

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

DUNN

Mailed: April 30, 2015

Opposition No. 91220929

*Homieshop, LLC and Homieshop
Properties, LLC*

v.

Homies Wonderland

Elizabeth A. Dunn, Attorney (571-272-4267):

On April 27, 2015, the Board conducted a conference by phone with the parties. The participants were Deborah Greaves, attorney for Opposers, Mr. Kunert, one of the partners in Applicant, a New York partnership, acting pro se, and Elizabeth Dunn, attorney for the Board.¹ Opposer requested the conference in view of Applicant having filed a motion to extend its time to file an answer which comprised a one-sentence statement of the request with no showing of good cause; Opposer having not received a copy of the motion by either email or mail as listed in the certificate of service; and Applicant's efforts to contact Opposers directly, instead of through counsel.

At the beginning of the conference, the Board informed the parties that phone conferences may not be recorded, but an order summarizing the discussion would

¹ Alison Grabell, attorney for Opposers, also attended the conference.

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issue. Applicant was advised that the Board strongly encourages all parties to retain experienced US trademark counsel to protect their interests in the opposition. An inter partes proceeding before the Board is similar to a civil action in a Federal district court. No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules. Strict compliance with the Trademark Rules of Practice and, where applicable, the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel. *McDermott v. San Francisco Women's Motorcycle Contingent*, 81 USPQ2d 1212, 1212 (TTAB 2006).

Applicant also was specifically advised that communications regarding this proceeding must be directed exclusively to counsel for Opposer, and that, if service problems were not resolved and the use of mail and email continued to be ineffective for serving Opposer, the Board could order the use of overnight couriers to ensure that the Board's service requirements were met.

As background to the present motion, the Board notes that on March 5, 2015, Opposers, two Delaware limited liability companies, filed a notice of opposition against application Serial No. 86302656 for the mark HOMIES WONDERLAND (standard characters) for "hats; hooded sweatshirts for men; jackets; jerseys; shorts for men; sweatpants for men; sweatshirts for men; t-shirts for men" alleging that registration of Applicant's mark would cause dilution of, and likelihood of confusion with, Opposer's HOMIES marks, the subject of common law use and pleaded registrations. The Board's March 5, 2015 institution and trial order set April 14,

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2015 as the due date for Applicant's answer. On April 2, 2015, Applicant filed the one-sentence request for an extension, which included a certificate of service indicating that a copy was served on Opposer by both mail and email.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is "good cause." See Fed. R. Cir. P. 6(b). "[T]he 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 extension is not abused." *National Football League v. DNH Management LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008). Opposer contends that in the absence of any showing of good cause, the Board should deny the requested extension of time to file the answer.

As a one-time concession to Applicant's pro se status, the Board allowed Applicant to supplement its motion with the explanation that Applicant was acting pro se, and needed additional time to decide if Applicant wanted to select an alternate mark. In view of this oral amendment of the motion, the Board finds that Applicant has not been dilatory in seeking the extension, that Applicant has not abused the privilege of extensions, and that Opposer has indicated no specific prejudice, and the Board finds none, which would result from the extension. In view thereof, the Board finds that these circumstances constitute good cause for an extension of Applicant's time to file its answer to the notice of opposition. Applicant's motion is granted, and its time to file an answer is extended thirty days from the mailing date of this order.

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If Applicant decides it does not wish to litigate this matter, Applicant may use ESTTA to select the “Settlement/Termination” paper titled “Withdrawal of Application” and upload its statement that it withdraws its application, with a certificate of service. Pursuant to Trademark Rule 2.135 “After the commencement of an opposition, concurrent use, or interference proceeding, if the Applicant files a written abandonment of the application or of the mark without the written consent of every adverse party to the proceeding, judgment shall be entered against the Applicant.”

If Applicant fails to file its answer, or its withdrawal of the application, within thirty days from the mailing date of this order, the Board will issue notice of default.

In view of the extension, dates are reset below:

Deadline for Discovery Conference	6/26/2015
Discovery Opens	6/26/2015
Initial Disclosures Due	7/26/2015
Expert Disclosures Due	11/23/2015
Discovery Closes	12/23/2015
Plaintiff's Pretrial Disclosures	2/6/2016
Plaintiff's 30-day Trial Period Ends	3/22/2016
Defendant's Pretrial Disclosures	4/6/2016
Defendant's 30-day Trial Period Ends	5/21/2016
Plaintiff's Rebuttal Disclosures	6/5/2016
Plaintiff's 15-day Rebuttal Period Ends	7/5/2016

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.

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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.