

ESTTA Tracking number: **ESTTA453066**

Filing date: **01/25/2012**

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

Proceeding	91200168
Party	Plaintiff Bach Flower Remedies Limited
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Submission	Motion to Extend
Filer's Name	Sheryl De Luca
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Signature	/Sheryl DeLuca/
Date	01/25/2012
Attachments	5027-97OpposersMotforExtforDisc.pdf (6 pages)(373021 bytes)

The additional time is needed in order for Opposer to review Applicant's documents and things responsive to Opposer's written discovery requests, to resolve the outstanding discovery matters in connection with this case and for Opposer to serve follow-up discovery requests that are likely to be required.

Counsel for Applicant has been contacted concerning the instant motion and has not consented thereto.

I. Factual Background

In this case, Discovery opened on August 17, 2011. Opposer served its Initial Disclosures on September 16, 2011 and also served its first sets of written discovery requests on applicant (including Interrogatories, requests for production of documents and things and requests for admissions) on September 16, 2011. Applicant provided its responses thereto on December 2, 2011 (after receipt of a consented extension).

By letter of December 16, 2011 to Applicant's counsel, Opposer requested supplementation and clarification of certain discovery responses and asked that Applicant mutually agree to make copies of documents and things responsive to the requests for production and send them to respective counsels' offices in lieu of making them available for inspection.

Opposer served its second set of requests for admissions to Applicant on December 19, 2011.

In a letter of January 9, 2012 to Applicant's counsel, Opposer requested a 60-day extension of all relevant due dates while discovery matters were being worked on by the parties. Again, Opposer indicated that it looked forward to

receipt of clarification and/or supplementation of responses identified in its December 16, 2011 letter. Opposer reiterated its suggestion to a mutual exchange of responsive documents and things by mail.

By letter of January 11, 2012 to Opposer's counsel, Applicant's counsel indicated that "[a]ny clarification or supplementation of our responses to Interrogatory Nos. 1, 2, 4, 7, 8 and 14, and our responses to Requests for Production Nos. 2, 3 and 13, will accompany our responses to your Second Set of Requests for Admission, which are due January 23, 2012." In that letter Applicant's counsel agreed to make copies of responsive documents and things and send them to Opposer's counsel's office. Further, it indicated that Applicant does not wish to extend discovery at this time.

With a letter dated January 23, 2012, Applicant provided its responses to Opposer's Second Set of Requests for Admission and indicated that it did not believe supplementation of any of its previous responses is required. It has not yet provided Opposer's counsel with its responsive documents and things.

II. Argument

Federal Rule of Civil Procedure 6(b) gives the Board wide discretion to grant a request for enlargement of time. Fed.R.Civ.P. 6(b). If the motion for and extension is filed prior to the expiration of the period as originally set, the moving party need only show good cause for the requested extension. See TBMP 509.01. See also *National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008) ("the Board is liberal in granting extensions of time before the period to act has elapsed so long as the moving party has not

been guilty of negligence or bad faith and the privilege of extension is not abused” and the moving party has the burden of persuading the Board that it was diligent in meeting its responsibilities).

This motion is being filed before the deadline for the close of discovery expires (the close of discovery as initially set is February 13, 2012), and is therefore timely.

It is believed that the following factors establish good cause. Opposer diligently served discovery requests on Applicant early in the proceeding. Opposer’s counsel still needs to receive and review Applicant’s responsive documents and things to its outstanding discovery requests and to resolve any outstanding discovery matters in connection with Applicant’s responses. Further, it is very likely that Opposer will need to serve follow-up discovery requests.

Opposer has not previously requested extension of the trial dates set forth in the Board’s June 8, 2011 scheduling order. Further, Opposer is not aware of any reason that Applicant would be prejudiced by this extension request.

III. Conclusion

For the above-stated reasons, Opposer respectfully requests that the Board grant it request for 30-day extension of the discovery and other relevant trial dates as set forth above.

Respectfully submitted,

Bach Flower Remedies Limited

By: *Sheryl De Luca*

Donna J. Banton

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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing OPPOSER'S MOTION FOR EXTENSION OF THE DISCOVERY PERIOD AND OTHER TRIAL DATES was served upon the following attorney of record for Applicant by depositing same in the United States mail, first class, postage prepaid, this 25th day of January, 2012:

James C. Wray
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Sheryl DeLuca