

ESTTA Tracking number: **ESTTA777795**

Filing date: **10/19/2016**

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

Proceeding	91221951
Party	Plaintiff Geoffrey, LLC
Correspondence Address	MEGAN E SPITZ BLANK ROME LLP ONE LOGAN SQUARE, 130 N 18TH STREET PHILADELPHIA, PA 19103-6998 UNITED STATES spitz@blankrome.com, mhomyk@blankrome.com, pecsenye@blankrome.com, bcraig@blankrome.com
Submission	Opposition/Response to Motion
Filer's Name	Matthew A. Homyk
Filer's e-mail	pecsenye@blankrome.com, mhomyk@blankrome.com
Signature	/matthew homyk/
Date	10/19/2016
Attachments	Response in Opposition to Motion to Extend.pdf(2057282 bytes)

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

GEOFFREY, LLC,	:	
	:	
Opposer,	:	Serial No. 86/222,809
	:	
v.	:	Opposition No. 91221951
	:	
	:	
	:	
HAIR ARE US, INC.,	:	Mark: 
	:	
Applicant.	:	

**OPPOSER'S RESPONSE IN OPPOSITION TO
APPLICANT'S MOTION TO EXTEND DISCOVERY AND TRIAL DATES**

Opposer, Geoffrey, LLC, by and through its attorneys, submits this Response in Opposition to Applicant's Motion to Extend Discovery and Trial Dates. The Motion should be denied.

I. PROCEDURAL HISTORY

On September 7, 2012, Applicant Hair Are Us, Inc. ("Applicant") filed U.S. Trademark Serial No. 85/723,673 for the



mark ("HAIR ARE US and Design"). U.S. Trademark Serial No. 85/723,673 published for opposition on April 16, 2013 and Opposer Geoffrey, LLC ("Opposer") promptly filed a notice of opposition against this application on May 16, 2013. (See Opposition No. 91210675.) On July 18, 2013, the Trademark Trial and Appeal Board (the "Board") sent a notice of default to Applicant because no answer had been filed. Accordingly, the Board entered judgment by default

against Applicant, sustained Opposer's opposition, and refused registration of HAIR ARE US and Design.

On September 11, 2012, Applicant filed U.S. Trademark Serial No. 85/725,997 for the HAIR ARE US word mark. U.S. Trademark Serial No. 85/725,997 published for opposition on February 12, 2013 and Opposer promptly filed a notice of opposition against this application on March 12, 2013. (See Opposition No. 91209709.) On May 22, 2013, the Board sent a notice of default to Applicant because no answer had been filed. Accordingly, the Board entered judgment by default against Applicant, sustained Opposer's opposition, and refused registration of the mark in U.S. Trademark Serial No. 85/725,997.

On April 25, 2014, Applicant filed U.S. Trademark Serial No. 86/262,385 for the TRESSES ARE US word mark. On July 9, 2014, the Examining Attorney refused registration of the mark under Section 2(d) of the Trademark Act based on a likelihood of confusion with seven of Opposer's prior registered marks: U.S. Reg. Nos. 3,647,541

for  ; 2,282,394 for "R" US; 3,859,459 for

 ; 3,859,458 for  ; 3,942,695 for

 ; 3,724,926 for  ; and 3,724,925 for

 . Applicant failed to respond to the July 9, 2014

Office Action, so a Notice of Abandonment was mailed on February 4, 2015.

In the face of three failed attempts to register its marks, Applicant filed yet another application for HAIR ARE US and Design, U.S. Serial No. 86/222,809. Opposer filed a notice of opposition with the Board and served a copy of the notice of opposition to Applicant on May 13, 2015.

On June 18, 2015, five days before the June 23, 2015 deadline to file and serve an answer to Opposer's notice of opposition, Applicant filed an unconsented Motion for Extension of Time to Answer with the Board.

