

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

Baxley

Mailed: September 22, 2015

Opposition No. 91200183

*The Worlds Pageants, LLC and Camila
Productions Ltd.*

v.

Miss G-String International LLC

Andrew P. Baxley, Interlocutory Attorney:

In the Board's May 19, 2015 order, the due date for Opposers' brief on the case was reset for August 26, 2015. On August 25, 2015, Opposers filed a motion to extend such due date by sixty days. Applicant has filed a brief in response thereto.¹

In support of the motion to extend, Opposers submitted the declaration of Opposers' attorney, Thomas T. Aquilla, as an exhibit. Therein, Mr. Aquilla avers that his wife and former office assistant, Elizabeth Aquilla, has inoperable Stage IV metastatic breast cancer and had not eaten for more than two weeks prior to the filing of the motion to extend; that doctors have discontinued all treatments except for palliative care; that Mrs. Aquilla was hospitalized for hydration, electrolytes and additional palliative care on the day before the filing of the motion to extend; and that, "[w]hile caring for [his] wife and children during this time, [he has] been

¹ Applicant's brief in response is single-spaced in contravention of Trademark Rule 2.126. All briefs in Board proceedings must be double-spaced.

practically unavailable to work and have been able to meet only [his] clients' most urgent needs.”

In response, Applicant contends that Opposers’ attorney has knowledge of his wife’s condition for nearly five years and therefore should have proactively secured necessary assistance to meet his deadlines; that Opposers’ motion indicates that their attorney views this case as not urgent; that Opposers waited until the penultimate day of their final briefing period to seek the requested extension; and that Opposers’ motion reflects a pattern of obfuscation and delay in this case. In particular, Applicant contends that Opposers failed to take a testimony deposition of their principal Gracinda Cardoso, that Opposers’ attorney failed to respond to correspondence and telephone messages from Applicant’s attorney, and that Opposers’ attorney failed to participate in the testimony deposition of Applicant’s principal. Accordingly, Applicant asks that the Board deny Opposers’ motion.

Because Opposers acted prior to the expiration of time to file their brief on the case, they need only show “good cause” for the extension sought. *See* Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509.01(a) (2015). 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. DowBrands Inc.*, 22 USPQ2d 1313 (TTAB 1992). The Board tends to be particularly liberal in granting extensions of time to file briefs on the case because such briefs guide the Board through the evidentiary record. At the same time, however, a party, in its motion to extend,

must set forth with particularity facts said to constitute good cause for the requested extension and must establish that the requested extension is not made necessary by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor. *See National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008); TBMP § 509.01(a).

Notwithstanding that Mrs. Aquilla's illness was first diagnosed nearly five years ago and became advanced several months ago, the Board finds that Mr. Aquilla's recitation in his declaration of circumstances surrounding Mrs. Aquilla's illness in the time immediately prior to the due date of Opposers' brief on the case constitutes a sufficiently particular showing of good cause to extend Opposer's time to file a brief on the case. Applicant contends that Opposers' lack of diligence has delayed this case. However, Opposers' attorney was not required to take any testimony depositions or to participate in Applicant's testimony depositions. Likewise, although the Board strongly encourages parties' attorneys to communicate with one another, such communication is not required. Although Opposers have been passive through much of this case, that passivity has not substantially delayed it.² Further, in view of the fact that Opposers' motion marks the first unconsented motion to extend that they have filed in this case, Opposers have not abused the privilege of extensions.

² Whether or not Opposers can prevail on their pleaded likelihood of confusion claim under Trademark Act Section 2(d), 15 U.S.C. § 1052(d), is a matter for resolution at final hearing. *See Flatley v. Trump*, 11 USPQ2d 1284, 1286 (TTAB 1989).

The Board shares Applicant's frustration regarding the four-year pendency of this case, which involves a relatively straightforward likelihood of confusion claim under Trademark Act Section 2(d), 15 U.S.C. § 1052(d). *See* June 21, 2012 order. However, some of the delay in this case can be attributed to Applicant's filing of procedurally inappropriate motions. For example, Applicant, on December 5, 2014, filed a motion to dismiss for failure to prosecute under Trademark Rule 2.132(a), notwithstanding that Opposers filed evidence, namely, a notice of reliance, during their testimony period. *See* February 12, 2015 order. In addition, Applicant, on April 17, 2015, filed a motion for issuance of a notice of default under Fed. R. Civ. P. 55(a), based on Opposers' alleged failure to serve a testimony deposition transcript in compliance with Trademark Rule 2.123, notwithstanding that the record does not indicate that Opposers took any depositions during their testimony period. *See* May 19, 2015 order. Had Applicant refrained from filing such motions and instead allowed this proceeding to move forward under the schedule set forth in the Board's October 15, 2014 order,³ final briefing of this case could have been completed months ago.

In addition, this case was delayed further by motions in Cancellation No. 92056838, styled *Eadie v. The World Pageants, LLC*, wherein Applicant's principal sought transfer of Registration Nos. 2037202⁴ and 3039826 to himself as a means of satisfying a state court judgment for monetary damages that was assigned to

³ The Board denied the parties' cross-motions for summary judgment in that order.

⁴ Opposers rely on Registration No. 2037202 in support of the Section 2(d) claim herein.

Applicant's principal. *See* November 27, 2013 order. That cancellation proceeding was consolidated with this proceeding in an August 24, 2012 order, but was eventually dismissed with prejudice for failure to state a claim upon which relief can be granted under Federal Rule of Civil Procedure 12(b)(6) in the November 27, 2013 order. *See also* June 29, 2013 order.

Based on the foregoing, Opposers' motion to extend is granted to the extent that Opposers are allowed until **forty days** from the mailing date set forth in this order to file their brief on the case.⁵ Remaining briefing is due in accordance with Trademark Rule 2.128(a)(1).

⁵ Applicant's principal's *ex parte* telephone calls to the Board attorney assigned to this case to discuss issues in this case contravene Trademark Rule 2.18(a)(7) and Patent and Trademark Rule 11.305(b). *See* TBMP § 105 and TMEP § 601.02 (July 2015). Because Applicant is represented by counsel, the Board will not communicate directly with Applicant's principal.