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

Proceeding	91204512
Party	Plaintiff EventForce, Inc
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Signature	/s/Oliver Edwards
Date	08/09/2012
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UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD

EventForce, Inc,

Opposer,

v.

salesforce.com, inc.,

Applicant.

Opp No.: 91204512

**RESPONSE IN OPPOSITION TO APPLICANT'S MOTION TO EXTEND TIME FOR
SALESFORCE TO RESPOND TO EVENTFORCE'S DISCOVERY REQUESTS
AND
CONTINGENT MOTION TO EXTEND DISCOVERY RESPONSE DEADLINE FOR
EVENTFORCE TO RESPOND TO SALESFORCE.COM'S DISCOVERY REQUESTS**

Opposer EventForce, Inc, by and through its undersigned attorney, opposes Applicant's motion (docket no. 6) to extend for two weeks Applicant's time to respond to Opposer's discovery requests and to suspend proceedings. Further, Opposer makes the contingent motion, in the event the Board grants Applicant's motion, to extend for two weeks the deadline for Opposer to respond to Applicant's discovery requests served six days later than Opposer's requests. In support of the this opposition to Applicant's motion and in support of Opposer's contingent motion, Opposer states as follows:

Background

The discovery period for the instant Opposition opened June 8, 2012. See Order, docket no. 2. Counsel for Opposer and Alica Del Valle, counsel for Applicant salesforce.com, inc. held a discovery conference on June 5, 2012. See Declaration Oliver Edwards, August 6, 2012, para. 2 (hereinafter "Decl."). During the conference, counsel for Opposer expressed a willingness to

ensure manageable discovery by, *inter alia*, reasonably limiting the number of custodians in regard to electronically stored information. *Id.*, para. 2.

On July 9, 2012, Applicant served its Initial Disclosures, disclosing that third-party Eventley, Inc. was a person having knowledge of:

Use of the EVENTFORCE mark; business and marketing plans related to the EVENTFORCE mark; channels of trade, nature of the goods and services, and classes of consumers for products and services offered under the EVENTFORCE mark; communications between Applicant and Eventley, Inc.

Id., para. 3, Ex. 1 at 2.

Two days later, on July 11, 2012, Applicant's appexchange.salesforce.com website contained an announcement that “EventForce Eventley Event Management 2.0: Cloud, Social, Mobile App by Eventley, Inc.” was available. Decl., para. 4, Ex. 2.

On July 24, 2012, Opposer served interrogatories and requests for production upon Applicant seeking, *inter alia*, discovery responses relating to Eventley, Inc.'s and Applicant's present and intended uses of the EVENTFORCE mark. *Id.*, para. 5.

On July 31, 2012, two days prior to leaving on vacation, Applicant's attorney telephoned Opposer's attorney requesting a two-week extension to respond to Opposer's discovery requests. *Id.*, para. 6. On August 1, 2012, Opposer's attorney telephoned Applicant's attorney to inform him that Opposer would agree to an extension as to most of Opposer's discovery requests and would send Applicant's attorney a list of requests for timely reply within the current deadline. Decl., para. 7. Applicant's attorney deemed Opposer's offer "unacceptable" and stated he would file a motion with the Board. *Id.* Applicant's attorney did not inquire as to which or how many requests would receive (or not) the benefit of an agreed extension. *Id.* Applicant's attorney did not inquire as to any other mode of managing discovery, such as limiting custodians or ESI collection methods. *Id.*

Argument

Applicant's motion should be denied because the Applicant has failed to establish good cause for the extension and the extension will likely prejudice Opposer. “The appropriate standard for allowing an extension of a prescribed period prior to the expiration of the term is 'good cause.’” *National Football League v. DNH Management LLC*, 85 USPQ2d 1852, slip. op. at 3 (TTAB 2008) (citing Fed. R. Civ. P. 6(b)). An extension cannot be granted if there is bad faith of the party seeking it or prejudice to the other party. *See Wright & Miller*, 4B Federal Practice and Procedure § 1165 (3d ed. 2004) (2011 supp.). Under the “excusable neglect” prong of Fed. R. Civ. P. 6(b)(2) (pertaining to extensions requested after a deadline), a mere “danger of prejudice” to the non-moving party is a factor to be considered. *See Dating DNA, LLC v. Imagini Holdings, Ltd.*, 94 U.S.P.Q.2d 1889, slip op. at 6 (TTAB 2010).

Given Applicant's assertion that third party Eventley, Inc. is a person with knowledge and Eventley, Inc.'s subsequent announcement on an Applicant website of an app associated with "EventForce," Opposer is seeking and is entitled to timely discovery as to the character and nature of the app, its customers, its channels of trade; whether use of "EventForce" rises to use as a trademark; whether Opposer is being harmed by such use; and whether such use is accruing to the advantage of Applicant in the instant Opposition. There is a danger of prejudice to Opposer by any delay in receiving such discovery and delay in determining registrability. Opposer is entitled to timely discovery on all factors related to likelihood of confusion in support of potential summary or accelerated TTAB proceedings.

