of extensions. *Id.* Here, D.C. One has not been negligent, acted in bad faith, or abused the Board's privilege of extensions. To the contrary, Respondent Mr. Chien's dilatory litigation tactics have prejudiced D.C. One's ability to timely make its expert disclosures.

2. The expert disclosure deadline in these consolidated cases is currently set for February 1, 2012. Pursuant to 37 C.F.R. § 1.120(a)(2) and Fed. R. Civ. P. 26(a), these disclosures must identify the expert witness and provide, among other things: the expert's qualifications, all of the expert's opinions, the facts or data considered by the expert, and the basis for the experts opinions.

3. On November 23, 2011, D.C. One served Mr. Chien with document requests and interrogatories. These discovery requests were served, in part, to acquire the information necessary for an expert to review, synthesize, and render an opinion in this case. Mr. Chien's responses were due on December 26, 2011.

4. In light of the holiday season, D.C. One agreed to grant Mr. Chien a two week extension to respond to these discovery requests. Mr. Chien did not meet this deadline. He served his written interrogatory responses five days after the deadline. He still has not produced the documents D.C. One requested.

5. Two weeks after the parties' agreed deadline passed, Mr. Chien asked for another forty-five days produce the documents requested by D.C. One. Mr. Chien's documents would then have been produced on February 28, 2012; a month after the expert disclosure date. Given

the case schedule, D.C. One told Mr. Chien that it would agree to a shorter extension so long as Mr. Chien agreed to extend the case deadlines. Mr. Chien has not responded to this counteroffer and still has not produced the documents that D.C. One requested months ago. This has become a common pattern from Mr. Chien. He made his initial disclosures four-and-a-half months late, and only after D.C. One moved to compel them.

6. D.C. One may well need to file a motion to compel Mr. Chien to respond to its document requests. In the meantime, D.C. One is faced with an imminent expert disclosure deadline. Because of Mr. Chien's dilatory behavior, D.C. One has insufficient information and insufficient time for an expert to render an opinion and prepare a report. Accordingly, good cause exists to extend the expert disclosure deadline by thirty-days so that D.C. One's expert has sufficient time to obtain, review, and synthesize the facts of this case, including the discovery requested from Mr. Chien. The other case deadlines should be similarly extended to accommodate the new expert discovery deadline.

7. D.C. One has not previously requested the Board to extend the case schedule.

8. Before filing this motion, D.C. One made a good faith effort to obtain the concurrence of Respondent's counsel by emailing and phoning him. D.C. One's counsel did not hear from Respondent's counsel before this motion was filed.

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WHEREFORE, Petitioner D.C. One Wholesaler, Inc., respectfully requests that the Board enter an order extending the expert discovery deadline and the remaining deadlines in this case by thirty-days, as follows:

Expert Disclosures Due	3/1/2012
Discovery Closes	4/1/2012
Plaintiff's Pretrial Disclosures	5/16/2012
Plaintiff's 30-day Trial Period Ends	6/31/2012
Defendant's Disclosures	7/16/2012
Defendant's 30-day Trial Period Ends	8/30/2012
Plaintiff's Rebuttal Disclosures	11/15/2012
Plaintiff's 15-day Rebuttal Period Ends	12/29/2012

Dated: February 1, 2012
Washington, D.C.

Respectfully submitted,

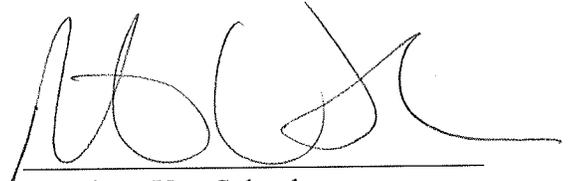


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*Counsel for Petitioner D.C. One
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CERTIFICATE OF SERVICE

I hereby certify that on February 1, 2012, the foregoing motion was served, pursuant to the parties agreement, by electronic mail on Mr. Chien's counsel, Jason Lee, Lee, Lee & Associates, P.C., 2531 Jackson Road, Suite 234, Ann Arbor, Michigan 48103, Email: jason@llapc.com. In addition, a copy of the foregoing motion was mailed to Mr. Chien's counsel via U.S. Mail.



Matthew Von Schuch