

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

wbc

Mailed: June 12, 2014

Opposition No. 91205046

Christina Sukljian

v.

Ate My Heart, Inc.

Wendy Boldt Cohen, Interlocutory Attorney:

On March 10, 2014, Applicant filed a motion to extend discovery to allow time to take the discovery deposition of Christina Sukljian and remaining trial dates.¹ The motion is fully briefed. The Board has considered the parties' submissions and presumes the parties' familiarity with the arguments made therein. The parties' arguments will not be summarized herein except as necessary to explain the Board's decision.

As last set, discovery was set to close March 10, 2014. Because Applicant acted prior to the expiration of this deadline, it need only show "good cause" for the extension sought. *See* Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509.01(a) (3d

¹ Applicant also filed a motion to extend on March 3, 2014. The March 3, 2014 fails to indicate service upon Opposer as required by Trademark Rule 2.119(a) ("Proof of service must be made before the paper will be considered by the Office."). *See* TBMP § 113. The March 3, 2014 motion indicates a "cc: Ms. Christian Sukljian" but does not include the elements of a certificate of service "stating the date and manner in which service was made" signed by the filing party. *See* TBMP § 113.03. In view thereof, the March 3, 2014 motion will receive no consideration.

Opposition No. 91205046

ed. rev.2 2013). A motion to extend should include a recitation of specific facts constituting good cause for the extension sought. *See Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479, 1480 (TTAB 2000); *Instruments SA Inc. v. ASI Instruments Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999); *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758 (TTAB 1999). The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. *See, e.g., American Vitamin Products, Inc. v. DowBrands Inc.*, 22 USPQ2d 1313 (TTAB 1992).

Applicant alleges that it needs additional time to depose Ms. Sukljian and was unable to do so in the time allotted because, *inter alia*, it was waiting for Opposer's revised discovery responses and because Applicant's counsel was involved in other litigation related to an "FDIC enforcement action."

After considering the parties' submissions and arguments therein, the Board finds that Applicant has demonstrated the requisite good cause for the extension sought. *See Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL*, 59 USPQ2d 1383, 1383-84 (TTAB 2001) (press of other litigation may constitute good cause to extend).

In view thereof, the motion to extend discovery for the limited purpose of taking Ms. Sukljian's discovery deposition and remaining dates, to the extent modified herein, is **granted**. Applicant is allowed to serve Ms. Sukljian at

Opposition No. 91205046

her address of record with a discovery deposition notice, said deposition to occur on or before June 30, 2014 in Albany, New York or wherever the parties may agree.² *See* Trademark Rule 2.120(b); *see also* TBMP § 527.03. Dates are reset as follows:

Discovery for the limited purpose of taking Ms. Sukljian's discovery deposition closes	6/30/2014
Plaintiff's Pretrial Disclosures	8/14/2014
Plaintiff's 30-day Trial Period Ends	9/28/2014
Defendant's Pretrial Disclosures	10/13/2014
Defendant's 30-day Trial Period Ends	11/27/2014
Plaintiff's Rebuttal Disclosures	12/12/2014
Plaintiff's 15-day Rebuttal Period Ends	1/11/2015

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. *See* Trademark Rule 2.125, 37 C.F.R. § 2.125. Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

² As noted in the Board's January 28, 2014 order, Ms. Sukljian is reminded that failure to appear for a noticed deposition may result in entry of judgment against her.