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Filing date: **10/25/2013**

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

Proceeding	91204777
Party	Plaintiff Apple Inc.
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Signature	/Joseph Petersen/
Date	10/25/2013
Attachments	2013-10-25 Apple v Crapple - Motion to Extend Opposer_s Testimony Period for Limited Purposes.pdf(102764 bytes )

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

In the Matter of Application Serial No. **85/379,097**  
For the mark: **CRAPPLE**  
Filed: July 22, 2011  
Published: December 20, 2011

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APPLE INC.,	:	
	:	Opposition No. 91204777
Opposer,	:	
	:	
v.	:	
	:	
NINJA ENTERTAINMENT	:	
HOLDINGS, LLC,	:	
	:	
Applicant.	:	
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**MOTION TO EXTEND OPPOSER’S TESTIMONY PERIOD  
FOR LIMITED PURPOSES**

Opposer Apple Inc. (“Apple”) respectfully moves the Board for 60-day extension of Apple’s testimony period up to and including January 5, 2014 for the limited purposes of (1) taking the testimony deposition of Thomas R. La Perle and (2) filing a Notice of Reliance on a certified copy of Apple’s 10-K form for the fiscal year ended Sept. 29, 2012 as an official record of the Securities and Exchange Commission (“SEC”).

Prior to filing this motion, Apple sought Applicant’s counsel’s consent to submission of testimony by affidavit and to a 30-day extension of Apple’s testimony period. (Oct. 25, 2013 Declaration of Joseph Petersen (“Petersen Decl.”) ¶¶ 2-3.) On October 14, 2013, Applicant’s counsel refused to consent to either request. (*Id.* ¶ 4.)

This is Apple’s first motion for an extension of its testimony period and it is timely filed, is not necessitated by any unreasonable delay on the part of Apple, and is based on good cause

for the reasons discussed below.

Pursuant to Fed. R. Civ. P. 6(b) and 37 C.F.R. § 2.116(a), the Board may grant a timely motion to extend a party's testimony period for good cause. *See Sysco Corp. v. Princess Paper, Inc.*, Cancellation No. 92042937, 2006 WL 752426, at \*2 (Mar. 22, 2006) (“[T]he 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.”). Apple's motion is timely because it is filed well prior to the November 5, 2013 closing date of Apple's testimony period as reset in the Board's June 17, 2013 order. Apple is and has been diligent in pursuing its claim in this proceeding. Apple's discovery was completed in a timely manner once responses were compelled and received from Applicant Ninja Entertainment Holdings, LLC (“Applicant”), and Apple is preparing to file several Notices of Reliance within its testimony period as currently set. (Petersen Decl. ¶5.) To complete the evidence Apple intends to file in this proceeding, however, Apple must take—and obtain and file the transcript of—the testimony deposition of Thomas R. La Perle, Director, Legal, Apple Inc. (disclosed in both Apple's Initial Disclosures and Pretrial Disclosures) and file a Notice of Reliance on a certified copy of Apple's 10-K form for the fiscal year ended Sept. 29, 2012 as an official record of the SEC. (*Id.* ¶¶ 6, 11.)

Preexisting scheduling conflicts, unavailability, and other pressing litigation matters over the upcoming months on the part of both Mr. La Perle and Apple's counsel Joseph Petersen—who will be taking the deposition—have necessitated this motion for an extension to take the deposition of Mr. La Perle and constitute good cause for granting it. *See, e.g., Societa Per Azioni Chianti v. Spoletoducale*, 59 U.S.P.Q.2d 1383, 1384 (T.T.A.B. 2001) (holding that the press of other litigation constituted good cause for granting opposer's first request to extend its testimony

period). Mr. La Perle was out of the office on vacation from October 16, 2013 – October 23, 2013 (Petersen Decl. ¶ 8), and Mr. Petersen is also engaged in other pressing litigation, including preparing for and presenting oral argument at a hearing before the Second Circuit Court of Appeals the following week (*id.* ¶ 9). In addition, Apple’s offices will be closed the entire week of the Thanksgiving holiday (from November 23, 2013 until December 2, 2013) as well as from Christmas Eve through New Year’s Day (from December 24, 2013 until January 2, 2014). (*Id.* ¶ 10.)

With respect to the certified copy of Apple’s 10-K form for the fiscal year ended Sept. 29, 2012, Apple diligently filed its request with the SEC on October 8, 2013 in order to receive the same in time to file it under a Notice of Reliance before the close of Apple’s testimony period as currently set. (*Id.* ¶ 12.) That same day, Apple called the SEC to confirm whether orders for certified documents would continue to be filled during the shutdown of the federal government. (*Id.* ¶13.) Apple was advised that SEC had a significantly greater backlog of certification requests than usual and that there is no option to expedite a particular request. Apple was also advised that if the SEC runs out of funds at any time due to the government shutdown, the SEC will cease to fulfill certification requests until further notice. (*Id.*)

Apple followed up with the SEC on October 17, 2013 to attempt to confirm that its order will be fulfilled and the estimated date that the certified document would be received. (*Id.* ¶14.) Apple was advised that the requested certified copy of Apple’s 10-K form is in process, due to be shipped by October 30, 2013, and that the SEC Office of Records Management Services will make every attempt to complete the request within that timeframe. (*Id.*) Because of the likelihood, however, that Apple will not receive the certified 10-K form in time to file it under a Notice of Reliance by November 5, 2013, Apple also seeks the requested extension with respect

to this document, to ensure its timely filing.

**CONCLUSION**

Based on the good cause established above, including preexisting scheduling conflicts, other pressing litigation matters, and likely delay in Apple's receipt of the certified 10-K form Apple has requested from the SEC, Apple respectfully requests a 60-day extension of Apple's testimony period up to and including January 5, 2014 for the limited purposes of (1) taking the testimony deposition of Thomas R. La Perle and (2) filing a Notice of Reliance on a certified copy of Apple's 10-K form as an official record of SEC.

This the 25th day of October, 2013.

Respectfully submitted,

**KILPATRICK TOWNSEND & STOCKTON LLP**

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NINJA ENTERTAINMENT	:	
HOLDINGS, LLC,	:	
	:	
Applicant.	:	
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**CERTIFICATE OF SERVICE**

This is to certify that a copy of the foregoing MOTION TO EXTEND OPPOSER’S TESTIMONY PERIOD FOR LIMITED PURPOSES has been served on Ninja Entertainment Holdings, LLC by sending a copy via e-mail to Daniel Kelman at [danielkelman@gmail.com](mailto:danielkelman@gmail.com) and depositing a copy with the United States Postal Service as First Class Mail, postage prepaid, in an envelope addressed to:

Daniel Kelman  
1934 Josephine Street  
Pittsburgh, Pennsylvania 15203

This the 25th day of October, 2013.

\_\_\_\_\_  
/s/ Alberto Garcia  
Alberto Garcia