

**UNITED STATES PATENT AND TRADEMARK OFFICE  
Trademark Trial and Appeal Board  
P.O. Box 1451  
Alexandria, VA 22313-1451**

Mailed: April 20, 2006

Cancellation No. 92040092

KAPALUA LAND COMPANY, LTD.

v.

KAPALUA STRICKWAREN GMBH

**Peter Cataldo, Attorney:**

Motion to Extend Discovery

This case now comes before the Board for consideration of respondent's motion (filed on January 31, 2006) for an extension until April 16, 2006 of the discovery period in the above-referenced proceeding. The motion is fully briefed.

The Board has carefully considered the arguments of both parties with regard to the above motion. However, repeating those arguments herein would only serve to delay the Board's disposition of this matter.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is "good cause." See Fed. R. Civ. P. 6(b) and TBMP §509.01(a) (2d ed. rev. 2004) and the authorities cited therein. The Board is generally liberal in granting extensions of time so long as the moving party has not been guilty of negligence or bad

**Cancellation No. 92040092**

faith and the privilege of extensions is not abused. See, e.g., *Hewlett-Packard Co. v. Olympus Corp.*, 931 F.2d 1551, 18 USPQ2d 1710 (Fed. Cir. 1991); *American Vitamin Products, Inc. v. Dow Brands Inc.*, 22 USPQ2d 1313 (TTAB 1992); and *Sunkist Growers, Inc. v. Benjamin Ansehl Co.*, 229 USPQ 147 (TTAB 1985).

Though the Board is reluctant to grant motions to extend in cases such as this one in which the moving party does not move until the last day of the affected trial date (i.e., on the last day of the discovery period), respondent has presented a compelling showing of the requisite good cause for granting its motion to extend. More particularly, from the record on motion it appears that counsel for respondent appeared on December 1, 2005. Since that time, respondent has responded to petitioner's discovery requests and propounded its discovery to petitioner. Further, respondent is a foreign company and asserts that it requires additional time in which to obtain documents responsive to petitioner's discovery requests. Thus, respondent cannot be said to have been guilty of negligence in the pursuit of its discovery obligations in this proceeding.

Given the totality of circumstances regarding the timing of the appearance of respondent's counsel and its status as a foreign company, the Board finds good cause for respondent's motion to extend. Moreover, the Board finds no

**Cancellation No. 92040092**

evidence of bad faith on the part of respondent or prejudice to petitioner other than delay, which the Board would not characterize as significant. Mere delay, without more, usually is not held to constitute prejudice. Nor does the Board find that respondent has abused its privilege of extensions.

In view thereof, respondent's motion to extend is **granted** as requested therein.

Nonetheless, the parties again are reminded that, as indicated in our August 17, 2005 order, the Board will closely examine any request to extend or suspend dates in this proceeding.

Motion to Amend Pleading

Petitioner's motion (filed on January 31, 2006) to amend its pleading is hereby **granted** as well-taken and, moreover, as conceded. See Trademark Rule 2.127(a). Accordingly, petitioner's amended petition to cancel, filed therewith, is accepted as petitioner's operative pleading herein.

In consequence thereof, respondent is allowed until **thirty days** from the mailing date hereof in which to file its response to the amended petition for cancellation.

Consolidation of Cases

Respondent's assertion that the instant proceeding and Opposition No. 91124762 involve the same parties and marks

**Cancellation No. 92040092**

is noted. However, current Office records do not indicate what relation, if any, exists between applicant Interfashion Ltd. B.V.I. and respondent Kapalua Strickwaren GmbH, nor does respondent submit any documentation to support such a finding. Accordingly, the Board declines to consolidate the two proceedings at this time.

Dates Reset

Trial dates, including the close of discovery, are reset as follows:

THE PERIOD FOR DISCOVERY TO CLOSE:	April 16, 2006
Testimony period for party in position of plaintiff to close: (open for thirty days)	July 15, 2006
Testimony period for party in position of defendant to close: (open for thirty days)	September 13, 2006
Rebuttal testimony period to close: (open for fifteen days)	October 28, 2006

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 Rule 2.128(a) and (b).

An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.