

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451

Mailed: October 7, 2013

Opposition No. 91204296

JJI International, Inc.

v.

Sparkle Life LLC

**George C. Pologeorgis,
Interlocutory Attorney:**

This case now comes before the Board for consideration of (1) opposer's motion (filed September 13, 2013), under Fed. R. Civ. P. 6(b)(1), to extend the close of its testimony period by thirty days and to reset all subsequent trial dates accordingly, and (2) applicant's cross-motion (filed October 3, 2013) for dismissal of the opposition under Trademark Rule 2.132. The Board notes that applicant filed a response to opposer's motion to extend concurrently with its cross-motion to dismiss for failure to prosecute. Opposer, however, has yet to file a response to applicant's cross-motion for involuntary dismissal.

We turn first to opposer's motion to extend its testimony period. To prevail on its motion, opposer must establish good cause for the requested extension of time. *See* Fed. R. Civ. P. 6(b)(1); TBMP § 509.01 (3d ed. rev. 2 2013).

In support of its motion to extend, opposer argues that its counsel is currently involved in a significant, multiple-week long jury trial in a case

pending in the United States District Court for the District of Rhode Island styled *Ira Green, Inc. v. Military Sales & Service Co.* Opposer further maintains that, in this regard, opposer's counsel has been engaged in extensive and daily trial preparation during the pendency of opposer's current testimony period. In view thereof, opposer contends that because of the significance and size of this litigation, and accompanying trial preparation efforts, opposer's counsel has been unavailable to take witness testimony during opposer's allotted testimony period and that opposer's counsel of record is the only person who possesses the requisite knowledge to participate in the preparation and submission of evidence during opposer's assigned testimony period.

In response, applicant argues that opposer has failed to demonstrate the requisite good cause that would justify opposer's extension request. Specifically, applicant maintains that opposer waited until the very last day of its testimony period to notify the Board for the first time that it was allegedly having scheduling problems with its own witnesses and nonetheless has failed to provide a statement of any facts demonstrating opposer's actions to mitigate the delay in seeking its extension request or take action in anticipation of a known trial schedule which overlapped with opposer's testimony period. Further, applicant contends that opposer never once contacted applicant to notify it that it was unable to take its testimony during its assigned testimony period.

Decision

It is settled that the press of other litigation, in appropriate circumstances, is sufficient to make out a “good cause” showing under Fed. R. Civ. P. 6(b)(1). See *Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL*, 59 USPQ2d 1383 (TTAB 2001).

We find that such circumstances exist in this case. Opposer has set forth sufficient facts relating to its counsel’s other litigation matters in sufficient detail to warrant a finding that good cause exists for the requested extension of opposer's testimony period. Also, we note that this is the first extension of the testimony period that has been requested by opposer. Further, while it would have been a professional courtesy for opposer to inform applicant that it needed an extension of its testimony period in light of opposer’s counsel’s other pressing litigation early in the testimony period, opposer was not required to do so prior to filing its motion to extend.¹

Accordingly, opposer’s motion to extend the close of its testimony period by thirty days is **GRANTED**.

Because we have granted opposer's motion to extend its testimony period, applicant’s cross-motion for dismissal under Trademark Rule 2.132 is deemed moot and will be given no further consideration.

¹ As noted above, opposer's unconsented motion to extend time was filed at the end of opposer's testimony period. The better practice would have been to file the motion early in the testimony period, as soon as it became apparent that the press of other business would make an extension of time necessary, and that applicant would not consent to such an extension.

Trial Schedule

In light of this order, trial dates are reset as follows:

Plaintiff's 30-day Trial Period Ends	10/13/2013
Defendant's Pretrial Disclosures Due	10/28/2013
Defendant's 30-day Trial Period Ends	12/12/2013
Plaintiff's Rebuttal Disclosures Due	12/27/2013
Plaintiff's 15-day Rebuttal Period Ends	1/26/2014

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 the taking of testimony. Trademark Rule 2.125.

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