On June 10, 2016, the parties' counsel participated in a voluntary settlement discussion telephone conference. On August 22, 2016, Opposer's counsel sent a letter to Applicant's counsel via email, again raising the possibility of settlement; on September 21, 2016, Applicant's counsel acknowledged receipt of the letter, then sent a more substantive reply on October 3, 2016, but the proposed settlement terms in the October 3 letter were unsatisfactory to Opposer. Consequently, two days after the unsatisfactory settlement proposal from Applicant's counsel, Opposer served the outstanding discovery requests and notice of deposition on Applicant's counsel by email and U.S. mail. In light of the multiple settlement communications from June through October, Applicant's statement in its motion that "Opposer had over four months from the time initial disclosures were due to serve its request for discovery documents,

but did nothing until October 5th, 2016" is inaccurate and misleading. Opposer and Applicant actively tried to settle this matter, but were unable to reach mutually-acceptable settlement terms over the course of more than three months.

More recently, on October 5, 2016, Opposer served interrogatories, requests for production of documents and things, requests for admissions, and a notice of deposition under F.R.C.P. Rule 33(b)(6) on Applicant via both first class mail and emailed PDF attachments. Applicant's counsel confirmed receipt of the emailed documents via email.

On October 17, 2016, a mere 12 days into the 33-day period for Applicant to respond to Opposer's discovery requests, Applicant's counsel filed a motion to extend discovery and trial dates. It is important to note that the motion was filed eight days after Florida Power & Light announced that power had been restored to all of its customers in Miami-Dade County (see Exhibit A) and nine days after *USA Today* explained that the storm "caused little damage in Miami-Dade" and that most people were called back to work on Friday, October 7 (see Exhibit B). It is also worth noting that, if the *USA Today* article is to be believed, most Miami residents returned to the office only two days after Opposer served its discovery requests and notice of deposition on Applicant's counsel.

Under the relevant Federal Rules of Civil Procedure, Applicant has until November 7, 2016, a date still 19 days in the future, to respond to Opposer's discovery requests. It is irrelevant to

Applicant's ability to review and respond to the requests that the parties were busy trying to settle the case in the months leading up to the October 5, 2016 service of discovery requests by Opposer.

In summary, Opposer has been expending time and money in Board proceedings against Applicant regarding its HAIR ARE US marks for more than four years, a period of time in which Applicant and its counsel surely had an opportunity to gather information regarding its use of the HAIR ARE US mark. Moreover, Applicant still has 19 days to gather and organize information and evidence responsive to Opposer's discovery requests. Consequently, "good cause" is absent under the aforementioned facts.

II. ARGUMENT

Pursuant to Fed. R. Civ. P. 6(b), made applicable to Board proceedings by 37 C.F.R. § 2.116(a), a party may file a motion for an enlargement of the time in which an act is required or allowed to be done. To secure the requested enlargement of time, however, the moving party must demonstrate good cause for the requested extension. T.B.M.P. § 509.01. A motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension; mere conclusory allegations lacking in factual detail are insufficient. Id. The Board will "scrutinize carefully" any motion to extend time to determine whether the requisite good cause has been shown. Id.

In this case, Applicant has set forth facts in an attempt to demonstrate good cause for its request to extend discovery, but said

facts are unbelievable, contradict reality, and even if true would not provide good cause for another delay in this dispute, which has been dragging on for over four years since Applicant's U.S. Trademark Serial No. 85/723,673 was filed on September 7, 2012.

Applicant alleges that "Applicant's assets and its attorneys were directly located in a jurisdiction that was severely affected by Hurricane Matthew during the first week of October, 2016," and that "the Hurricane made landfall in and near South Florida area just after October 5, 2016, the very day which Opposer electronically mailed Applicant's attorneys its request for discovery documents."

However, Applicant, according to its website, is "an Atlanta based Hair company" (see Exhibit C) and Atlanta was spared by Hurricane Matthew. According to the website for 11Alive, which is the NBC affiliate in Atlanta, "evacuees from Florida, South Carolina, and Southeast Georgia [packed] hotels throughout metro Atlanta..." during Hurricane Matthew (see Exhibit D). Consequently, it seems hard to believe that Applicant was unable to review and gather documents and information during the two weeks after Opposer served its discovery requests and notice of deposition.

