

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: March 31, 2015

Opposition No. 91213057

Hybrid Athletics, LLC

v.

Hylete LLC

ELIZABETH J. WINTER, INTERLOCUTORY ATTORNEY:

This case now comes up for consideration of Applicant's contested motion (filed March 25, 2015) to extend its time to respond to Opposer's motion for summary judgment filed on March 2, 2015.¹

Applicant seeks an extension of thirty days from the "April 1, 2015" deadline for Applicant to respond to Opposer's summary judgment motion. As a threshold matter, the deadline for Applicant to respond to Opposer's motion is **April 6, 2015**. See Trademark Rules 2.119(c) and 2.127(e)(1). That being said, Applicant explains that it needs the requested extension in order to "comprehensively prepare" its brief in opposition, and that the motion is not being filed for delay. Opposer opposes the request for the additional time, arguing, *inter alia*, that Applicant has not shown good cause for the

¹ In view of the imminent deadline at issue, the Board now considers the motion before the time for Applicant to file a reply brief.

requested thirty-day extension of time, that Applicant's lack of participation in this proceeding has already delayed the proceeding, which has prejudiced Opposer, and that Applicant's lack of diligence in adhering to deadlines does not support granting the requested extension of time.

The appropriate standard for allowing an extension of a prescribed period prior to the expiration of the term is "good cause." *See* Fed. R. Civ. P. 6(b) and TBMP § 509 (2014) and cases cited therein. The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the motion sets forth with particularity facts that constitute good cause for the requested extension, *Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQd 1479, 1480 (TTAB 2000), and the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. *See, e.g., SFW Licensing Corp. v. Di Pardo Packing Ltd.*, 60 USPQ2d 1372, 1375 (TTAB 2001) (cursory and unsupported statements are insufficient to show good cause); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1851 (TTAB 2000); and *American Vitamin Products, Inc. v. DowBrands Inc.*, 22 USPQ2d 1316 (TTAB 1992). The moving party, however, retains the burden of persuading the Board that it was diligent in meeting its responsibilities and should therefore be awarded additional time. *See National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008), *citing Sunkist Growers, Inc. v. Benjamin Ansehl Company*, 229 USPQ 147 (TTAB 1985).

As an initial observation, Applicant's sparse motion contains very little information upon which the Board could find good cause for an extension of the period for responding to Opposer's summary judgment motion. A motion to extend must state with particularity the grounds therefor, including detailed facts constituting good cause. *Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999). Here, Applicant has failed to explain any exigent circumstances why it is unable to timely file its response to the summary judgment motion, nor has it set forth good cause for the extension of time. Moreover, the Board notes that Applicant has been previously sanctioned for its failure to adhere to the deadline set forth in the Board's July 4, 2014 order compelling responses to Opposer's discovery requests; and that Applicant failed to respond to Opposer's motion to compel. In view thereof, the Board finds that Applicant's conduct in this proceeding has been negligent.

Accordingly, because Applicant has failed to show good cause for its requested extension of time and has not been diligent in meeting its responsibilities in this proceeding, the motion to extend its time to respond to Opposer's motion for summary judgment is **denied**. Applicant's response to Opposer's motion is due **April 6, 2015**.

This proceeding remains suspended pending the Board's consideration of Opposer's motion for summary judgment.

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