

ESTTA Tracking number: **ESTTA578176**

Filing date: **12/20/2013**

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

Proceeding	91204124
Party	Defendant Robert Campbell
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Date	12/20/2013
Attachments	Threshold-PLANT HERBAL TREASURES.PDF(69380 bytes ) McLaughlin Decl.PDF(35731 bytes )

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

In the Matter of U.S. Application Serial No. 85/396136  
For: PLANT HERBAL TREASURES

THRESHOLD ENTERPRISES LTD.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91204124
	)	
ROBERT CAMPBELL (individual),	)	
	)	
Applicant.	)	
	)	

**OPPOSER'S MOTION FOR AN EXTENSION OF TIME IN WHICH TO RESPOND TO  
APPLICANT'S MOTION FOR SUMMARY JUDGMENT**

## INTRODUCTION

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and TBMP §509, Opposer Threshold Enterprises, Ltd. (“Threshold”) hereby moves for a thirty day extension of time—to February 3, 2014—in which to respond to Applicant Robert Campbell’s (“Applicant”) motion for summary judgment. Good cause for this motion exists due to (1) other litigation demands on Threshold’s primary counsel, (2) Applicant only recently responded to some outstanding discovery requests germane to the summary judgment motion, (3) Threshold’s primary counsel unexpectedly had to travel due to a family emergency, and (4) Threshold’s primary counsel will be out of the country for 10 days over the Christmas holiday.

## BACKGROUND

On November 27, 2013, Applicant filed a Motion for Summary Judgment (the “Motion”). Because Applicant served the Motion via the U.S. Postal Service, Threshold’s response is due on January 2, 2014. *See* TBMP 502.02(b) (30 days in which to respond to a motion for summary judgment) & 37 C.F.R. §2.119(c) (five days added to response date if service effected by first class mail).<sup>1</sup> During the period from November 27, 2013 to January 2, 2014, a variety of factors have or will prevent Threshold’s primary counsel (the undersigned) from preparing an adequate response to the Motion.

First, other litigation demands are preventing Threshold’s counsel from adequately preparing an opposition to the Motion. When Applicant filed the Motion (the day before Thanksgiving), Threshold’s primary counsel for trademark oppositions was representing Threshold in over thirty active trademark proceedings before the Board. Declaration of Jeremy

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<sup>1</sup> The response date, which is 35 days after the date of service per 37 C.F.R. §2.119(c), falls on January 1, 2014. Because that is a holiday, the response date moves forward a day. TBMP §112.

M. McLaughlin In Support Of Opposer's Motion For An Extension Of Time In Which To Respond To Applicant's Motion For Summary Judgment ("McLaughlin Decl.") ¶2. Several of those proceedings were consuming substantial amounts of time for Threshold's counsel. For example, in one of these proceedings (Opposition 91200928), Threshold's testimony period had begun only days before Applicant filed the Motion, and it is ongoing. *Id.* In another proceeding (Opposition 91212054), counsel had to prepare by December 23, 2013 a reply in support of a motion to dismiss. *Id.* In addition to matters before the Board, during this time period, Threshold's counsel is actively engaged on numerous other matters: two state court litigation matters; an investigation by the Federal Trade Commission; a death penalty appeal; and an evaluation of a potential challenge to California regulations. *Id.*

Second, on November 25, 2013, Threshold prepared and served on Applicant a second set of interrogatories (comprised of 6 interrogatories) and a second set of requests for production (comprised of 10 document requests). McLaughlin Decl. ¶3. These discovery requests are aimed at issues relevant to a likelihood of confusion analysis, which is the focus of Applicant's Motion. Applicant provided written responses to these requests on December 18, 2013. *Id.* However, Applicant did not produce any documents in response to the second set of requests for production, although many of the written responses state that "Applicant will produce relevant, non-privileged documents, to the extent any exist, in its possession, custody, or control that are responsive to this request." *Id.*

Third, on December 7, 2013, Threshold's counsel learned of a medical emergency in his family. McLaughlin Decl. ¶3. Accordingly, on December 11, 2013, counsel traveled from San Francisco to Pittsburgh to attend to the family emergency. *Id.* He remained in Pittsburgh for several days. *Id.*

Fourth, and finally, Threshold’s counsel has plans to travel out of the country for the Christmas holiday, from December 24, 2013 to January 4, 2014. McLaughlin Decl. ¶4. These travel plans pre-dated Applicant’s Motion. *Id.*

### ARGUMENT

Federal Rule of Civil Procedure 6(b)(1) provides that time may be extended “for good cause” if a request is made—as it is here—before the original time expires. *Accord* TBMP §509. The “Board generally 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 extensions is not abused.” *Sysco Corp. v. Princess Paper, Inc.*, 2006 WL 752426, at \*2 (TTAB Mar. 22, 2006). Applying these standards, good cause exists here to grant Threshold’s request for a thirty day extension of time for numerous reasons.

