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

Proceeding	91205896
Party	Defendant Wild Brain Entertainment, Inc.
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**IN THE UNITED STATES PATENT AND TRADEMARK OFFICE
BEFORE THE TRADEMARK TRIAL AND APPEAL BOARD**

BEAU L. TARDY

Opposer,

v.

WILD BRAIN ENTERTAINMENT, INC.

Applicant.

Opposition No. No. 91205896

**APPLICANT’S REPLY BRIEF IN SUPPORT OF
ITS MOTION FOR AN EXTENSION OF TIME
TO FILE ITS TRIAL BRIEF**

On June 3, 2016, Applicant, Wild Brain Entertainment, Inc., moved for a thirty-day extension of time to file its trial brief, citing the press of other matters and certain personal complications. *See* D.I. 66. The following day Opposer, Beau L. Tardy, filed objections to the request, claiming that Applicant “appears to be intentionally trying to deceive the Board” and averring that “Applicant does not appear to have met the good cause standard.” *See* D.I. 67.

It is regrettable that a simple scheduling matter has taken such a turn, especially considering that Applicant is the only party that could possibly be prejudiced by a delay. The inflammatory nature of Opposer’s filing, however, merits that Applicant file a short reply.

In his opposition brief, Opposer first claims that when Applicant approached Opposer about an extension (on May 12), “there had previously been no action by Applicant for months and there were still several weeks left in the Brief period.” *See* D.I. 67, p. 1. In suggesting that Applicant has been dilatory, however, Opposer is overlooking the manifest point that Applicant’s

brief is intended to be *in response to* the trial brief that Opposer just filed on May 6. *Cf.* D.I. 65. Thus, Applicant (unlike Opposer) could not have begun work on its brief “months” before.

Opposer next suggests that Applicant sought an extension *too soon*, *see* D.I. 67, p. 1, and in so doing turns the world on its head. The reason Applicant’s counsel approached Opposer shortly after being served with Opposer’s trial brief was because counsel was already aware of the likelihood for a scheduling conflict and thus wanted to address the issue proactively. When Opposer surprisingly refused the requested extension, Applicant’s counsel attempted to complete all of other projects on which it was working—including a TTAB trial brief and a dispositive motion [and associated reply brief] for federal court—in sufficient time to prepare the brief for this matter as well, but unfortunately was unable to do so because of some medical issues that subsequently arose. It was for that reason that Applicant filed the current extension request.¹

Lastly, Opposer points to the evidentiary record and suggests that because Applicant only filed a single Notice of Reliance, counsel’s representation that it was requesting the additional time so that Applicant would “have sufficient time to prepare its arguments in this matter and to summarize accurately the evidence in this case” was made in bad faith. *See* D.I. 67, p. 2. To be clear, the position Applicant intends to take during briefing is that *Opposer* has failed to support his claim of standing with admissible evidence², and that even if the issue of standing could be

¹ Opposer notes that he was unaware of any medical issues when the parties spoke on May 12. *See* D.I. 67, p. 2. The reason for this was that the problems arose later, and despite Opposer’s insistence to the contrary, Applicant never suggested in its motion that Opposer *had* known.

² As just one example, Opposer is attempting to introduce testimony by simply attaching a declaration it to a Notice of Reliance and calling it a “Supplemental Disclosure.” *See* D.I. 62. Given that there was no stipulation between the parties about the use of declarations, such testimony (as well as the accompanying exhibits) obviously is improper and thus cannot be considered when assessing Opposer’s claim of standing. *See, e.g., Tri-Star Marketing LLC v.* (continued)

ignored, Opposer separately has not made out a *prima facie* case that Applicant supposedly lacked a *bona fide* intent to use the subject mark. That is, the “evidence” Applicant intends to summarize (and to which it mostly plans to object) is *Opposer’s* evidence. Thus, Opposer’s discussion of the purposefully limited nature of Applicant’s trial testimony is irrelevant.

* * *

As Applicant demonstrated in its opening brief, the combination of the press of other contested matters and an unexpected medical situation has prevented Applicant from completing the drafting process for its trial brief. Applicant is therefore seeking a thirty-day extension of its briefing period, although Applicant hopes to complete the briefing process sooner. Good cause having been shown, Applicant respectfully asks that the Board granted the requested extension.

Date: June 7, 2016

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Nino Franco Spumanti S.R.L., 84 USPQ2d 1912, 1914 (TTAB 2007) (a declaration cannot be submitted in lieu of a testimony deposition absent a stipulation of the parties); *Order Sons of Italy in America v. Memphis Mafia Inc.*, 52 USPQ2d 1364, 1365 n.3 (TTAB 1999) (“statement” with exhibits by defendant's officer stricken where there was no stipulation altering the rules).

CERTIFICATE OF SERVICE

It is hereby certified that a true copy of the foregoing *Reply Brief in Support of Applicant's Motion for an Extension of Time to File its Trial Brief* was served on the parties or counsel indicated below by electronic mail sent to the address(es) listed below (as agreed to by the parties):

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