

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

RK

Mailed: May 7, 2015

Opposition No. **91212445**

Red Bull GmbH

v.

Bullson Co., Ltd.

Yong Oh (Richard) Kim, Interlocutory Attorney:

As last reset, Opposer's testimony period opened on December 17, 2014, and was scheduled to close on January 15, 2015. This matter now comes up on Opposer's motion (filed December 23, 2014) to extend its testimony period. The motion is fully briefed.

As Opposer's motion was filed prior to the expiration of the time period for which Opposer seeks an extension, Opposer need only show good cause for the requested extension. *See* Fed. R. Civ. P. 6(b); TBMP § 509.01 (2014). To show good cause, the moving party must set forth with particularity the facts said to constitute good cause and must demonstrate that the requested extension is not necessitated by the moving party's own lack of diligence or unreasonable delay. TBMP § 509.01(a). So long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions has not been abused, the Board is liberal in granting extensions of time. *See National*

Football League v. DNH Management LLC, 85 USPQ2d 1852, 1854 (TTAB 2008).

Opposer's motion for extension is **GRANTED**. There is nothing in the record to suggest that Opposer was negligent or otherwise acting in bad faith in seeking an extension of its testimony period. Opposer's counsel sent an email to Applicant's counsel of record two days after the opening of testimony concerning scheduling of its testimonial depositions, particularly in light of the upcoming holidays. Opposer's counsel received email responses from Applicant's co-counsels on December 19 and 20, 2014, informing him that they would be handling the deposition as Applicant's counsel of record had "left for the holiday" and that "it will not be possible to schedule any depositions prior to January 2nd, after the holiday." *Applicant's Opposition*, 10 TTABVUE 12-13. Subsequent emails that following Monday and Tuesday, i.e., December 22 and 23, 2014, demonstrate a clear disagreement and misunderstanding between the parties' counsels concerning scheduling of and availability for the depositions, including Applicant's prior representation that it was unavailable for depositions until after the holidays. After Applicant's counsel made clear that Applicant would not agree to an extension, Opposer filed its motion for extension later that day. Under these circumstances, the Board finds neither negligence nor bad faith. That Applicant's counsels may have been available under a particular schedule

suggested by Applicant is only one consideration in the inquiry and does not preclude a motion to extend.

It is further noted that there have only been two prior extension/suspension requests in this proceeding and that the matter “has progressed with relatively few delays or interruptions,” as confirmed by both parties. *Id.* at 3; *see also Motion to Extend*, 9 TTABVUE 3. Indeed, Opposer notes that the prior requests were necessitated by “Applicant’s counsel’s travel unavailability,” *id.* at 4, and Applicant does not contend otherwise. As such, it cannot be said that the privilege of extensions has been abused.

Finally, considering the parties’ mutual obligations of good faith dealing and cooperation, the Board finds the current disagreement between the parties both unfortunate and unnecessary. Although Applicant is not obligated to consent to the requested extension, which the Board does not find to be unreasonable in view of the holiday season and the scheduling difficulties inherent therein, Applicant’s failure to do so has resulted in needless motion practice, increased costs to the parties, unnecessary utilization of Board resources and delay.

Proceedings herein are **RESUMED** and dates are **RESET** as follows:

Plaintiff's 30-day Trial Period Opens	5/18/2015
Plaintiff's 30-day Trial Period Ends	6/16/2015
Defendant's Pretrial Disclosures Due	7/1/2015
Defendant's 30-day Trial Period Ends	8/15/2015
Plaintiff's Rebuttal Disclosures Due	8/30/2015
Plaintiff's 15-day Rebuttal Period Ends	9/29/2015

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 taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

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