Even assuming Applicant's documents and information were primarily located in Miami, where it has a store location, *USA Today* declared that most Miami-Dade County residents were back to work on Friday, October 7, and all electricity had been restored to residents of Miami-Dade County by Sunday, October 9, a date 29 days before the deadline to respond to the discovery requests. With only a couple of

days possibly lost to work on this case, Applicant's feeble basis for its motion seems to be based on a desire to prolong and delay the proceeding, thereby prejudicing Opposer.

Considering that this is the third opposition that has been filed against its HAIR ARE US applications by Opposer (including the second one involving the exact same HAIR ARE US and Design mark), and considering that Applicant already filed an unconsented motion for an extension of time to submit initial disclosures in this same proceeding on August 18, 2015, it is self-evident that Applicant already possesses a full understanding of the facts pertaining to this opposition and has had more than sufficient time to review its case and documents.

In summary, Opposer has not shown the good cause necessary to grant its motion to extend discovery. Accordingly, Opposer's motion should be denied by the Board.

III. CONCLUSION

For the foregoing reasons, Opposer, Geoffrey, LLC, respectfully requests that the Trademark Trial and Appeal Board deny Applicant's motion to extend discovery and trial dates.

BLANK ROME LLP

Dated: October 19, 2016

By: /matthew homyk/
Timothy D. Pecsénye
Megan E. Spitz
Matthew A. Homyk
One Logan Square
Philadelphia, PA 19103
(215) 569-5619

Attorneys for Opposer,
Geoffrey, LLC

CERTIFICATE OF SERVICE

The Undersigned, a member of the Bar of the Commonwealth of Pennsylvania, hereby certifies that on the 19th day of October, 2016, he caused a copy of the foregoing Opposer's Response to Applicant's Motion for Extension of Discovery and Trial Dates to be served by first class mail on:

HARRY TAPIAS
LOIGICA PA
2 S BISCAYNE BLVD, STE 3760
MIAMI, FL 33131-1815

/matthew homyk/
MATTHEW A. HOMYK

EXHIBIT A

HURRICANE OCTOBER 9, 2016 5:40 PM

FPL restores power to all South Florida customers after Matthew



BY CARLI TEPROFF
cteproff@miamiherald.com

All Florida Power & Light customers in Miami-Dade, Broward and Palm Beach counties who were in the dark after Hurricane Matthew had their power restored by Sunday evening, according to the utility company.

Throughout the storm, which grazed Florida's east coast Thursday and Friday as it made its way north, nearly 150,000 customers — the majority in Palm Beach — temporarily lost power.

FPL workers were on standby throughout the state to quickly fix the power problems brought on by Matthew's high winds and rain. Crews will restore power as long as winds are less than 35 miles per hour.

By Sunday afternoon, there were 10 customers in Palm Beach County still without power, according to FPL. By the evening, those customers had their power restored.

There were still significant power outages Sunday in several counties across central and north Florida including Martin, Volusia and St. Johns.

"Our crews worked through the night again & we'll continue working until all customers are restored," the company tweeted Sunday morning.

Carli Teproff: 305-376-3587, @CTeproff



MORE HURRICANE

COMMENTS

EXHIBIT B

Hurricane Matthew causes little damage in Miami-Dade, Broward and Palm Beach

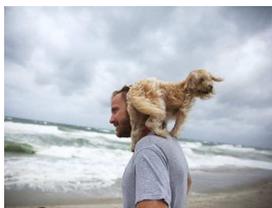


Alan Gomez, USA TODAY

5:31 p.m. EDT October 8, 2016

Impacts of
Hurricane
Matthew

SC



(Photo: Joe Raedle)

WEST PALM BEACH – As Hurricane Matthew continued its march north along the Florida coast Friday, people farther south crept out of their boarded-up homes to take stock.

