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

Proceeding	91220573
Party	Defendant Linda Grandia
Correspondence Address	LINDA GRANDIA G & G EXCHANGE KEPPLERSTREET 13 AMERSFOORT, 3817TA NETHERLANDS info@missmultiverse.com
Submission	Other Motions/Papers
Filer's Name	Linda Grandia
Filer's e-mail	info@missmultiverse.com
Signature	/Linda Grandia/
Date	02/01/2016
Attachments	Defendants Response To Opposers Motion To Extend Discovery & Trial Dates - Opposition No. 91220573.pdf(167218 bytes)

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

**In re: Application Serial No. 86/235,052
Mark: MISS MULTIVERSE**

MISS UNIVERSE L.P., LLLP,

Opposer,

vs.

LINDA GRANDIA,

Defendant.

Opposition No. 91220573

**DEFENDANTS RESPONSE TO OPPOSERS MOTION
TO EXTEND DISCOVERY AND TRIAL DATES**

I. Introduction

Defendant MISS MULTIVERSE ("Defendant") hereby contests to Miss Universe L.P., LLLP ("Opposer") motion to extend discovery and trial dates as set forth below.

Defendant does not consent nor agree and hereby contest to opposers motion submitted on January 29, 2016 requesting for extension of discovery deadline and trial dates for sixty (60) days. Defendant hereby moves the board to deny such request and to allow the proceedings to continue with the foregoing scheduled dates as presently set and make no changes thereto providing reasons as detailed herein. (i) Parties received equal and fair amount of time as set forth by the USPTO rules and regulations, (ii) an extension of 30 days was already granted within the existing discovery period (iii) no substantial eventualities or further delay occurred during the discovery period to justify an additional 60 days' extension (iv) opposer falsely implies that Defendant has refused to comply as an

excuse to delay possible means for putting an early end to the foregoing trademark procedures. (v) Opposer seeks to delay the foregoing proceedings to pursue unreasonable production of documents and things to engage in “fishing expeditions” in hopes of finding loopholes to fabricate non existing evidence.

II. History of Proceedings

Opposer filed a Notice of Opposition in this proceeding on February 11, 2015. Defendant filed her Answer on July 6, 2015. Counsel for the respective parties held a discovery conference in August 2015. Defendants research demonstrated that previous cases were opposer as (Miss USA) was involved; such as (Miss Asia USA vs Miss USA) the (Defendant Miss Asia USA) won the case against (opposer Miss USA) but as result (Defendant Miss Asia USA) became financially overwhelmed and thus affected her business negatively as result of (opposer Miss USA) lengthy and high expenditure based litigation strategy; therefore, Defendants resolved as counter strategy to not be lead in to a lengthy resource based litigation where opposer seeks to financially frustrate and drain Defendant’s resources and therefore Defendant withdrew counsel of record to avoid high legal fees and to represent her self, on September 2, 2015, the Board approved Defendant's pro se request.

III. Discovery Proceedings

The parties exchanged Initial Disclosures in September 2015, Discovery opened October 06, 2015 providing equal amount of time for both parties to diligently begin interrogatories, then (one month and 4 days later) on November 10, 2015 Opposer served

upon Defendant a set of 105 discovery interrogatories counting subparts, that exceeded the 75 seventy-five interrogatories as set forth by Rule 33 of the Federal Rules of Civil Procedure, with due date set for December 15, 2015, pursuant to 37 CFR § 2.120(d)(1).

Opposers (one month and 4 days) time delay provided as result merely (15 days) left for the expert disclosure period that was scheduled to end on January 1, 2016. If Opposer considered that the expert disclosure period was essential and of high importance, Opposer should not have lingered (one month and four days) before serving discovery questions.

Opposers lack of due diligence during earlier stage of discovery does not justify additional extensions of time during the closing of discovery period. Furthermore, Opposers council are experienced trademark attorney's familiar with the permitted number of interrogatories. Contrariwise and to establish good faith and to not frustrate nor delay the foregoing case Defendant resolved to proceed with the 105 interrogatories and made no objections to the board of the subject matter. Defendants language is Dutch and has no legal council; therefore, has to perform extraordinary and lengthy research. With reasonable efforts and due diligence Defendant provided answers to 105 interrogatories on December 20, 2015 with a delay of only 5 days.

