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

Proceeding	92048260
Party	Defendant IPI ACQUISITION CORP.
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Submission	Motion to Extend
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Date	05/22/2009
Attachments	motiontoextenddeclofphk.pdf (8 pages)(168758 bytes)

TRADEMARK
IPTI 10.5R-044

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

FAMILY CLUBHOUSE, INCORPORATED, d/b/a i play Petitioner, v. INTERNATIONAL PLAYTHINGS, INC. Registrant.	Reg. No.: 2,923,675 Cancellation No.:92048260

REGISTRANT'S MOTION TO EXTEND PERIOD OF TIME FOR REGISTRANT TO FILE ITS TRIAL BRIEF

Registrant International Playthings, Inc., hereby requests an extension of time for filing its responsive trial brief in the above-captioned cancellation proceeding. Registrant's trial brief is presently due on June 8, 2009. Registrant respectfully requests that this date be extended 30 days. Registrant respectfully submits that it has good cause to request the extension and that this request is not being made for purposes of delay.

Specifically, at the present time, counsel for Registrant is participating in a preliminary injunction hearing in the case of *Sabert Corporation v. Par-Pak, Ltd.* Civil Action No. 07-5437-FLW-LHG now scheduled for May 28, 2009 in the United States District Court for the District of New Jersey. Registrant's counsel will need a good portion of May 27, 2009 to prepare for the hearing. Additionally, counsel for the Registrant is in the process of preparing a responsive brief in

opposition to a motion to amend an answer and add counterclaims in a trademark infringement action pending in the United States District Court for the Central District of California entitled *Phytoceuticals, Inc. and Mostafa M. Omar v. Science of Skincare, LLC (d/b/a Innovative Skincare)*, Civil Action No. 2:09-cv-996 ODW (SSx). This brief is due on May 25, 2009. Oral argument on this motion, which counsel will be attending, will be heard in Los Angeles, California on June 8, 2009. At the same time, in a companion action entitled *Science of Skincare, LLC (d/b/a Innovative Skincare) v. Phytoceuticals, Inc., Mostafa M. Omar, Ph.D.*, Civil Action No. 08-4470 ODW (SSx) in the United States District Court for the Central District of California, counsel will be preparing for and participating in an oral argument on a motion for summary judgment also on June 8, 2009. The actions are both before the same United States District Judge. It is anticipated that counsel will be preparing for both of these arguments during the week of June 1, 2009. Finally, counsel also has a brief due in response to a motion for summary judgment and a responsive brief on a motion to strike counsel's client's evidence opposing the motion for summary judgment in the matter of *Howmedica Osteonics Corp. v. Wright Medical Technology, Inc.*, Civil Action No. 00-1167-SDW-MCA, a patent infringement action pending in the United States District Court for the District of New Jersey. Each of these briefs are due on June 8, 2009.

The standard for obtaining an extension of time prior to the expiration of the period requested to be extended is "good cause" Fed. R. Civ. P. 6(b)(1); *Procyon Pharmaceuticals Inc. v. Procyon*

Biopharma Inc., 61 U.S.P.Q.2d 1542, 1543 (T.T.A.B. 2001). To demonstrate "good cause," the requester must set forth facts with particularity to support the extension. T.M.B.P. § 509.01(a). In that regard, it has been found and recognized that the press of other litigations may constitute "good cause" for granting an extension, if such request is made before the time to act has expired. *Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL*, "The press of other litigation may indeed constitute good cause for an extension of time." 59 U.S.P.Q.2.d 1383, 1384 (T.T.A.B. 2001). (Press of other litigation constituted "good cause" for granting an extension of testimony period.) It is submitted that based upon Registrant's counsel's schedule over the next two weeks, as set forth in detail above and in the declaration of Paul H. Kochanski submitted concurrently herewith, Registrant has made the requisite showing of good cause by providing specific facts to support an extension of time of 30 days to file Registrant's responsive brief. Moreover, Registrant has filed this motion before the time to file Respondent's brief expired.

Registrant submits that as soon as the timing conflicts came to light with respect to counsel's litigation schedule, Registrant moved immediately before the Board for the requested extension. Registrant did request Petitioner's consent to a 30-day extension, but such request was refused on the basis that the Petitioner wants to move the proceeding forward. On this issue, the requested extension in no way prejudices Petitioner since trial testimony has been taken by both parties and

Petitioner has filed its opening brief. The requested extension only impacts on when the Petitioner would need to file its rebuttal brief. If the present motion is granted, that would only delay Petition's filing of its rebuttal brief 30 days. The request for the extension has not been interposed for purposes of delay.