What they found was another stroke of luck: The worst of the damage in West Palm Beach was downed palm tree fronds and scattered power outages.

Once again, the Miami metropolitan region – a dense collection of 6 million people stretching from Miami to Fort Lauderdale to West Palm Beach – ducked the angry winds of a killer hurricane. Miami hasn't taken a direct hit from a major hurricane since Hurricane Andrew in 1993 and West Palm Beach hasn't been hit since

[Hurricane Wilma in 2005.](#)

Dire warnings about Matthew's Category 4 strengthen and uncertain path prompted people throughout the region to scramble this week, restocking their old first aid kits, rushing to stores to pick up water and batteries, and slapping up old hurricane shutters.

But after all that preparation and worry, the storm stayed far enough off the southern Florida coast and didn't bash the region with high winds.

"We got lucky," said Karen Alzate as she took a morning stroll Friday with her husband and 7-month-old son. **Hurricane Matthew left a trail of destruction**

As of 5 p.m. Friday, 40,000 homes were without power in [Miami-Dade](#), Broward and Palm Beach counties, just a fraction of the million-plus homes and businesses without power throughout the state. Florida Power & Light crews were operating throughout South Florida, following the storm and restoring power as soon as winds died down.

Shortly after sunrise Friday, clean up crews with leaf blowers and brooms set to work on Clematis Street, a popular stretch filled with bars and restaurants that had battened down the day before. Workers rushed to pull down hurricane shutters and pick up sandbags in time to welcome regular lunch rush.

"It was supposed to be bad," said Mike Rosche, general manager of Rocco's Tacos & Tequila Bar as he wiped down a set of lamps.

Police continued restricting access to barrier islands along the Palm Beach County coast early Friday, but said they expected to reopen them by midday.

School officials in Miami-Dade, Broward and Palm Beach counties decided earlier in the week to close schools on Thursday and Friday. That left many parents scrambling on Friday as they were ordered back to work and had to figure out what to do with their children.

Miami-Dade County spokesman Michael Hernandez said police officers and firefighters were already back to regular schedules, and all county operations would return to normal by the end of Friday. He said the county obviously dodged a bullet, but said the experience was a much-needed one for a region that was out of practice.

"It obviously was a wakeup call for our community," Hernandez said.

Read or Share this story: <http://usat.ly/2dSpsmw>

EXHIBIT C

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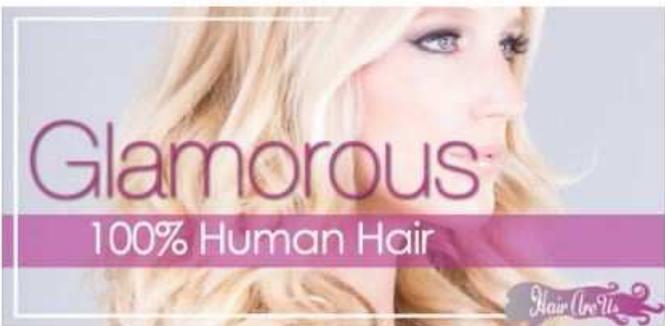
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Eurasian is great for achieving a voluminous look



Glamorous 100% Human Hair



Curling Wand Sizes: 13mm, 19mm, 22mm \$20



Hair Extensions With 100% Human Hair



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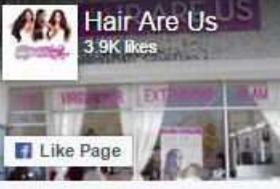
Brazilian

Latest Tweets

HAIR ARE US @Hairareus We have restocked! We are open till 6pm

HAIR ARE US @Hairareus

Facebook



Social Networks



About us

Hair Are Us is an Atlanta based Hair company that holds pride in ensuring Top quality Human Hair to women and salons nationwide. We understand that a "Woman's Crown is her Glory" and that each woman has different hair desires. Therefore, our team hand picks a variety of top quality hair extension from suppliers around the world.

