

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

EJW

Mailed: December 16, 2014

Opposition No. 91207836

Volvo Trademark Holding AB

v.

Wolvol Inc

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

This case now comes up for consideration of Applicant's motion (filed December 4, 2014) to extend for ninety days its response due date to Opposer's testimonial deposition upon written questions. Opposer has filed an opposition thereto.

On December 15, 2014, the parties, represented by Leigh Ann Lindquist (of Sughrue Mion PLLC) for Opposer and Michael Steinmetz (of Garson, Ségal, Steinmetz, Fladgate LLP) for Applicant, and Elizabeth Winter, the assigned Interlocutory Attorney, held a teleconference to discuss the referenced motion. This order summarizes the conference and sets forth the Board's order on Applicant's motion. *See* Trademark Rule 2.120(i)(1); and TBMP § 502.06(a) (2014).

- *Parties' Arguments*

By way of background, Opposer served its deposition upon written questions on Applicant on November 12, 2014. In view thereof, under Trademark Rules 2.119(a) and 2.124(d)(1), Applicant's cross questions were due on December 7, 2014. By its motion, Applicant seeks an extension of ninety days to the response due date, that is, until March 6, 2015, on the grounds that Opposer has served with its 175 written examination questions over 1500 pages of exhibits not produced during discovery, which will require time for Applicant to research. In addition, Applicant explains that it is in the midst of the busy retail holiday season and is unavailable for much of the next two months, and that it needs additional time to prepare cross questions. Finally, Applicant states that its motion is not for purposes of delay.

In opposition, Opposer points out that, in opposition to Opposer's June 19, 2014 motion to extend its testimony period and subsequent trial dates, Applicant stated that "Applicant's employee does not require 90 days to make him/herself available in this proceeding that Opposer initiated" (June 24, 2014, response). Further, Opposer asserts that, in view of the schedule proposed in that motion, Applicant knew when both parties' testimony periods would close; that Opposer responded to Applicant's discovery on July 3, 2014, and that Applicant has not complained previously about Opposer's responses; and that, notwithstanding the holiday season, a ninety-

day extension of time is excessive. Opposer also suggests that Applicant's request is akin to a request to conduct discovery when the discovery period is closed and Applicant did not request a deposition of Opposer's witness during the discovery period.

In reply, during the conference, Applicant stated, *inter alia*, that although Opposer's June 19, 2014 motion to extend its testimony period included a trial schedule, Applicant had been unaware that a testimonial deposition upon written questions would be conducted; that Applicant is a small business, and its principal is largely unavailable during the holiday season, just as Opposer's witness was previously unavailable; and that it needed additional time to review the materials served by Opposer.

- *Decision*

Trademark Rule 2.124(d)(2) provides that upon motion for good cause by any party, or upon its own initiative, the Board may extend any of the time periods provided by Trademark Rule 2.124(d)(1) for the service of cross questions and redirect questions. Based on the parties' arguments, the Board concludes that Applicant has not shown good cause for its request for a ninety-day extension of time. Simply put, Applicant did not support why it needs most of December, all of January and February, and the first week of March 2015 to serve its cross questions on Opposer. Generally, the adverse party is only allowed 20, not 110 days to serve its cross questions, and the holiday season (of concern to Applicant) traditionally ends after the

beginning of January. The Board also notes that Applicant has known of the trial schedule since the Board's August 28, 2014 order and that, in response to Opposer's motion to extend the testimony period which was the subject of the August 28, 2014 order, Applicant did not mention any potential scheduling issues with respect to the then proposed trial periods running from November 2014 through January 2015. Rather, Applicant protested any further delay to the proceeding. Finally, Opposer's counsel confirmed that it had identified its testimonial witness (Ms. Monica Dempe) in its initial disclosures, that is, as a person likely to have discoverable information that Opposer may use to support its claims. In view thereof, Applicant has known since early 2013¹ that Ms. Dempe may be a trial witness in this proceeding. *Cf. Spier Wines (Pty) Ltd. v. Shepherd*, 105 USPQ2d 1239 (TTAB 2012) (witness excluded because she was not identified early in proceeding as a person who might ultimately be identified as prospective witnesses). Insofar as Ms. Dempe resides in Sweden and oral depositions of foreign persons are rarely allowed in Board proceedings, her testimonial deposition upon written questions should have been an anticipated possibility.

In view of the foregoing, Applicant's motion to extend for ninety days its response due date for its cross questions is **denied**. However, in view of the large number of questions posed by Opposer and accompanying exhibits, as well as the current winter holiday season, Applicant is allowed until

¹ In accordance with the Board's order mailed January 9, 2013, initial disclosures were due on April 9, 2013.

JANUARY 16, 2015 to serve its cross questions for Ms. Dempe on Opposer's counsel. Subsequent service of redirect or recross questions should be served in accordance with Trademark Rule 2.124(d)(1).

As a final matter, as discussed, the parties shall serve by electronic mail on the adverse party *courtesy copies* of any submission to the Board. Primary service on the adverse party remains by mail or similar means such that the five days added to any prescribed period under Trademark Rule 2.119(c) shall remain applicable.

This proceeding remains SUSPENDED in accordance with the Board's order mailed on November 20, 2014.

☼☼☼