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

Proceeding	91199458
Party	Plaintiff Playboy Enterprises International, Inc.
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Submission	Opposition/Response to Motion
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Attachments	110608 Playboy's Opposition to Extension of Time Request.pdf ( 6 pages ) (462505 bytes )

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

In re Application Serial No. 77/909,600  
Filed: January 12, 2010  
Mark: ZEITGEISTRACING & Rabbit Design  
Published in the *Official Gazette* (Trademarks) on: December 7, 2010

Playboy Enterprises International,	)	
Inc.	)	
	)	
Opposer,	)	
	)	
v.	)	Proceeding No.: 91199458
	)	
William F. Braconi,	)	
Aaron A. Foltz,	)	
Steven C. Vance,	)	
Herbert W. Bool, and	)	
Lael E. Kopke,	)	
Applicants.	)	

**PLAYBOY ENTERPRISES INTERNATIONAL, INC.’S OPPOSITION  
TO APPLICANTS’ UNCONSENTED MOTION FOR AN  
UNREASONABLE EXTENSION OF TIME**

Playboy Enterprises International, Inc. (“Playboy”), by its attorneys<sup>1</sup>, opposes the Motion to Extend filed by Applicants, Mr. Braconi, Mr. Foltz, Mr. Vance, Mr. Bool, and Ms. Kopke (collectively, “Applicants”). Applicants unilaterally filed this motion without requesting consent from Playboy. More importantly, Applicants failed to demonstrate any good cause for the Board to grant an excessive extension of time. Accordingly, it is appropriate for the Board to deny Applicants’ request, and direct Applicants to Answer the Notice of Opposition within 30-days of the original May 26, 2011 deadline unless

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<sup>1</sup> Playboy recently filed a change of correspondence to reflect the appointment of counsel on June 2, 2011.

good cause for a further time extension is shown. The new deadline will be June 25, 2011.

## **I. Introduction**

On December 7, 2010, the U.S. Application for the mark ZEITGEISTRACING & Rabbit Design owned by Applicants (Serial No. 77/909,600) was published for Opposition. Prior to filing the Notice of Opposition, Playboy sent correspondence to Applicants requesting that they abandon their application based upon Playboy's prior rights in the Rabbit Head Design. Playboy received no response to this letter.

Then, on April 6, 2011, Playboy filed a Notice of Opposition against the U.S. Application for the mark ZEITGEISTRACING & Rabbit Design. The Notice of Opposition and accompanying exhibits were served on Applicants. The Board issued an order setting May 26, 2011 as the deadline for Applicants to respond to Playboy's Notice of Opposition. Without contacting Playboy, Applicants filed an unconsented request for a 90-day extension of time to respond to the Notice of Opposition. Playboy was not presented with the opportunity to consent and cannot decipher from the current request the basis for needing such an extension. Applicants' present request fails to demonstrate any good cause and seeks an unnecessarily long period of time.

## **II. Argument**

### **A. Applicants Failed to Demonstrate Any Good Cause for the Requested Extension.**

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure, "the court may, *for good cause*" grant a motion to extend time. Fed. R. Civ. P. 6(b) (emphasis added). Motions for extensions of time are "scrutinize[d] carefully... to determine whether the requisite good cause has been shown." See Trademark Trial and Appeal Board Manual

of Procedure (“TBMP”) § 509.01(a). While good cause is not explicitly defined, an extension will be granted if “the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused.” *National Football League v. DNH Management*, 85 U.S.P.Q.2d 1852, 1854 (T.T.A.B. 2008). In order to demonstrate good cause, “a motion to extend must set forth with the particularity the facts said to constitute good cause for the requested extension.” TBMP § 509.01(a); *see also Luemme, Inc. v. D.B. Plus Inc.*, 53 U.S.P.Q.2d 1758, 1760-61 (T.T.A.B. 1999) (sparse motion contained insufficient facts on which to find good cause). The TBMP is clear on this point, “mere conclusory allegations lacking in factual detail are not sufficient.” TBMP § 509.01(a). It is incumbent on the moving party to demonstrate “the requested extension of time is not necessitated by the party’s own lack of diligence.” *Id.* In *National Football League*, the Board held that even the first extension request with no evidence of bad faith should be denied because the moving party failed to show the minimum good cause required. 85 U.S.P.Q.2d at 1854. Instead, the record in that case showed “the claimed need for an extension... is the product solely of opposers’ unwarranted delay....” *Id.*

Applicants’ request fails to establish good cause for granting any extension, let alone a 90-day extension. The only reason provided is “to further research our options and reasonably respond to Playboy Enterprises International’s opposition.” This ambiguous statement lacks any particularity or factual details. Applicants bear the burden to show good cause, and they failed to meet this burden. Instead, Applicants are not taking this proceeding seriously, and failed to comply with the rules of practice (as evidenced by their failure to serve Playboy with a copy of the unconsented request).

Moreover, Applicants' request demonstrates the lack of diligence on the part of Applicants. Simply stated, Applicants' request lacks any detail and contains no facts to justify a finding of good cause, and therefore, the request should be denied.

**B. A 90-Day Extension of Time is Excessive and Unsupported.**

Applicants' request for a 90-day extension is unwarranted in light of the fact that they already had 40 days to respond and failed to demonstrate the need for additional time. Furthermore, Applicants filed the motion for an extension without seeking consent from Playboy. Playboy believes that any extension is unnecessary and lacking in good cause. However, Playboy is a reasonable party, and upon presentation of good cause, Playboy would consider, and likely consent, to a reasonable extension of time—if it had the opportunity to do so. However, a 90-day extension is an excessive period of time. There are no ongoing settlement discussions, and Applicants provided no evidence of good cause or undue hardship. A 30-day extension of time is more appropriate. Applicants had ample opportunity to respond to Playboy's Notice of Opposition, and Playboy will not consent to any future extensions of time unless good cause is demonstrated by the Applicants.

**III. Conclusion**

As a result, Playboy respectfully requests that Applicants' Motion for an Extension of Time be denied, and requests that Board order Applicants to Answer the Notice of Opposition within 30-days of the original May 26, 2011 deadline unless good cause for a further time extension is shown. The new deadline will be June 25, 2011. In addition, all other deadlines in this Proceeding should remain as previously set by the Board on April 16, 2011.

Respectfully submitted,

**PLAYBOY ENTERPRISES INTERNATIONAL,  
INC.**

Dated: June 8, 2011

By:



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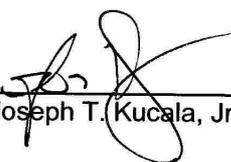
Attorneys for Playboy Enterprises  
International, Inc.

**CERTIFICATE OF SERVICE**

I hereby certify that a true and correct copy of the foregoing PLAYBOY ENTERPRISES INTERNATIONAL, INC.'S OPPOSITION TO APPLICANTS' UNCONSENTED MOTION FOR AN UNREASONABLE EXTENSION OF TIME has been served upon Applicants via United States first class mail, postage prepaid, addressed to:

William F. Braconi  
P.O. Box  
Fairfax, CA 94978-1018

This 8<sup>th</sup> day of June 2011.

  
\_\_\_\_\_  
Joseph T. Kucala, Jr.