EXHIBIT D

Hurricane Matthew evacuees pack Atlanta hotels

Christopher Hopper, WXIA 1:03 AM, EDT October 07, 2016



ATLANTA -- Evacuees from Florida, South Carolina, and Southeast Georgia are packing hotels throughout metro Atlanta.

Thousands of people plan to call Atlanta home for at least a few days as Hurricane Matthew batters the east coast.

Exits off I-75 North in Georgia are a little busier this week.

"I knew it was coming," said Lisa Wilhelm who evacuated South Carolina.

South Georgians were also ready.

"Left this morning," said Robert and Patti Wilmott who evacuated Savannah.

PHOTOS: S.C. evacuates from Hurricane Matthew



International travelers in the area immediately sought Atlanta as refuge.

"What's the nearest safe place? Atlanta," said David Woodey, from Ontario, Canada.

Exit 233 in Clayton County is littered with hotels and now they're all full.

"We don't get hurricanes in Canada so much," said Woodey.

"Traveling from Florida to Kentucky," said Jon Lehr.

"Got here yesterday afternoon," said Albert Litster. "Came from Sun City, Hilton Head."

Metro Atlanta is packed full of evacuees as Hurricane Matthew barrels toward the east coast.

License plates from South Carolina, southeast Georgia, and Florida fill the parking lots.

"I'm worried I am going to come home to a flood or busted windows or no electricity," said Wilhelm.

Litster said he's concerned to come home to even worse.

PHOTOS: Coastline prepares for Hurricane Matthew



"I'm worried we're going to be going home to a wreck or a roof off the house or something," he said.

Some had to abandon their vacation even after making the long drive from Canada.

"We were supposed to be going on a cruise out of Port Canaveral, hotel in Port Canaveral said don't come," Woodey said.

And for those visiting Mickey in Orlando, Disney shut its doors.

"We finally made the decision to find a hotel and leave a day early," one evacuee said.

They are all calling Atlanta home for now, safely away from the storm - at least for a few days.

"We're just happy we got out when we did," another evacuee said.

"Property we can replace, we can't replace ourselves," Litster said. "We may be getting old but we still love our life, man."

For those people who are making last minute decision to evacuate, hotel rooms will be hard to find.

Georgia's state parks are open to evacuees as is the campground at Atlanta Motor Speedway.

PHOTOS: Hurricane Matthew



(© 2016 WXIA)



[WXIA](#)

[President declares federal emergency in 30 Ga. counties as Matthew looms](#)

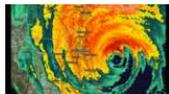
[\(/weather/president-signs-emergency-declaration-for-30-ga-counties-ahead-of-hurricane-matthew/329788306\)]((/weather/president-signs-emergency-declaration-for-30-ga-counties-ahead-of-hurricane-matthew/329788306))



[WXIA](#)

[Matthew forces drastic changes in Ga. couple's dream wedding](#)

[\(/news/local/matthew-forces-drastic-changes-in-ga-couples-dream-wedding/329741079\)]((/news/local/matthew-forces-drastic-changes-in-ga-couples-dream-wedding/329741079))



[WXIA](#)

[LIVE BLOG: Hurricane Matthew makes landfall in South Carolina](#)

[\(/news/local/live-blog-tracking-matthew/327974848\)]((/news/local/live-blog-tracking-matthew/327974848))



[WXIA](#)

[Hurricane Matthew downgraded to a Category 1](#)

[\(/weather/hurricane-matthew/327398687\)]((/weather/hurricane-matthew/327398687))



[WXIA](#)

[Pleading or fear: What's the best way to warn of Matthew's danger?](#)

[\(/news/local/weatherman-anchor-tackle-matthews-danger-in-different-ways/329762186\)]((/news/local/weatherman-anchor-tackle-matthews-danger-in-different-ways/329762186))

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