

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

MBA/rk

Mailed: June 5, 2009

Cancellation No. 92048260

i play. inc.

v.

International Playthings, Inc.

Michael B. Adlin, Interlocutory Attorney

This case now comes up for consideration of respondent's motion, filed May 22, 2009, for a 30 day extension of time to file its trial brief, which is currently due on June 8, 2009. Petitioner opposes the motion.

In its motion to extend, respondent alleges that its lead counsel, who has apparently been respondent's lead counsel throughout this proceeding, has a number of "timing conflicts" during the two weeks prior to the current due date for respondent's brief. Specifically, respondent's lead counsel is involved in several other active litigation matters which will require respondent's counsel to draft briefs, travel and appear at hearings. Declaration of Paul H. Kochanski in Support of Respondent's Motion ¶¶ 2-5. Respondent further argues that petitioner will not be

prejudiced by an extension, "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."

Petitioner opposes the extension because it is "interested in the earliest possible resolution of this controversy." Furthermore, petitioner points out that "the June 8, 2009 due date for Registrant's trial brief has essentially been fixed and known for six months in advance." Finally, petitioner claims that "a situation of reverse confusion may be developing, representing a particular risk to the prior user, Cancellation Petitioner, as well as detriment to the public."

Under Fed. R. Civ. P. 6(b)(1)(A), a prescribed period may be extended prior to the expiration of that period where "good cause" is shown. *Societa Per Azioni Chianti Ruffino Esportazione Vinicola Toscana v. Colli Spolentini Spoletoducale SCRL*, 59 USPQ2d 1383, 1383 (TTAB 2001). The "press of other litigation" may constitute good cause for granting an extension of time. *Id.* at 1384.

Here, respondent has provided sufficient detail concerning its lead counsel's other litigation responsibilities to justify the requested extension. Furthermore, there is nothing in the record to suggest that the extension request is due to negligence or that it was

made in bad faith, or that respondent abused the privilege of extensions. See, *American Vitamin Products Inc. v. DowBrands Inc.*, 22 U.S.P.Q.2d 1313 (TTAB 1992).

Respondent's arguments against the requested extension are unpersuasive. First, a "delay" of 30 days in a case which will likely take approximately three years to resolve is relatively insignificant. Second, as petitioner acknowledges, respondent could not prepare its entire brief until receiving petitioner's brief, so the fact that the due date for respondent's brief has been long known is not particularly relevant. Third, petitioner's concern with alleged "reverse confusion," while potentially relevant to a claim under Section 2(d) of the Act, is not relevant to respondent's motion for extension, because even if respondent's motion was denied, the potentially earlier resolution of this case would only impact respondent's registration, not its trademark use. TBMP §102.01 ("The Board is not authorized to determine the right to use, nor may it decide broader questions of infringement or unfair competition."). Fourth, while respondent's lead counsel is part of a large intellectual property law firm, it appears that respondent's lead counsel has acted as such for the duration of this case, and requiring other attorneys to draft the brief is unnecessary and could be inefficient and ineffective. Finally, while *Societa Per Azioni* involved a

motion to extend a testimony period, if the press of other litigation is good cause for extending a testimony period, it follows that it also constitutes good cause for extending the deadline for a brief, which is intended to assist the Board, rather than only the moving party. *See, generally, United Foods Inc. v. United Air Lines Inc.*, 33 USPQ2d 1542, 1542 (TTAB 1994) (if a motion to file an overlong brief is denied, "then the moving party will be allowed time to file a brief conforming to the relevant page limit").

For all of these reasons, respondent's motion to extend the time to file its trial brief is hereby **GRANTED**.

Respondent is allowed until **THIRTY DAYS** from the mailing date of this order to file its brief on the case.

News from the TTAB

The USPTO published a notice of final rulemaking in the Federal Register on August 1, 2007, at 72 F.R. 42242. By this notice, various rules governing Trademark Trial and Appeal Board inter partes proceedings are amended. Certain amendments have an effective date of August 31, 2007, while most have an effective date of November 1, 2007. For further information, the parties are referred to a reprint of the final rule and a chart summarizing the affected rules, their changes, and effective dates, both viewable on the USPTO website via these web addresses:
<http://www.uspto.gov/web/offices/com/sol/notices/72fr42242.pdf>
http://www.uspto.gov/web/offices/com/sol/notices/72fr42242_FinalRuleChart.pdf

By one rule change effective August 31, 2007, the Board's standard protective order is made applicable to all TTAB inter partes cases, whether already pending or commenced on or after that date. However, as explained in the final rule and chart, this change will not affect any case in which any protective order has already been approved or imposed by the

Cancellation No. 92048260

Board. Further, as explained in the final rule, parties are free to agree to a substitute protective order or to supplement or amend the standard order even after August 31, 2007, subject to Board approval. The standard protective order can be viewed using the following web address:

<http://www.uspto.gov/web/offices/dcom/ttab/tbmp/stndagmnt.htm>
