

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

Mailed: June 26, 2007

Cancellation No. 92045147

Metro Q

v.

Gay & Lesbian Yellow Pages,
Inc.

George C. Pologeorgis, Interlocutory Attorney:

Pursuant to the Board's order dated May 29, 2007, the discovery period in this case was last reset to close on June 18, 2007.

This case now comes up for consideration of petitioner's motion (filed June 18, 2007) to extend the close of discovery by ninety days and to reset trial dates accordingly. Respondent has filed a brief in response thereto.

In support of its motion, petitioner contends that, until very recently, the parties have been engaged in settlement negotiations. As a result of these discussions and out of professional courtesy, petitioner claims it voluntarily suspended its discovery efforts while the

parties attempted to negotiate a settlement so that neither party would incur needless expenses. Petitioner further asserts, however, that settlement negotiations have reached an impasse and while petitioner requested consent to an additional extension of the discovery deadline, respondent declined to provide such consent. Petitioner states that the additional time for discovery is necessitated by the fact that a review of respondent's responses to petitioner's discovery requests reflects the need for discovery depositions of not only respondent, but certain non-parties to this proceeding having knowledge relevant to this issues involved in this case.

In opposition to petitioner's motion, respondent argues that, inasmuch as petitioner was served with respondent's responses to all of petitioner's written discovery requests by December 28, 2006, petitioner cannot now claim that it requires additional discovery time in which to take depositions based upon a review of respondent's responses to petitioner's discovery requests. Moreover, respondent contends that, at the request of petitioner's counsel, respondent submitted to petitioner a proposed settlement agreement on January 17, 2007, yet it took four months for petitioner to reject the proposed agreement. Finally, respondent claims that it only became aware of petitioner's need for a discovery deposition of respondent nine days

before the discovery period was set to close and did not learn of petitioner's need for a non-party discovery deposition until petitioner filed its motion to extend.

The standard for granting an extension of time is good cause. See Fed. R Civ. P. 6(b) and TBMP § 509 (2nd ed. rev. 2004) and authorities cited therein. The Board generally is liberal in granting extensions of time before the period to act has elapsed so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. See, e.g., *American Vitamin Products Inc. v. DowBrands Inc.*, 22 USPQ2d 1313 (TTAB 1992).

Although petitioner filed its motion to extend on the last day of discovery, as last reset, and inasmuch as petitioner was served with respondent's responses to its written discovery requests approximately six months ago and rejected respondent's proposed settlement four months after receiving it, the Board nonetheless finds, under the totality of circumstances stated herein, that good cause exists to grant petitioner a brief extension of the discovery period to allow petitioner to notice and take discovery depositions of respondent, as well as non-parties to this proceeding.¹

1 The parties are advised that, if a proposed deponent residing in the United States is not a party, or a person who, at the time set for the taking of the deposition, is an officer, director, or managing agent of a party, or a person designated under Fed. R. Civ. P. 30(b)(6) or 31(a)(3) to testify on behalf of a party, the responsibility rests wholly with the deposing party to secure the attendance of the proposed deponent. If the proposed deponent is not willing to appear voluntarily, the deposing party must secure

In view thereof, petitioner's motion to extend is granted to the extent that the discovery period is extended by **thirty days** from the mailing date set forth in the caption of this order for the limited purpose of allowing petitioner to notice and take the discovery depositions of respondent under Fed. R. Civ. P. 30(b)(6), as well as any non-party discovery deposition it requires, at a mutually agreeable time and place. The parties are directed to work together to find suitable dates on which these discovery depositions will occur within the time frame provided in this order.

Except as noted above, the discovery period closed on June 18, 2007. Testimony periods are reset as follows:

30-day testimony period for party in position of plaintiff to close: **September 26, 2007**

30-day testimony period for party in position of defendant to close: **November 25, 2007**

15-day rebuttal testimony period for plaintiff to close: **January 9, 2008**

the deponent's attendance by subpoena, pursuant to 35 U.S.C. § 24 and Fed. R. Civ. P. 45. The subpoena must be issued from the United States district court in the Federal judicial district where the deponent resides or is regularly employed. See TBMP Section 404.03(a)(2) (2d ed. rev. 2004). Moreover, if a person named in a subpoena compelling attendance at a discovery deposition fails to attend the deposition, or refuses to answer a question propounded at the deposition, the deposing party must seek enforcement from the United States District Court that issued the subpoena; the Board has no jurisdiction over such depositions. *Id.*

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 Rules 2.128(a) and (b). An oral hearing will be set only upon request filed as provided by Trademark Rule 2.129.
