

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

Mailed: March 10, 2016

Opposition No. 91220573

Miss Universe L.P., LLLP

v.

Linda Grandia

Geoffrey M. McNutt, Interlocutory Attorney:

This case comes before the Board for consideration of Opposer's motion to extend the deadline for submission of expert disclosures, the close of discovery, and subsequent trial dates. The motion has been fully briefed.¹

In support of its motion Opposer asserts that the requested extension is warranted to allow the parties to fully conduct discovery, and in particular to allow Opposer to confer with Applicant regarding alleged deficiencies in Applicant's discovery responses.

Background

Opposer served its first set of interrogatories and document requests on November 10, 2015. Applicant's responses to Opposer's discovery requests were due by

¹ The Board has not considered Applicant's sur-reply brief, filed on February 21, 2016. Trademark Rule 2.127(a) allows for the filing of a motion, a brief in response to the motion, and a reply brief. Following the reply brief, "[t]he Board will consider no further papers in support of or in opposition to a motion." Trademark Rule 2.127(a).

December 15, 2015. Trademark Rules 2.120(a)(3) and 2.119(c). At the time, expert disclosures were due by January 1, 2016, and the discovery period was scheduled to close on January 31, 2016. *See* 18 TTABVUE 1. Opposer indicates that Applicant's discovery responses, which Applicant did not provide until December 20, 2015, included little responsive information and only thirteen pages of documents. Opposer's counsel wrote to Applicant on January 12, 2016, detailing the perceived deficiencies in Applicant's responses and requesting that she revise her responses and objections and produce responsive documents. On January 19, 2016, Applicant provided supplemental responses and objections to Opposer's discovery requests, including two additional pages of documents. Opposer contends that Applicant's supplemental responses remain inadequate. Counsel for Opposer thereafter sent Applicant an email informing her that the supplemental responses and objections to Opposer's discovery requests were inadequate. Opposer indicates, and Applicant does not dispute, that Opposer requested that Applicant consent to a sixty day extension of the discovery period in order for the parties to meet and confer to attempt to resolve the perceived discovery issues, but that Applicant refused to consent to any extension of the existing deadlines. Opposer then filed the pending unconsented motion to extend the existing deadlines.

In response, Applicant indicates that she withheld her consent and that Opposer's request to the Board should be denied because Opposer delayed in initiating discovery; Applicant's responses were late by only five days (a delay she contends was remedied when she previously consented to a thirty-day extension of the discovery

and trial dates); Opposer's first set of interrogatories exceeded the seventy-five interrogatory limitation; and Applicant has responded to Opposer's discovery requests in good faith.

Analysis

Turning to Opposer's motion, as an initial matter neither the propriety of Opposer's discovery requests nor the sufficiency of Applicant's responses are now before the Board. Opposer has not filed a motion to compel Applicant's discovery responses. Indeed, Opposer indicates one of the justifications for its extension request is to allow Opposer additional time to confer with Applicant in an effort to resolve the parties' discovery impasse. Additionally, if Applicant believed Opposer's first set of interrogatories exceeded the seventy-five interrogatory limitation, then instead of serving answers and specific objections to the interrogatories, she was required to, within the time for responding to the interrogatories, serve a general objection on the ground of their allegedly excessive numbers. *See* Trademark Rule 2.120(d); TBMP § 405.03(e). Having failed to do so, the issue of the number of interrogatories is not before the Board.²

As last reset by the Board, expert disclosures were due by January 31, 2016, and the discovery period was scheduled to close on March 1, 2016. *See* 20 TTABVUE 1. Because Opposer filed its motion to extend prior to the close of these periods, it need only show "good cause" for the extension sought. Fed. R. Civ. P. 6(b)(1)(A); TBMP

² Applicant is advised, however, that the rules do not limit the number of document requests or requests for admission. The limitation as to number applies only to *interrogatories*. *See* Trademark Rule 2.120(d)(1); *compare* TBMP § 405.03 (interrogatories) with TBMP §§ 406.02 (document requests) and 407 (requests for admissions).

§ 509.01(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.” *Am. Vitamin Prods. Inc. v. DowBrands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992). However, a motion to extend must set forth with particularity facts said to constitute good cause for the requested extension. *See Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758, 1760-61 (TTAB 1999).

