

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

Butler

Mailed: March 10, 2007

Cancellation No. 92043017

George Contos and Neil Pryor

v.

Cuzcatlan Beverages, Inc.

Before Hohein, Rogers and Bergsman, Administrative Trademark Judges.

By the Board:

In accordance with the institution order dated March 8, 2004, discovery closed on September 9, 2004 and petitioners' testimony period, as originally set, closed on December 23, 2004. The Board, on April 21, 2005, granted petitioners' January 3, 2005 motion to reopen their testimony period and reset August 15, 2005 as the closing of the first testimony period.¹ On May 20, 2005, petitioners' attorney of record moved to withdraw. Such motion was granted on July 26, 2005 and proceedings were suspended to allow petitioners time to clarify their representation. On August 26, 2005, petitioners informed the Board that they were representing themselves. The Board, in an

¹ The Board also granted petitioners' motions, filed November 29, 2004 and December 21, 2004, respectively, to extend their time to respond to respondent's discovery requests.

order dated September 16, 2005, resumed proceedings, resetting the close of the first testimony period to November 30, 2005.

This case now comes up on petitioners' motion, filed November 30, 2005 by petitioner George Contos, to extend their testimony period by thirty days. Respondent filed a response thereto.

In support of petitioners' motion, Mr. Contos argues that, subsequent to the departure from the law firm of the specific attorney representing petitioners, he has "... had difficulty obtaining all of the relevant information and work prepared ..." on behalf of petitioners. Acknowledging he has "... a significant amount ..." of information and materials in his possession, and further acknowledging he has reviewed the matter, Mr. Contos contends he is still trying to retrieve certain documents from the law firm. Mr. Contos also argues the paperwork generated by both sides is voluminous and the relevant issues are complex and substantive in nature. Consequently, because he is representing himself, Mr. Contos contends he has been unable to make the necessary progress required on this matter, "... due to a lack of resources." Recognizing petitioners previously were granted enlargements of time, Mr. Contos asks for "... one more brief but necessary continuance to properly prepare."

In response, respondent, preliminarily noting that petitioners themselves are attorneys, argues that petitioners have not shown good cause so as to warrant the requested

extension. More specifically, respondent argues petitioners have had over one year to prepare testimony since the first testimony period, as originally set, closed on December 23, 2004 (and was later reopened). Respondent also argues that petitioners have had all papers relating to this matter for at least six months based on the statement of petitioners' former counsel in its withdrawal of May 18, 2005 indicating all papers were sent to petitioners at their last known address, which has not changed. Thus, according to respondent, petitioners have not supported their claim that they have had difficulty obtaining all information and work prepared by their former counsel, nor have they identified what is missing and what steps they have taken to obtain such missing matter. Respondent argues the circumstances show that petitioners have not acted diligently and have otherwise unreasonably delayed in acting in this proceeding.

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)(1). A motion to extend must set forth with particularity the facts said to constitute good cause for the requested extension. See *Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758 (TTAB 1999); and TBMP §509.01(a). The Board will scrutinize carefully any such motions in determining whether good cause has been shown, including the diligence of the moving party, whether the moving party is guilty of negligence or bad faith and whether the privilege of extensions has been abused.

Id. See, also, American Vitamin Products, Inc. v. DowBrands Inc., 22 USPQ2d 1316 (TTAB 1992).

We find petitioners have not established good cause so as to warrant the requested extension of their testimony period. With respect to delay, and as mentioned briefly above, petitioners have been granted other extensions of time in this proceeding. Their testimony period was reopened once in the Board's April 21, 2005 order and subsequently reset again after the withdrawal of their attorney. In the resumption order of September 16, 2005, the Board provided petitioners with general information, including a referral to TBMP §700 (2d ed. rev. 2004) concerning the introduction of evidence during the assigned testimony periods and the expectations for parties representing themselves. Since the withdrawal of their attorney, petitioners have had ample time to review their case, including reviewing available documents, to ascertain what they have and what they believe is missing, and to obtain what they believe their previous law firm may not have provided to them, if anything, upon termination of representation. As to the latter, we note that petitioners have not described what they believe counsel did not forward to them or what steps they have taken to obtain any withheld "information and work." In addition, the record is devoid of any explanation as to why petitioners waited until the last day of their testimony period to seek an extension. After all, petitioners brought this cancellation proceeding and bear the burden of going

forward in a timely manner. While there is no evidence that petitioners are acting in bad faith, petitioners have not been diligent, thus causing delay to this case.

In view thereof, petitioners' motion to extend their testimony period is denied.

Petitioners have no evidence of record on which they can meet their burden of proof as plaintiffs and their motion to extend their testimony period now has been considered and denied. Accordingly, judgment is hereby entered against petitioners, and the petition to cancel is dismissed with prejudice.

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