

ESTTA Tracking number: **ESTTA431763**

Filing date: **09/22/2011**

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

Proceeding	91201139
Party	Plaintiff O2 Holdings, Ltd.
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Date	09/22/2011
Attachments	Response to motion to suspend.pdf (3 pages)(18297 bytes)

**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
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O2 Holdings Limited	Opposition No. 91201139
Opposer	Mark: O2 HOME SERVICES (stylized)
v.	Serial No.:79087506
O2 Développement Société Par Actions Simplifiée	Filed: March 11, 2010
Applicant	
-----X	

OPPOSER’S RESPONSE AND OBJECTION TO APPLICANT’S MOTION TO SUSPEND PROCEEDINGS AND TO EXTEND ITS TIME TO ANSWER

Opposer, O2 Holdings Limited (“Opposer”) hereby responds and objects to Applicant’s, O2 Développement Société Par Actions Simplifiée (“Applicant”) Motion to Suspend Proceedings and to Extend its Time to Answer the Pleading.

Applicant appears to have misunderstood the rules and caselaw that would support such a motion, and such a suspension would be highly prejudicial to Opposer. The other proceedings in which Opposer is a party do not include all the registrations on which Opposer relies in the present case. Opposer’s Notice of Opposition here cites eight registrations and applications on which Opposer intends to rely, as well as its common law uses of its marks. The other proceedings in which Opposer is a party involve no more than three of Opposer’s marks. The pleaded issues in this case are not duplicates of claims in the other proceedings and do not involve Applicant’s application.

Moreover, evidence or witnesses in the present matter may be lost if there is a protracted delay in the ability of Opposer or Applicants to bring their claims and defenses. *See for example Prakash Melwani v. Allegiance Corporation*, 97 USPQ2d 1537, 1541 (TTAB 2010); *Gaylord Entertainment Co. v. Calvin Gilmore Productions Inc.*, 59 USPQ2d 1369, 1372 (TTAB 2000) (in determining whether excusable neglect allows the reopening of testimony periods, the Board considers any prejudice to the non-moving party such as lost evidence or unavailable witnesses). The parties in the

other matters are involved in settlement negotiations and have been granted suspensions in those other matters. As a result, Opposer and Applicant here cannot know the extent of the delay that would occur here if Applicant's motion is granted as it is difficult to determine the time period in which the other matters may be resolved. Indeed, it could be years.

The Board seldom grants a motion to suspend an opposition pending the disposition of other oppositions even as against the same application unless the motion includes the consent of the other parties. In the absence of Opposer's consent, which Opposer has not given, Applicant's motion to suspend this opposition to give it an indeterminate time to file its Answer is not only unfair but highly prejudicial.

Because Opposer has not consented to a suspension and the claims and marks in the other oppositions differ from the claims and marks involved here, Applicant's motion to suspend this opposition pending the disposition of the other oppositions must be denied.

At the very least, Applicant should be compelled to file its Answer. In fact, in case its motion was denied, Applicant should have attached an Answer with its motion. After the discovery conference is held between the parties, and any potential grounds for settlement are discussed, perhaps suspension would then be consented to by Opposer and considered by the Board.

WHEREFORE, Opposer prays that the Applicant's motion be denied and that this Opposition be allowed to proceed.

Respectfully submitted for Opposer O2 Holdings
Limited

By: /s/Linda Kurth
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Dated: September 22, 2011

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of Opposer's Notice of Opposition was forwarded by first class postage prepaid mail by depositing the same with the U.S. Postal Service on this 22nd day of September t, 2011 to the attorney for the Applicant at the following address:

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