IV. Reasonably short and minimum delays occurred from both parties and readily amended with an extension of 30 days.

Opposers motion brings to the attention of the board an instance where the Defendants delayed reasonably (short 5 days') in order to frame Defendant as being non-compliant due to a minimum delay, but fails to mention that Opposer similarly produced a

one-day delay while providing their discovery answers and therefore both parties produced non-significant delays that cannot be considered of any importance unless seeking to annoy and frustrate the board with nonsense.

As means of amending the non-intentional 5 days' delay, both parties agreed to an extension of 30 days. In addition, and in contrast to opposers 105 interrogatory questions, Defendant submitted a short interrogatory with only 26 questions that required short admission answers and did not compel production of documents and things in order to not cause unnecessary expenditures nor burden to the Opposing party including noble intentions of cultivating an atmosphere of good faith and speedy conclusion of the foregoing discovery period with no delays or extensions of time. Thereto Defendants flexibility and cooperation mentioned herein demonstrates collaboration and good faith.

Opposer responded to Defendant's interrogatory questions on January 26, 2016, with a delay of one day later than allowed by the Federal Rules of Civil Procedure and with nearly no information, not limited to admission that required short answers where likewise wholly nonresponsive. Defendant made no claims thereto, reasoning that excessive documentation only deposits unnecessary burden to all parties and further reasoning that Defendant does not require lengthy interrogatories nor unreasonable piles of documentation to demonstrate lawful facts and common sense. Defendant resolved to not object to opposers non responsive answers in order to not delay the foregoing proceedings.

On January 13, 2016 (not January 12 as stated in opposers motion) opposer demanded a full revision of all 105 answers within only 5 working days to comply, imposing an unreasonable deadline to answer by no later than January 19, 2016.

With spirit of collaboration, in good faith and to prevent Opposer from filing motions designed to delay the foregoing procedures, Defendant thereafter diligently revised 105 complex legal questions within the imposed 5 working days to what Defendant made extraordinary efforts and timely answered within the short compulsory deadline in order to provide the sufficient period of 9 days for opposers counsel to read and react to Defendants answers in a timely matter.

V. No Good Cause to justify delay Exists

Opposers counsel is a well established law firm based in NY with experienced attorneys whom received the reasonable period of 9 days to read the document and therefore by no means can justify delaying their reaction until the very last moment of January 29, 2016 to the extend of contacting the Defendant via email, on a Friday 29, 2016, just one hour and 25 minutes before the end of business hours within Defendants time zone to request an additional 60 days' extension and to demand response before Opposers closing work hours in the USA which is hasty and unconsidered. Opposer did not provide any explanation whatsoever nor attachments within the email describing or justifying an extension of time and therefore Defendant did not consent and declined. Opposer responded with a second email, this time with unsubstantiated claims supported merely with the biased conclusory statement that "Defendants supplemental responses are not compliant with Defendants discovery obligations" as means to justify Opposer's unreasonable delay in taking action within the existing discovery period. In view that Defendant already provided and revised answers to discovery questions for a second time

and to Defendant's best ability and good faith. Defendant did not consent to their last moment demands for an additional 60 days' delay of the foregoing procedures.

VI. No Good Cause to claim bad faith Exists

Opposer makes the improper uses of the terms (refused to produce) and (not in good faith) in association with Defendant, as to deliberately frame the Defendants character as non-cooperative or reluctant to comply. But fails to mention that the opposing party received Defendant's responses with sufficient time for the opposing party to prepare, bring to the attention of, or attach an extract of, or numerate the questions that are supposedly non-compliant and assume that defendant would carelessly accept and blindly consent to an extension of 60 days merely because they say so, implying that opposer has authority within the foregoing dispute to impose pressure and deadlines when convenient for them (as the opposers) and extensions of time in opposers best interest.

Opposing party demanded that Defendant shall revise, prepare, formulate and answer their questions within 5 days; thereby, opposing party cannot possibly argue, nor deny that 9 days' time are likewise as equally sufficient to merely read the Defendants answers; therefore, Opposer's demands for a further extension of 60 days under such excuse, seeks one-sided privileges that are biased and inclined. To not consent nor comply with unreasonable demands and to be pro-speedy resolution to reach an early end to the foregoing procedures does not constitute bad faith.

