

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

BUO

Mailed: January 15, 2015

Opposition No. 91214191

*BBK Pictures, Inc.*

*v.*

*Boston Iced Tea Co., Inc.*

**Benjamin U. Okeke, Interlocutory Attorney:**

Now before the Board is Opposer's motion, filed January 10, 2015, for an extension of an unspecified amount of time to allow the parties to complete their previously noticed depositions. Opposer's counsel contacted the assigned Board interlocutory attorney on January 6, 2015, seeking to discuss the parties' troubles conducting the depositions and the need for an extension of time to resolve those issues and conduct the depositions. Opposer indicated that it had contacted Applicant to secure Applicant's consent to the motion, but that Applicant's consent was withheld.

Rather than incur further delay to the proceeding, the Board granted Opposer's request to have the issue resolved by telephone conference as

permitted by Trademark Rule 2.120(i)(1). *See* Trademark Rule 2.120(i)(1); TBMP § 502.06 (2014).<sup>1</sup>

The parties agreed to hold a brief telephone conference at 2:00 p.m. EST, on Friday, January 9, 2015. Participating in the conference were Opposer's counsel, Dina Leytes, Applicant's counsel, Roger N. Behle, and Board interlocutory attorney, Benjamin U. Okeke.

The Board carefully considered the arguments raised by the parties during the telephone conference, and the record of this case in coming to a determination regarding the issues presented.

During the telephone conference, the Board made the following findings and determinations:

***Motion for Extension of Dates***

Inasmuch as the purpose of discovery is the fair and complete exchange of information, and in light of the Board's preference to decide its cases on the merits, and where practicable to produce a full and complete record for consideration, the Board is inclined to favor the completion of discovery.

Pursuant to Fed. R. Civ. P. 6(b), a party need only establish "good cause" for an extension request lodged prior to the close of the period sought to be extended. Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509.01. Generally, "the Board is

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<sup>1</sup> A party may request a telephone conference from the assigned Board attorney before it files the underlying motion. *See* TBMP § 502.06. Moreover, Patent and Trademark Rule 1.2, which requires all business with the USPTO be transacted in writing, is waived to the extent that Board attorneys or judges may accept from parties, or direct parties to present, oral recitations of procedural facts and presentations of argument. Finally, Trademark Rule 2.119(b), which specifies the acceptable methods for forwarding service copies of papers filed with the Board, is waived to the extent necessary to facilitate telephone conferencing.

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.” *Am. Vitamin Prods. Inc. v. DowBrands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992).

Inasmuch as this is only Opposer’s second request for an extension of dates, the Board does not find that Opposer has abused the privilege of extensions. Additionally, there is no evidence of record to indicate that Opposer has acted in bad faith. Finally, despite the belated nature of Opposer’s motion, and in light of the abrupt circumstances presented which occasioned the need for this extension request, there is no evidence that Opposer has acted negligently.

Given the difficulties presented in Opposer’s motion, the Board finds good cause to postpone the opening of Opposer’s trial period in order to allow the parties to complete any previously noticed depositions.

Accordingly, Opposer’s motion for an extension of dates in the proceeding is **GRANTED** to the extent that the parties are allowed **THIRTY DAYS** from the mailing date of this order to conduct any previously noticed depositions.

However, given the circumstances surrounding Opposer’s two previous requests for extension of the schedule in this proceeding, further extensions

of time will not be granted absent a showing of **extraordinary circumstances**.<sup>2</sup>

The Board notes that while the parties mutually agreed to an accelerated schedule in this case, it was nonetheless “Opposer [who] brought this case and, in so doing, took responsibility for moving forward on the established schedule.” *Atlanta-Fulton County Zoo, Inc. v. DePalma*, 45 USPQ2d 1858, 1860 (TTAB 1998).

***Schedule***

The remaining trial and briefing dates are reset as follows:

|                                     |                  |
|-------------------------------------|------------------|
| Plaintiff’s Main Brief Due          | <b>2/15/2015</b> |
| Defendant’s Response Brief Due      | <b>3/17/2015</b> |
| Plaintiff’s Reply Brief Due, If Any | <b>4/1/2015</b>  |

Briefs shall be filed in accordance with Trademark Rule 2.128(a) and (b), except as modified by the Board’s May 15, 2014 order.

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<sup>2</sup> Opposer should note that neither the general press of other business matters or litigation, nor any difficulties with communication between Opposer and its counsel will be seen to constitute **extraordinary circumstances**.