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

Baxley

Mailed: April 23, 2008

Cancellation No. 92042082

Four Seasons Dairy, Inc.

v.

International Gold Star Trading Corp.

Andrew P. Baxley, Interlocutory Attorney:

Pursuant to the Board's March 3, 2008 order, petitioner's testimony period was reset to close on April 18, 2008. On April 18, 2008, petitioner filed an unconsented motion to extend its testimony period.

In the interest of resolving the trial schedule in this case without the delay that would be inherent in full briefing of that motion, the Board, in exercising its inherent authority to control the scheduling of cases on its docket, determined that the motion to extend should be resolved by telephone conference. See Trademark Rule 2.120(i)(1); TBMP Section 502.06 (2d ed. rev. 2004). On April 23, 2008, such conference was held among petitioner's attorney Samuel Friedman, respondent's attorney Roger Thompson, and Andrew Baxley, the Board attorney assigned to this case.

Petitioner filed its motion to extend on the last day of the testimony period and therefore must show that good cause exists for the extension sought. See Fed. R. Civ. P. 6(b). Ordinarily, the Board is liberal in granting extensions of time before the period to act has elapsed upon a showing of good cause, so long as the moving party has not been guilty of negligence or bad faith, and the privilege of extensions has not been abused. See Fed. R. Civ. P. 6(b)(1); *American Vitamin Products, Inc. v. DowBrands Inc.*, 22 USPQ2d 1316 (TTAB 1992); TBMP Section 509.01 (2d ed. rev. 2004). However, petitioner must demonstrate that the requested extension of time is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor. See *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1851 (TTAB 2000).

Petitioner has demonstrated that the requested extension of time was not necessitated its lack of diligence or unreasonable delay during its testimony period. Notwithstanding that petitioner's attorney was recovering from an illness when petitioner's testimony period commenced, petitioner conducted seven testimony depositions during its twenty-day testimony period, which commenced on March 30, 2008 and closed on April 18, 2008. Although

respondent alleges that petitioner failed to show diligence by failing to have the attendance of Leo Nigro and Natalie Walewitsch for testimony depositions secured by subpoena, the Board is satisfied that petitioner had no reason to believe that any such subpoenas would be necessary because those witnesses had previously agreed to testify. See TBMP Section 703.01(f) (2d ed. rev. 2004). Further, it is clear to the Board that circumstances beyond petitioner's control prevented the taking and/or completion of the properly noticed testimony depositions of Mr. Nigro and Ms. Walewitsch prior to the close of its testimony period. The Board finds that these circumstances constitute good cause to extend the closing date of petitioner's testimony period until **May 23, 2008** for limited purpose of taking the testimony depositions of Mr. Nigro and Ms. Walewitsch. Accordingly, petitioner's motion to extend is granted, to the extend modified by this order. Remaining testimony periods are reset as follows.

Defendant's 30-day testimony period to close:	**July 22, 2008**
Plaintiff's 15-day rebuttal testimony period to close:	**September 5, 2008**

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.l29.