First, the Board has held “that the press of other litigation may indeed constitute good cause for an extension of time, in appropriate circumstances.” *Societa Per Azioni Chianti v. Spoletoducale*, 59 U.S.P.Q.2d 1383, 1384 (TTAB 2001); *see also Land O’Lakes, Inc. v. A. Duda & Sons, Inc.*, 2004 WL 2047328, at \*1 (TTAB Sept. 10, 2004). In *Societa*, the Board granted a thirty day extension request where counsel, through a declaration, set forth in sufficient detail facts relating to other litigation matters to warrant good cause for the extension. *Id.* Good cause exists here for that same reason because, as explained above, other litigation demands are preventing Threshold’s counsel from adequately preparing an opposition to the Motion. Threshold’s counsel is representing Threshold in over thirty active trademark proceedings before the Board, including one proceeding in the trial testimony phase and one in the briefing phase for a motion to dismiss. McLaughlin Decl. ¶2. In addition to matters before the Board, during this time period, Threshold’s counsel is actively engaged on numerous matters: two state court

litigation matters; an investigation by the Federal Trade Commission; a death penalty appeal; and an evaluation of a potential challenge to California regulations. *Id.*

Second, Applicant provided Threshold with discovery responses germane to opposing the motion on December 18, 2013. McLaughlin Decl. ¶3. These responses will likely be the subject of meet and confer efforts, which will further extend the time in which Threshold is able to obtain relevant information to oppose the Motion. *Id.*

Third, “the absence of key individuals necessary for the preparation of a responsive brief constitutes good cause to warrant an extension of time to file a responsive brief to [a] motion for summary judgment.” *Sysco Corp.*, 2006 WL 752426, at \*2. Here, Threshold’s primary counsel has or will be absent on two different occasions. First, counsel had to unexpectedly travel across the country to attend to a family medical emergency where he remained with his family for several days. McLaughlin Decl. ¶4. Second, counsel has pre-existing plans to be out of the country for eleven days over the Christmas season. *Id.* Both of these absences occur during the time to respond to the Motion.

Fourth, and finally, as in other cases in which the Board has granted an extension, this is Threshold’s “first and only request for extension of time to file a responsive brief,” “the request is for a relatively short extension of only 30 days,” and the request is being made “well prior to the deadline as originally set.” *Sysco Corp.*, 2006 WL 752426, at \*2; *see also Silicon Genetics v. Genetworks, Inc.*, 2003 WL 880553, at \*2 (TTAB Mar. 4, 2003) (granting an extension request, noting that the movant had “filed only a single extension request”).<sup>2</sup>

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<sup>2</sup> Threshold’s counsel attempted to secure the consent of Applicant’s counsel for an extension of time. Applicant conditioned his consent, however, on Threshold forfeiting its right to argue that Applicant had waived its right to object to certain discovery requests on the merits because it had failed to timely respond to such requests. McLaughlin Decl. ¶5. Threshold refused to do so.

**CONCLUSION**

Because good cause exists, the Board should grant Threshold's request for a 30-day extension of time—until February 3, 2014—in which to respond to Applicant's Motion.

Respectfully submitted,

THRESHOLD ENTERPRISES, LTD.

December 20, 2013

By: /s/ \_\_\_\_\_

Jeremy M. McLaughlin  
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Attorneys for Opposer

**CERTIFICATE OF SERVICE**

I hereby certify that a true and complete copy of the foregoing OPPOSER'S MOTION FOR AN EXTENSION OF TIME IN WHICH TO RESPOND TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT & the DECLARATION OF JEREMY M. MCLAUGHLIN IN SUPPORT OF OPPOSER'S MOTION FOR AN EXTENSION OF TIME IN WHICH TO RESPOND TO APPLICANT'S MOTION FOR SUMMARY JUDGMENT has been served on Applicant Robert Campbell, by mailing said copy on December 20, 2013, via United States Postal Service, to:

Kuscha Hatami  
LegalForce RAPC Worldwide  
1580 W. El Camino Real Suite 13  
Mountain View, CA 94040

