

ESTTA Tracking number: **ESTTA750326**

Filing date: **06/04/2016**

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

Proceeding	91205896
Party	Plaintiff Beau L. Tardy
Correspondence Address	WENDY PETERSON NOT JUST PATENTS LLC PO BOX 18716 MINNEAPOLIS, MN 55418 UNITED STATES wsp@NJPLS.com
Submission	Opposition/Response to Motion
Filer's Name	Wendy Peterson
Filer's e-mail	wsp@NJPLS.com
Signature	/Wendy Peterson/
Date	06/04/2016
Attachments	Objection to Motion to Extend.pdf(27229 bytes)

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

Opposition Proceeding 91205896

In the matter of Trademark Application No. 85509929

For the mark: DIZZY

Published for Opposition Date: June 5, 2012

Beau Tardy ('Tardy'), Opposer

v.

Wild Brain Entertainment, Inc. ('Wild Brain'), Applicant

OBJECTION TO MOTION TO EXTEND

Opposer objects to the Motion to Extend because Applicant appears to be intentionally trying to deceive the Board and because Applicant does not appear to have met the good cause standard.

On May 12, 2016 at 10:08am in a one minute call, Applicants attorney Jonathan Reichman called Opposers attorney Wendy Peterson to ask for consent to extend the time for the Brief. The reason given at that time for the extension was that Applicants attorney was too busy to get it done although there had previously been no action by Applicant for months and there were still several weeks left in the Brief period. This did not seem like a good cause and Opposer's attorney responded on May 17 at 10:41 am in a one minute call that Opposer did not consent.

On June 3, 2016 a different attorney, William Merone filed for a Motion to Extend. In this Motion the claim is made that Opposer did not consent over the claim that Applicants attorney represented that he was too busy and that there was an unexpected illness.

The implication that Opposer did not consent even though the Applicants reason for asking for an Extension was an unexpected illness is total misrepresentation.

To be clear, neither Jonathan Reichamn nor William Merone ever mentioned an unexpected illness while asking Opposer for an Extension.

Neither on May 12, 2016 nor on June 3, 2016 did the Applicant ever make any mention of an unexpected medical situation to the Opposer. Additionally, no representation with regard to the unavailability of individuals with requisite knowledge associated with the nature or scope of the Brief was ever made.

Applicant also does not clearly explain why the period to file a Brief should be doubled rather than extended for a few days.

It appears that Applicants last filing was January 6, 2016 that consisted of a two page cover sheet followed by 35 pages of cut and paste TSDR records that failed to provide any relevant new evidence.

During the entire previous period Applicant did not take testimony and only submitted a short Notice of Reliance. Applicant did not submit any rebuttal evidence or any evidence of its use of the mark Dizzy. Applicants claim in this Motion to Extend that it “must summarize accurately the evidence in this case” seems like a bad faith claim given the lack of evidentiary documentation produced over the preceding two year period.

The Applicants law firm, Kenyon & Kenyon is a powerhouse law firm with offices in New York, Washington and California and has multiple trademark attorneys capable of handling trademark cases beyond the two that have appeared in this case so far.

We therefore believe that William Merone is attempting to deceive the Board by representing that the reason given for asking for the Extension was that there was an unexpected illness and that they were too busy.

Since Opposer delayed five days in responding to the original request for consent that took place weeks ago, Opposer therefore consents to a five day Extension rather than an Extension of the whole period.

Submitted By: /Wendy Peterson/

Date: June 4, 2016

Wendy Peterson, Attorney for Opposer, Beau Tardy

Not Just Patents

PO Box 18716

Minneapolis, MN 55148

wsp@NJPLS.com

CERTIFICATE OF SERVICE

I hereby certify that on June 4, 2016, the foregoing was served on Applicant's correspondents of record by email to:

jreichman@kenyon.com ,
wmerone@kenyon.com,
tmdocketny@kenyon.com