Despite potential prejudice to Opposer but in furtherance of the Board's expectation that parties cooperate in the discovery process (TBMP § 408.01), Opposer offered to accommodate Applicant's attorney's request to extend by limiting the number of discovery requests for timely response. Counsel for Applicant rejected such an accommodation out of hand and filed the present motion. Notably,

Applicant's motion does not purport to establish "good cause;" rather, the motion argues that the request "is reasonable," based on Applicant's unsupported assertion that the delay "will not prejudice Opposer." *See* Applicant's Motion at 3, docket no. 6.

Applicant has failed to assert, let alone establish, good cause for the extension because it cannot. Applicant is represented by a large and experienced law firm with two of the firm's attorneys of record in the case, John Slafsky and Matthew Kuykendall. *See* Applicant's Appearance of Counsel, docket no. 5. Indeed, Applicant's motion and each of Applicant's three discovery request papers bear Mr. Kuykendall's signature (or at least a signature distinct from that on Mr. Slafsky's declaration). Decl., para. 8. Only Mr. Slafsky has asserted that he is unavailable due to a vacation. *See, e.g., Firsthealth of Carolinas v. Carefirst of Maryland*, 479 F.3d 825, 830 (Fed. Cir. 2007) (finding Board did not abuse its discretion denying motion to reopen where movant offered no explanation why "other authorized individuals in the same firm could not have assumed responsibility for the case").

With regard to Applicant's request for "an order suspending these proceedings, and all discovery deadlines," Applicant has failed to set forth good cause to suspend as required under 37 CFR § 2.117. Applicant's motion is not dispositive and suspension is unwarranted, prejudicial for the reasons given above, and apt to impose unnecessary administrative overhead on the Board and parties in redocketing case deadlines. *See, e.g., SDT Inc. v. Patterson Dental Co.*, 30 U.S.P.Q.2d 1707 (TTAB 1994) (motion for leave to amend a notice of opposition is not a potentially dispositive motion which would warrant suspension).

With regard to Opposer's contingent motion, in the event that the Board determines to grant Applicant's instant motion, Opposer requests that the Board issue an order extending for two weeks the deadline for Opposer to respond to Applicant's discovery requests to September 12, 2012. Responses are presently due August 29, 2012. An effect of granting Applicant's motion, but not Opposer's contingent motion would be the inequitable result of changing the sequence of the parties' discovery

responses, providing Applicant with the benefit of receiving Opposer's discovery responses prior to producing Applicant's discovery responses to Opposer. Opposer served its discovery requests six days before Applicant served Applicant's; it would be unfair to give Applicant an unmerited tactical benefit because of Applicant's attorney's vacation.

Conclusion

For the foregoing reasons, Applicant's motion to extend Applicant's time to respond to Opposer's discovery requests and to suspend proceedings should be denied. However, in the event the Board grants Applicant's motion, Opposer makes the contingent motion that the Board enter an order extending for two weeks the deadline for Opposer to respond to Applicant's discovery requests to September 12, 2012.

LAW OFFICE OF OLIVER EDWARDS LLC,

Date: August 9, 2012

By /s/Oliver Edwards
Oliver L. Edwards
8701 Georgia Ave
Suite 605
Silver Spring, MD 20910
301-841-8050
Fax: 301-368-2106

Attorney for EventForce, Inc

CERTIFICATE OF SERVICE

I certify that the foregoing Response in Opposition and Contingent Motion and appended Declaration of Oliver Edwards and exhibits were served August 9, 2012, upon Applicant via e-mail to Applicant's attorneys of record at Jslafsky@wsgr.com and MKuykendall@wsgr.com.

 /s/Oliver Edwards

**UNITED STATES PATENT AND TRADEMARK OFFICE
TRADEMARK TRIAL AND APPEAL BOARD**

EventForce, Inc,

Opposer,

v.

salesforce.com, inc.,

Applicant.

Opp No.: 91204512

DECLARATION OF OLIVER EDWARDS

1. I am counsel for Opposer EventForce, Inc in the above-captioned proceeding. I make this declaration in connection with Opposer's Response in Opposition to Applicant's Motion to Extend Time for Salesforce to Respond to EventForce's Discovery Requests, filed herewith.

2. I and Alica Del Valle, counsel for Applicant salesforce.com, inc. held a discovery conference on June 5, 2012. During the conference, I expressed Opposer's willingness to ensure manageable discovery by, for example, reasonably limiting the number of custodians asked to search for responsive documents and electronically stored information.