It is understood, that the Board may not be able to act on this unconsented motion to extend Registrant's time to file its responding brief prior to the expiration of the date that Registrant's brief is now due. Accordingly, Registrant respectfully requests that the Board set a new period of time when Registrant is to file its responsive brief whether Registrant's motion is granted or denied and that such date be set from the date of the Board's decision on the present motion.

A favorable action on Registrant's motion to extend time to file its trial brief is respectfully requested.

Respectfully submitted,

Date: May 27, 2009

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CERTIFICATE OF SERVICE

I hereby certify that on May 22, 2009 a true of Registrant's Motion to Extend Period of Time for Registrant to File Its Trial Brief and the Declaration of Paul H. Kochanski were served upon the attorneys for Petitioner, Family Clubhouse, Incorporated by via first class mail addressed as follows:

Steven C. Schnedler, Esq.
CARTER & SCHNEDLER, P.A.
56 Central Avenue, Suite 101
P.O. Box 2985
Asheville, NC 28802

Paul H. Kochanski

PAUL H. KOCHANSKI

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

FAMILY CLUBHOUSE, INCORPORATED, d/b/a i play Petitioner, v. INTERNATIONAL PLAYTHINGS, INC. Registrant.	Reg. No.: 2,923,675 Cancellation No.:92048260

DECLARATION OF PAUL H. KOCHANSKI

I, PAUL H. KOCHANSKI, do declare and state as follows:

1. I am part of the law firm of Lerner, David, Littenberg, Krumholz & Mentlik, LLP, counsel for Registrant International Playthings, Inc. in the above-captioned cancellation proceeding. I submit this declaration in connection with Registrant's Motion to Extend Period of Time for Registrant to File Its Trial Brief. I am fully familiar with the matters set forth herein.

2. At the present time, I am scheduled to participate in a preliminary injunction hearing in the case of *Sabert Corporation v. Par-Pak, Ltd.* Civil Action No. 07-5437-FLW-LHG, now scheduled for May 28, 2009 in the United States District Court for the District of New Jersey in Trenton, New Jersey. I anticipate that I will be preparing a good portion the day of May 27, 2009 for the hearing.

3. I am also in the process of preparing a responsive brief in opposition to a motion to amend an answer and add counterclaims in a trademark infringement action pending in the

United States District Court for the Central District of California entitled *Phytoceuticals, Inc. and Mostafa M. Omar v. Science of Skincare, LLC (d/b/a Innovative Skincare)*, Civil Action No. 2:09-cv-996 ODW (SSx). This brief is due on May 25, 2009. Oral argument on this motion, which I will be attending in Los Angeles, California, is to be heard on June 8, 2009.

4. At the same time, in a companion action entitled *Science of Skincare, LLC (d/b/a Innovative Skincare) v. Phytoceuticals, Inc., et al.*, Civil Action No. 08-4470 ODW (SSx), also pending in the United States District Court for the Central District of California. I will be preparing for and participating in an oral argument on a motion for summary judgment. This argument will also be held on June 8, 2009 in Los Angeles, California. Both actions pending in Los Angeles are before the same District Judge, The Honorable Otis D. Wright, II. I anticipate that I will be preparing for both of these arguments after the argument on the preliminary injunction on May 28, 2009 and during the week of June 1, 2009.

5. Finally, I am also involved in preparing a brief on behalf of plaintiff in response to a motion for summary judgment and responsive brief on a motion to strike plaintiff's evidence opposing the motion for summary judgment in the matter of *Howmedica Osteonics Corp. v. Wright Medical Technology, Inc.*, Civil Action No. 00-1167-SDW-MCA. This is a patent infringement action pending in the United States District Court for the District of New Jersey. Each of these briefs are due on June 8,

2009, the same day Registrant's responsive brief is due in the present action.

6. A request for an extension of time is not interposed for delay, but rather as a result of the deadlines in these other litigation matters.

I declare under penalty of perjury that the foregoing statements are true and correct.

Dated: May 22, 2009

Paul H. Kochanski

Paul H. Kochanski