Attorney for Applicant

By:   
Del E. Soza

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

In the Matter of U.S. Application Serial No. 85/396136  
For: PLANT HERBAL TREASURES

THRESHOLD ENTERPRISES LTD.,	)	
	)	
Opposer,	)	
	)	
v.	)	Opposition No. 91204124
	)	
ROBERT CAMPBELL (individual),	)	
	)	
Applicant.	)	
	)	

**DECLARATION OF JEREMY M. MCLAUGHLIN IN SUPPORT OF OPPOSER'S  
MOTION FOR AN EXTENSION OF TIME IN WHICH TO RESPOND TO  
APPLICANT'S MOTION FOR SUMMARY JUDGMENT**

I, Jeremy M. McLaughlin, declare as follows:

1. I am admitted to practice law in the State of California, and am an attorney with the law firm of Arnold & Porter LLP, counsel to Opposer Threshold Enterprises, Ltd. (“Threshold”) in the above-captioned proceedings. I offer this declaration in support of Threshold’s Motion For An Extension Of Time In Which To Respond To Applicant’s Motion For Summary Judgment. This declaration is based upon my own personal knowledge, and I could and would testify competently to the truth of the matters stated herein if called upon to do so.

2. At the time Applicant Robert Campbell (“Applicant”) filed his Motion for Summary Judgment (the “Motion”) on November 27, 2013 (the day before Thanksgiving), I was serving as Threshold’s counsel in over thirty active trademark proceedings before the Board, and those proceedings have detracted from my ability to prepare an adequate opposition to the Motion within the typical time to respond. For example, in one of these proceedings (Opposition 91200928), Threshold’s testimony period had begun (and is ongoing) only days before Applicant filed his Motion, and I am the attorney with primary responsibility for preparing evidence during the testimony period. In another proceeding (Opposition 91212054), I had to prepare a reply in support of Threshold’s motion to dismiss by December 23, 2013. In addition to matters before the Board, I am actively engaged on numerous matters: two state court litigation matters; an investigation by the Federal Trade Commission; a death penalty appeal; and an evaluation of a potential challenge to California regulations. In sum, the Threshold matters before the Board and my other litigation responsibilities have significantly taken away from the time I could dedicate to preparing an adequate response to the Motion.

3. On November 25, 2013, I prepared and served on Applicant a second set of interrogatories (comprised of 6 interrogatories) and a second set of requests for production

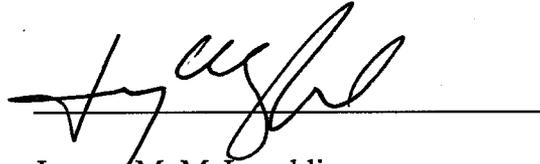
(comprised of 10 document requests). Applicant provided written responses to these requests on December 18, 2013. Applicant did not produce any documents in response to the second set of requests for production, although many of the written responses state that “Applicant will produce relevant, non-privileged documents, to the extent any exist, in its possession, custody, or control that are responsive to this request.”

4. On December 7, 2013, I learned that my father had been hospitalized unexpectedly in Pittsburgh, Pennsylvania and was preparing to undergo surgery. Accordingly, on December 11, 2013, I traveled to Pittsburgh where I remained with my family for several days as my father recuperated.

5. On December 24, 2013, I have plans to travel out of the country for the Christmas holiday, and I am not scheduled to return until January 4, 2014. I had these travel plans in place before Applicant filed the Motion.

6. On December 16, 2013, I emailed Applicant’s counsel to ask if he would agree to extend Threshold’s response deadline. I followed up this request with an email on the afternoon of December 18, 2013 asking for a two-week extension of time. Having heard no response, I telephoned Applicant’s counsel on the morning of December 19, 2013 and left him a voicemail again asking for a two-week extension of time. Again, having heard no response, I emailed Applicant’s counsel on the evening of December 19, 2013 about the extension. I then attempted to telephone counsel on the morning of December 20, 2013, but was told by a receptionist that he was on another call. Finally, Applicant’s counsel offered to consent to a two-week extension only if Threshold would agree that Applicant had not waived his right to object on the merits or otherwise to certain discovery requests—and issue about which the parties previously disagreed.

I declare under penalty of perjury that the foregoing is true and correct to the best of my knowledge. This declaration was executed on this 20th day of December 2013, at San Francisco, California.



Jeremy M. McLaughlin