

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

NY-EXOTICS, INC.

Petitioner

vs.

EXOTICS.COM, INC.

Respondent

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12-22-2003

U.S. Patent & TMOfo/TM Mail Rcpt Dt. #22

Cancellation No. 92040976

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PETITIONER'S RESPONSE TO RESPONDENT'S REQUEST FOR EXTENSION OF TIME TO OPPOSE PETITIONER'S MOTION FOR SUMMARY JUDGMENT

Petitioner NY-Exotics, Inc. ("NY-Exotics") here files its response to Respondent Exotics.com's ("Exotics") request to the Board for an extension of time to oppose Petitioner's Motion for Summary Judgment. For the reasons set forth below, the Board should deny Respondent's request.

A. Respondent has failed to demonstrate good cause for the requested extension

Rule 6(b) of the Federal Rules of Civil Procedure, made applicable to Board proceeding by 37 C.F.R. § 2.116(a) requires a party to show good cause when requesting an extension of time. In its extension request, Respondent's counsel states that he received Petitioner's Motion

14 days after its service by first class mail. The alleged postal delay notwithstanding, Respondent and its counsel had another 21 days (until December 4, 2003) in which to respond to Petitioner's Motion. Respondent's counsel cites the intervention of the Thanksgiving Day holiday as another reason for requesting an extension. However, Thanksgiving Day fell on November 27, 2003, a full two weeks **after** Respondent's counsel admittedly received Petitioner's Motion. Respondent's counsel further states that his responsibilities as a faculty member at UCLA and as an organizer of a conference interfered with his ability to respond to Petitioner's Motion. This last point hardly constitutes a showing of good cause. The fact that Respondent's counsel is engaged in other activities outside of his law practice is an issue between counsel and his client and apparently did not stop Respondent's counsel from accepting the representation of his client at the outset of this proceeding. Indeed, Respondent's request for an extension of time is necessitated solely because of its counsel's lack of diligence and planning. *See Luemme, Inc. v. D. B. Plus Inc.*, 53 U.S.P.Q.2d 1758 (TTAB 1999) (motion for extension of time denied where diligence not shown). Consequently, Respondent's extension request should be denied for failure to demonstrate good cause.

B. Respondent has responded on the merits to Petitioner's Motion

In the extension request, Respondent notes in the Memorandum, but not in the Declaration of its counsel, the "timely filing of a response by Respondent" to Petitioner's Motion. *See Respondent's Opposition to Petitioner's Motion*, copy attached hereto as Exhibit A. In other words, Respondent has very cleverly disguised its extension request in terms of filing a substantive response to Petitioner's Motion, when in fact the extension is being sought to supplement Respondent's response. As discussed above, Respondent's counsel had ample time

in which to file a response to Petitioner's Motion, and in fact did. Therefore, Respondent's extension request is no more than an attempt to get a "second bite" at a response.

For the reasons set forth above, Respondent's request for an extension of time in which to respond to Petitioner's Motion should be denied.

Respectfully submitted,

Date: 12/22/03



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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing "Petitioner's Response to Respondent's Request for Extension of Time" was served on Registrant's attorney of record via United States first-class mail, postage prepaid, on this 22nd day of December 2003, as follows:

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