Prior to the pending extension request, Opposer had requested, and been granted, a single extension of the discovery and trial dates. That extension request was filed on December 21, 2015, with Applicant’s consent, after Applicant failed to respond to Opposer’s discovery requests by the December 15, 2015, deadline to do so. Therefore, it cannot be said that Opposer has abused the privilege of extension requests. The Board further finds no evidence that Opposer has acted in bad faith.

Given the purpose presented in Opposer’s motion, we find good cause to extend the remaining discovery dates including the time for serving expert disclosures. *Cf. Sentrol, Inc. v. Sentex Sys., Inc.*, 231 USPQ 666, 667 (TTAB 1986) (the Board noting that in lieu of a motion to compel, a motion to extend time to allow the parties to engage in an effort to settle the discovery dispute would have been a proper approach).

Accordingly, Opposer’s motion is **GRANTED**. Dates are reset on the modified schedule set forth below.

The parties should promptly endeavor to exchange their remaining discovery requests and responses, and to resolve any outstanding discovery disputes that may exist. The Board expects parties to cooperate with one another in the discovery process. *See* TBMP § 408.01. Each party has a duty to make a good faith effort to satisfy the legitimate discovery needs of its adversary. *Id.*

Remaining dates are reset as follows:

Expert Disclosures Due	4/29/2016
Discovery Closes	5/29/2016
Plaintiff's Pretrial Disclosures	7/13/2016
Plaintiff's 30-day Trial Period Ends	8/27/2016
Defendant's Pretrial Disclosures	9/11/2016
Defendant's 30-day Trial Period Ends	10/26/2016
Plaintiff's Rebuttal Disclosures	11/10/2016
Plaintiff's 15-day Rebuttal Period Ends	12/10/2016

In each instance, a copy of the transcript of testimony together with copies of documentary exhibits, must be served on the adverse party within thirty days after completion of the taking of testimony. Trademark Rule 2.125.

Briefs shall be filed in accordance with Trademark Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.

Information for Pro Se Party

The Board notes that Applicant is representing herself in this proceeding. Although Patent and Trademark Rule 11.14 permits Applicant to represent herself, it is strongly advisable for a party who is not acquainted with the technicalities of the

procedural and substantive law involved in *inter partes* proceedings before the Board to secure the services of an attorney who is familiar with such matters. The United States Patent and Trademark Office (USPTO) cannot aid in the selection of an attorney. As the impartial decision maker, the Board may not provide legal advice; it may provide information solely as to procedure.

Any party who does not retain counsel should be familiar with the authorities governing this proceeding, including the Trademark Trial and Appeal Board Manual of Procedure (TBMP), and the Trademark Rules of Practice (37 C.F.R. Part 2), both accessible directly from the Board's web page.³ Also on the Board's web page are links to ESTTA, the Board's electronic filing system,⁴ and TTABVUE, for case status and prosecution history.⁵

Trademark Rules 2.119(a) and (b) require that every paper filed in the USPTO in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney. Proof of service must be made before the paper will be considered by the Board. Accordingly, copies of all papers filed in this proceeding must be accompanied by a signed statement indicating the date and manner in which such service was made. *See* TBMP § 113.03. The statement, whether attached to or appearing on the paper when filed, will be accepted as prima facie proof

³ Located at <http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

⁴ Located at <http://estta.uspto.gov>.

⁵ Located at <http://ttabvue.uspto.gov/ttabvue>.

of service, must be signed and dated, and should take the form of a certificate of service as follows:

I hereby certify that a true and complete copy of the foregoing (insert title of submission) has been served on (insert name of opposing counsel or party) by mailing said copy on (insert date of mailing), via First Class Mail, postage prepaid (or insert other appropriate method of delivery) to: (name and address of opposing counsel or party).

Signature _____

Date _____

Strict compliance with the Trademark Rules of Practice, and the Federal Rules of Civil Procedure (where applicable), is required of all parties before the Board, whether or not they are represented by counsel. *See McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, n.2 (TTAB 2006).

This *inter partes* proceeding is similar to a civil action in a federal district court. The parties file pleadings and a range of possible motions. This proceeding includes designated times for disclosures, discovery (discovery depositions, interrogatories, requests for production of documents and things, and requests for admission, to ascertain the facts underlying an adversary's case), a trial period, and the filing of briefs. The Board does not preside at the taking of testimony; all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. No paper, document, or exhibit will be considered as evidence unless it has been introduced in evidence in accordance with the applicable rules.