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

Proceeding	91214649
Party	Plaintiff Noodle Time, Inc.
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Date	07/05/2015
Attachments	Microsoft Word - MOT - Motion for Clarification2.pdf(113069 bytes)

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

NOODLE TIME, INC.,

Opposer,

Opposition No.: 91214649

v.

Mark: **BENNY HUNNA**

Serial No.: 85/920,599

BENNY HODGE,

Filing date: May 1, 2013

Applicant.

Publication Date: October 8, 2013

**OPPOSER'S REQUEST FOR CLARIFICATION OF MAY 28, 2015 ORDER RESTING
PRETRIAL AND TRIAL PERIODS, OR, IN THE ALTERNATIVE, TO EXTEND
TRIAL DATES BY THIRTY (30) DAYS**

Opposer Noodle Time, Inc. ("Opposer") respectfully requests clarification of the Board's May 28, 2015 Order ("Order") or, in the alternative, to briefly extend the trial dates. Specifically, Opposer seeks clarification of the Board's Order with respect to Plaintiff's Trial and Rebuttal Periods. Alternatively, pursuant to Rules 26 and 37 of the Federal Rules of Civil Procedure and Rule 2.120 of the Trademark Rules of Practice, Opposer seeks an extension of the trial dates by thirty (30) days. In support of the foregoing, Opposer states as follows:

Motion for Clarification

1. On May 28, 2015, the TTAB granted Opposer's Motion for Discovery Sanctions (filed January 29, 2015), in part by re-opening the discovery period until June 27, 2015 so that Plaintiff could take the discovery deposition of Applicant. Having re-opened the discovery period for this limited purpose, the Board's Order also reset certain trial dates as follows:

<u>Task</u>	<u>Current Deadline in Order</u>
Plaintiff's Pretrial Disclosures	07/20/2015
Plaintiff's 30-day Trial Period Ends	08/03/2015
Defendant's Pretrial Disclosures	08/18/2015
Defendant's 30-day Trial Period Begins	09/02/2015
Defendant's 30-day Trial Period Ends	10/02/2015
Plaintiff's Rebuttal Disclosures	10/17/2015
Plaintiff's 15-day Rebuttal Period Ends	11/16/2015

2. According to the above, Plaintiff's pretrial disclosures are due on July 20, 2015 and Plaintiff's 30-day trial period ends on August 4, 2015, which means that Plaintiff's trial period began on July 3, 2015. Plaintiff's pretrial disclosures, however, are due after the opening of Plaintiff's trial period. This is inconsistent with 37 CFR 2.121(e), which states that disclosures "are due *no later than fifteen (15) days prior* to the opening of each testimony period, . . ." (emphasis added).

3. Defendant's pretrial disclosures and trial period deadlines, as set forth in the Board's Order, are in accordance with 37 CFR §2.121(e) (Defendant's pretrial disclosures are due on 8/18/2015 which is fifteen (15) days prior to the opening of Defendant's trial period).

4. In view of the foregoing, NTI respectfully requests clarification of the Board's Order with respect to Plaintiff's Trial and Rebuttal Periods, as shown below.

<u>Task</u>	<u>Current Deadline in Order</u>	<u>Clarification</u>
Plaintiff's Pretrial Disclosures	07/20/2015	
Plaintiff's 30-day Trial Period Begins		08/04/2015
Plaintiff's 30-day Trial Period Ends	08/03/2015	09/03/2015
Defendant's Pretrial Disclosures	08/18/2015	
Defendant's 30-day Trial Period Begins	09/02/2015	
Defendant's 30-day Trial Period Ends	10/02/2015	
Plaintiff's Rebuttal Disclosures	10/17/2015	
Plaintiff's 15-day Rebuttal Period Opens	11/01/2015	
Plaintiff's 15-day Rebuttal Period Ends		11/16/2015

Motion for Extension of Time

5. Alternatively, Opposer requests an extension of all trial dates for the limited purpose of allowing Opposer to receive and review the deposition transcript of Applicant and to prepare a motion for summary judgment in an attempt to narrow the issues in this case for trial.

6. Opposer conducted the deposition of Applicant on June 23, 2015. Opposer has not yet received the transcript of Applicant's deposition. Opposer's deadline to submit pretrial disclosures is currently scheduled for July 20, 2015.

7. Opposer's 30-day trial period opened on July 4, 2015 and ends on August 4, 2015.

8. In view of the immediate deadlines, Opposer is requesting an extension of all trial dates by thirty (30) days in order for Opposer to have sufficient time to review the deposition transcript of Applicant, upon receipt, and to prepare this case for summary judgment.

9. Opposer has been diligent regarding the taking of discovery of this matter and has not yet requested any extension of time in this proceeding.

10. Opposer has made an effort to resolve this matter before filing this motion for extension of time by attempting to reach Applicant via email (on July 5, 2015) prior to the filing of this motion. Applicant has consented to the relief sought by this motion.

11. The requested extension is not sought for delay or any improper purpose.

WHEREFORE, Plaintiff respectfully requests that this Board grant Opposer's Motion for Clarification of the Board's May 28, 2015 Order Resetting Pretrial and Trial Periods, Or, In The Alternative, To Extend Trial Deadlines by Thirty (30) Days.

Date: July 5, 2015

MAVEN INTELLECTUAL PROPERTY

/s/ Janet C. Moreira

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Counsel for Opposer Noodle Time, Inc.

CERTIFICATE OF ELECTRONIC TRANSMISSION

I HEREBY CERTIFY that a true copy of the foregoing motion is being transmitted electronically through ESTTA pursuant to 37 C.F.R. § 2.195(a) on July 5, 2015.

/s/ Janet C. Moreira

Janet C. Moreira

CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a true and accurate copy of the foregoing document has been served on all counsel and/or parties of record via electronic mail transmission on bennyhodge25@yahoo.com as follows:

/s/ Janet C. Moreira

Janet C. Moreira