

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
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Mailed: June 20, 2014

Opposition Nos. **91203277 (parent)**
 91203279

3D International, LLC

v.

Palm Beach Motoring Accessories, Inc.

Yong Oh (Richard) Kim, Interlocutory Attorney:

This matter comes up on opposer's motion (filed March 19, 2014) to extend trial dates. The motion is contested.

As last reset, opposer's pretrial disclosures were due April 11, 2014, and opposer's first testimony period was due to close on May 26, 2014. However, due to an upcoming vacation from March 21 through April 15, 2014, which opposer asserts was planned "nearly a year ago," and opposer's inability to obtain the consent of applicant, opposer filed an unconsented motion to extend all remaining dates in this proceeding on March 19, 2014. *Motion to Extend*, p. 2.

As the motion was filed prior to the expiration of the time periods for which opposer seeks an extension, opposer need only show good cause for the requested extension. *See* Fed. R. Civ. P. 6(b); TBMP § 509.01. To show good

cause, the moving party must set forth with particularity the facts said to constitute good cause and must demonstrate that the requested extension is not necessitated by the moving party's own lack of diligence or unreasonable delay. TBMP § 509.01(a). So long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions has not been abused, the Board is liberal in granting extensions of time. *See National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008).

Here, and as alleged by applicant, opposer "likely received" applicant's latest set of discovery responses "not later than March 8, 2014." *Declaration of Leo Zucker*, ¶ 8. Notwithstanding that opposer may have "had nearly two weeks to review and resolve with [applicant's counsel] any perceived issues with the responses, before [opposer's counsel] departed on March 21," *id.*, ¶ 9, there is nothing in these circumstances to suggest that opposer unreasonably delayed or lacked diligence in moving forward with this matter. Although applicant appears to suggest that opposer may have created this situation by propounding its third set of admission requests merely one day before the close of discovery, opposer was within its right to do so as admission requests may be served through the last day of discovery. Trademark Rule 2.120(a)(3). Further, as this was the third set of requests, it is not surprising that they were propounded towards the end of discovery and, therefore, the Board finds neither negligence or bad faith on the part of opposer.

Finally, and bearing in mind the parties' mutual obligations of good faith dealing and cooperation, the Board finds surprising applicant's denial of opposer's extension request considering that opposer afforded applicant the same courtesy on three separate occasions in the early phases of this proceeding. Although applicant is not obligated to consent to the requested extension, applicant's failure to do so has resulted in needless motion practice, increased costs to the parties, unnecessary utilization of Board resources and delay.

In view thereof, opposer's motion to extend trial dates is hereby **GRANTED**. Accordingly, applicant's motion to dismiss filed on June 10, 2014, and which is premised on the dates as last reset is **MOOT** and will be given no further consideration. As there appears to be some confusion between the parties' counsels as to the schedule and in the interest of foreclosing any potential motion practice that may stem from such confusion, dates are **RESET** as follows:¹

Plaintiff's Pretrial Disclosures Due	7/21/2014
Plaintiff's 30-day Trial Period Ends	9/4/2014
Defendant's Pretrial Disclosures Due	9/19/2014
Defendant's 30-day Trial Period Ends	11/3/2014
Plaintiff's Rebuttal Disclosures Due	11/18/2014
Plaintiff's 15-day Rebuttal Period Ends	12/18/2014

¹ To be clear, the Board does not view opposer's testimony period as yet having opened. Therefore, any motions that must be filed prior to the opening of the first testimony period remain viable.

IN EACH INSTANCE, a copy of the transcript of testimony, together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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