VII. Defendant's reasonable good efforts with discovery obligations

Defendant has made reasonable good efforts to produce discovery responses and documents; subject to, the limitations imposed by Rule 26(b)(2)(C). Fed. R. Civ. P. 26(g) (B) [Note 3.] (i) While the scope of discovery is therefore somewhat broad, parties may not engage in "fishing expeditions" (ii) number of opposers requests include indiscriminate requests for financial data, information and documents that offer nothing to further the claims before the Board and are therefore not appropriately tailored. (iii) Defendant has reasonably reserved sensitive proprietary business trade secrets that are vulnerable to intellectual copy, divulcation of professional and artistic creation and/or replication by third parties. (iv) Many of Petitioner's interrogatories improperly requires Defendant to marshal all of her evidence or disclose its legal strategies which is not a permissible enquiry in an interrogatory. (v) Defendant has respectfully expressed in good faith that confidential information will be made readily available upon request of the board for review by outside counsel for the parties as deemed necessary by the board. "Although the rule contemplates liberal discovery, the right to discovery is not unlimited. Both the Trademark Rules and the Federal Rules of Civil Procedure grant the Board discretion to manage the discovery process in order to balance the requesting party's need for information against any injury that may result from discovery abuse." *Phillies*, 107 USPQ2d at 2152 (quoting *FMR Corp. v. Alliant Partners*, 51 USPQ2d 1759, 1761 (TTAB 1999)).

VIII. Good Cause Exists to Deny Requested Extension of Time

(i) Opposing party and Defendant will certainly not settle, Defendants mark *Miss Multiverse* is of high competitive importance, *Multiverse* is a higher title than *Universe*;

therefore, Opposer is pursuing a competitive advantage motivated case disguised under the excuse and frivolous claims of "mark confusion" as means to eradicate fair competition. more time will not change this. (ii) Defendant will not answer any differently to discovery questions therefore more time will not produce further information to the opposing party. (iii) The foregoing subject requires expert examination by the board not loopholes, technicalities nor excessive documentation that brings nothing to the board (iii) Defendant seeks to move forward with the proceedings with no delays and thereto direct the foregoing procedure towards the subject matter of **confusion, fame and dilution** to reach expert examination of the bottom line facts, to what defendant is more than ready to address the board. Opposing party may move heaven and earth, use fancy legal tactics, delay proceedings and so forth but this will not obscure or change any evidential, concrete facts.

A lengthy and costly discovery to produce boxes of unnecessary burdensome documentation to find loopholes are desperate measure taken by parties with no plausible evidence to substantiate frivolous claims, such practice offers nothing to further the claims before the Board.

More time will not erase the word Multiverse from the dictionary nor change the meaning of the cosmic Multiverse Theory. More time will not change any of the trademark laws that protects defendant rights to not marshal all her evidence that will be used on trial. More time will not allow indiscriminate requests for financial data nor allow disclosure of Defendants Trade Secret and Sensitive Material unless required by the board and shielded by the Board from public access, restricted from any access by the parties.

Opposers counsel is an experienced law firm with extensive experience that shall hopefully above all remain ethical and assume responsibility for not taking diligent action

during earlier stage of discovery nor deliberately tarnish Defendants good and proper conduct as an excuse to justify their demands for additional time or delay the foregoing proceedings.

Declaration under penalty of Perjury

I Linda Grandia declare under penalty of perjury that the information contained in this document are true and correct under the pertinent trademark laws of the United States.

Certificate of Service

*I hereby certify that a true and complete copy of the attached foregoing **(Defendant's Contest To Opposers Motion To Extend Discovery And Trial Dates)** has been served upon opposing counsel (Amy Gaven of Kelley Drye & Warren LLP) by e-mail (on February 01, 2016 to e-mail address (KOrtega@KelleyDrye.com) and mailing said copy, via First Class Mail, postage prepaid to: (Amy Gaven, Kelley Drye & Warren LLP, 101 Park Avenue, New York, 10178, United States).*



Dated: February 01, 2016

By: _____

Linda Grandia
Defendant

Respectfully submitted,
/Linda Grandia/
Keplerstreet 13, 3817TA, Amersfoort,
The Netherlands,
Phone: 011 31 6 380 56 135 Email:
info@missmultiverse.com