3. Exhibit 1 to this declaration is true and correct copy of Applicant's Initial Disclosures served on Opposer on July 9, 2012. Applicant discloses therein that third-party Eventley, Inc. was a person having knowledge of:

Use of the EVENTFORCE mark; business and marketing plans related to the EVENTFORCE mark; channels of trade, nature of the goods and services, and classes of consumers for products and services offered under the EVENTFORCE mark; communications between Applicant and Eventley, Inc.

4. Exhibit 2 to this declaration is a true and correct printout of a web page, made July 12, 2012, of Applicant's appexchange.salesforce.com website announcing "EventForce Eventley

Event Management 2.0: Cloud, Social, Mobile App by Eventley, Inc.” was available as of July 11, 2012.

5. On July 24, 2012, Opposer served interrogatories and requests for production upon Applicant seeking, *inter alia*, discovery responses relating to Eventley, Inc.'s and Applicant's present and intended uses of the EVENTFORCE mark.

6. On July 31, 2012, Applicant's attorney John Slafsky telephoned me to request a two-week extension for Applicant to respond to Opposer's discovery requests because Mr. Slafsky was two days away from leaving on a two-week vacation. Applicant's attorney of record Matthew Kuykendall was also on the call.

7. On August 1, 2012, I telephoned Mr. Slafsky to inform him that Opposer would agree to an extension as to most of Opposer's discovery requests and I would send him a list of requests for timely reply within the current deadline. Mr. Slafsky deemed the offer "unacceptable" and stated he would file a motion with the Board. Mr. Slafsky offered no explanation as to why Mr. Kuykendall would be unable to handle the pending discovery or any subset thereof. Mr. Slafsky did not inquire as to which or how many requests would receive (or not) the benefit of an extension. Mr. Slafsky did not inquire as to any other mode of managing discovery, such as limiting custodians or ESI collection methods.

8. The signatures on Applicant's instant motion, Applicant's first set of interrogatories served July 30, 2012, Applicant's first set of requests for production served July 30, 2012 and Applicant's Notice of Deposition of EventForce, Inc served August 6, 2012 appear to be Mr. Kuykendall's signature (or at least a signature distinct from that on Mr. Slafsky's declaration).

I make this declaration of my own knowledge of the facts set forth, under penalty of perjury.

August 9, 2012, Silver Spring, MD



Oliver L. Edwards

mark; documents concerning classes of consumers of goods and services sold under the EVENTFORCE mark; and documents concerning the sophistication of Applicant's customers.

Date: July 9, 2012

Regards,

WILSON SONSINI GOODRICH & ROSATI
A Professional Corporation

By: 

John L. Slafsky
Matthew J. Kuykendall
650 Page Mill Rd.
Palo Alto, CA 94304
(650) 493-9300

Attorneys for Applicant
SALESFORCE.COM, INC.

CERTIFICATE OF SERVICE BY EMAIL

I, Elvira Minjarez, declare:

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action. My business address is Wilson Sonsini Goodrich & Rosati, 650 Page Mill Road, Palo Alto, California 94304-1050.

I am employed in Santa Clara County. I am over the age of 18 years and not a party to the within action.

On this date, I served **INITIAL DISCLOSURES OF SALESFORCE.COM, INC.** on each person listed below, by forwarding the document(s) by electronic transmission on this date to the Internet email address listed below:

Oliver Edwards (ttab-email@edwardslaw.pro)

I declare under penalty of perjury under the laws of the State of California that the foregoing is true and correct.

Executed at Palo Alto, California on July 9, 2012.


Elvira Minjarez


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Built natively on Force.com, Eventforce provides a single, integrated solution in Salesforce to create and manage events and delight attendees. Event managers can leverage our integrated platform to engage their audiences pre-, during and post-event.

- Build branded registration sites in minutes integrated with your CRM
- Manage content across speakers, tracks and sessions and track attendance
- Turn attendees into fans with social collaboration and mobile apps

Most vendors start and end with online registration, but that's where event engagement really begins. Our Eventley experts learned this from years working on some of the biggest events. Now we are bringing that know-how and technology to you.

In addition to the above, with Eventforce, event managers and marketers can:

- * Deliver different registration experiences based on attendee types
- * Align in real time with sales and account teams for more targeted invitation management
- * Setup event pricing, promotion codes, payment options
- * Manage sessions, tracks, rooms, speakers, exhibitors, meetings
- * Launch branded attendee portals with collaboration, crowdsourcing, agenda builder
- * Engage attendees with matching rules, people, groups, feeds
- * Deliver on-site including kiosks, mobile check-in, mobile apps
- * Optimize programs and gain insight with real-time event reporting and dashboards

At Eventley, we are passionate about events and the results that can happen when you combine great vision with flawless execution and innovative technology. Our customers feel the same way. Contact us. We would love to show Eventforce to you and better understand your needs.

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