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

Proceeding	91212445
Party	Plaintiff Red Bull GmbH
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Date	12/23/2014
Attachments	RB v. Bullson - 91212445 - Mtn to Extend.pdf(45898 bytes )

**CERTIFICATE OF ELECTRONIC FILING**

I hereby certify that this correspondence is being filed with the TTAB electronically via ESTTA on December 23, 2014.

/Angelique M. Riordan/  
Angelique M. Riordan

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

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<b>RED BULL GMBH,</b> )		
)	<b>Opposition No.:</b>	<b>91-212,445</b>
<b>Opposer,</b> )		
)	<b>Trademark:</b>	<b>Bull Device with Shield</b>
<b>v.</b> )		
)		
<b>BULLSONE CO., LTD.</b> )		
)	<b>Serial No.:</b>	<b>79/106,767</b>
<b>Applicant.</b> )		
_____ )		

**OPPOSER’S MOTION FOR SUSPENSION/EXTENSION OF TESTIMONY PERIODS**

Opposer, Red Bull GmbH, moves the Honorable Trademark Trial and Appeal Board to suspend proceedings and re-set the remaining testimony periods.

**BACKGROUND**

This opposition proceeding has progressed with relatively few delays or interruptions. Earlier in this case, there were two agreed upon extensions of dates – one for 60 days and one for 90 days – so that the parties could engage in settlement discussions. Those extensions were necessary largely because Applicant’s counsel, Michael Stein, was traveling to Asia to meet with his client and was not able to review the settlement proposal that Red Bull proffered. Needless to say, those settlement discussions were not successful and this opposition has proceeded expeditiously.

Based upon the standard dates in the 90-day suspension order, Opposer’s 30-day testimony period opened last week on December 17, 2014, and is scheduled to close on January 15, 2015. Opposer called Applicant’s counsel last week immediately after the opening of the testimony period to discuss proposed

deposition dates in view of the fact that testimony was scheduled to take place over the Christmas and New Year's holiday season. Red Bull further left a voicemail message, immediately followed by an email to Applicant's counsel with a similar inquiry.

At the end of the week, Opposer received emails from two of Applicant's counsel's "of counsel" lawyers – Ms. Amy Benjamin and Mr. Joseph Zito – informing Opposer that Mr. Stein, the lead counsel for Applicant was traveling, and that they would be handling the depositions. In Mr. Zito's email, he stated:

Further to Ms. Benjamin's e-mail below, it will not be possible to schedule any depositions prior to January 2nd, after the holiday.

This meant that Red Bull's testimony period had to be limited to less than half of the 30-day testimony period in order to accommodate the schedules of Applicant's three partner-level attorneys – Michael Stein, Amy Benjamin and Joseph Zito.

Opposer fully recognizes the difficulties in scheduling – both attorney and lay witness – over the Christmas and New Year's holidays. Moreover, this proceeding has progressed well and courteously and this conflict was easily handled through a stipulated motion to suspend and extend the testimony dates.

As such, after receiving Mr. Zito's email, Opposer's counsel ceased efforts to coordinate with witnesses (particularly foreign witnesses) during the Christmas holiday week.

After several attempts to reach Ms. Benjamin and Mr. Zito, Opposer's counsel was finally able to reach Mr. Zito yesterday. Opposer's counsel explained the timing issues and the need to suspend/extend the testimony dates. While 30-day, 60-day or 90-day continuances are the norm, Opposer's counsel explained that he was traveling outside of North America during the latter half of January and returning in early February so a 30-day extension would not work. Thus, a 60-day suspension/extension would work but if Applicant preferred due to its schedule, Opposer was certainly willing to agree to a 90-day suspension/extension. While a routine extension does not ethically require client approval, Mr. Zito explained that he wanted to check with his client.

Late yesterday, Opposer's counsel received an email from Mr. Zito refusing any to agree to any suspension/extension other than 1 week (which he knew and acknowledged directly conflicted with trial counsel's trip outside North America). Mr. Zito's email also rambled on about irrelevant topics such as the identity of attorneys that he planned to have attend European depositions on written questions. Moreover, Mr. Zito did not either in the meet and confer telephone conference or in email correspondence, have any reason for not agreeing to normal scheduling accommodations particularly in view of the number and location of the witnesses, the holiday season, and Applicant's team's unavailability during the majority of Opposer's testimony period. Notably, Mr. Zito never explained how such a short continuance would harm his client in any manner. As such, Opposer informed Mr. Zito that it would take appropriate action<sup>1</sup>.

### **LEGAL ANALYSIS**

This motion is being filed early in the testimony period. Indeed, Opposer contacted Applicant within 1 - 2 days of the opening of its testimony period. Thus, not only is this motion timely, but Opposer has acted very promptly. Opposer needs only establish "good cause" for the requested extension. Fed. R.Civ. P. 6(b)(1)(A). Generally, "the Board is liberal in granting extensions of time before the period to act has elapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused." *American Vitamin Products Inc. v. DowBrands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992).

Here, as shown above, good cause has been established. Not only has Opposer been extremely diligent, it certainly has not been guilty of negligence or bad faith. In addition, the privilege of extensions has not been abused in that the only two extensions – earlier in this case – were for settlement discussions and were due to Applicant's counsel's travel unavailability. Finally, in the meet and confer between the

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<sup>1</sup> Mr. Zito's suggestion, in an aggressive email earlier today, that he might retract his team's unavailability over the holidays is too little, too late. This week was an important week for Opposer to coordinate with its witnesses, particularly its European witnesses. After receiving Mr. Zito's email of unavailability, a *partial* retraction of his unavailability on the eve of Christmas (European time) prejudicially deprives Opposer from meaningful contact with its witnesses during this critical time.

parties, Applicant has raised no countervailing argument or reason why the testimony period should not be suspended/extended.

### CONCLUSION

In view of the foregoing, Opposer submits that its testimony period should be suspended effective immediately and that its testimony period should be rescheduled in 60 days. Opposer's proposed schedule, in accordance with TTAB practice<sup>2</sup>, is:

Plaintiff's 30-day Trial Period Ends : 03/16/2015

Defendant's Pretrial Disclosures : 03/31/2015

Defendant's 30-day Trial Period Ends : 05/15/2015

Dated: December 23, 2014

Respectfully submitted,

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<sup>2</sup> These dates are proposed in accordance with the TTAB's standard time frames for setting trial dates. Opposer recognizes that should no further changes be made, Applicant's testimony period overlaps with the annual meeting of the INTA and depending on availability of witnesses that may be inconvenient for Applicant and/or counsel. Moreover, Opposer's counsel is scheduled to be out of the country during part of the 15-day rebuttal period. Thus, it is recognized that further reasonable adjustments may be necessary to accommodate witness schedules and/or counsel schedules.

**CERTIFICATE OF SERVICE**

I certify that a true and correct copy of the foregoing **OPPOSER'S MOTION FOR SUSPENSION/EXTENSION OF TESTIMONY PERIODS** is being served on December 23, 2014, by deposit of same in the United States Mail, first class postage prepaid, in an envelope addressed to counsel for Applicant at:

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