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

Proceeding	92050224
Party	Plaintiff Mr. Patrick Klos
Correspondence Address	Mr. Patrick Klos 18 Farmhouse Rd. Bedford, NH 03110 UNITED STATES patrick@klos.com
Submission	Motion to Extend
Filer's Name	B. Brett Heavner
Filer's e-mail	docketing@finnegan.com, scott.harlan@finnegan.com, heavnerb@finnegan.com
Signature	/B. Brett Heavner/
Date	07/14/2009
Attachments	Klos - Motion for Extension of Time.pdf (6 pages)(50099 bytes)

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

Patrick Klos)	Cancellation No. 92050224
)	
Petitioner)	
)	
v.)	Registration No. 3,377,588
)	
Taun Willis)	Subject Mark: PHISHCOPS
)	
Registrant)	
)	

PETITIONER'S MOTION TO EXTEND TIME

Pursuant to Rule 6(b) of the Federal Rules of Civil Procedure and Section 509.01(a) of the Trademark Trial and Appeal Board Manual of Procedure ("TBMP"), Patrick Klos ("Petitioner"), through undersigned counsel, respectfully moves the Board to extend its discovery period, and to reset the remaining trial dates as follows:

Discovery Closes	September 4, 2009
Pretrial Disclosures for party in position of plaintiff due	October 19, 2009
Testimony Period for party in position of plaintiff to close	December 3, 2009
Pretrial Disclosures for party in position of defendant due	December 18, 2009
Testimony Period for party in position of defendant to close	February 1, 2010
Rebuttal Disclosures for party in position of plaintiff due	February 16, 2010
Rebuttal Period for party in position of plaintiff due	March 18, 2010

BACKGROUND

Petitioner filed this Petition for Cancellation pro se on November 18, 2008. Petitioner thereafter secured undersigned counsel, who, after reviewing Petitioner's case and available evidence, contacted Registrant's counsel on January 7, 2009 and first offered the possibility of settlement. Registrant deferred discussion of settlement specifics until the Discovery Conference, which was held by telephone on its deadline of February 6. During that call, counsel for both parties discussed each other's claims, topics of discovery, and the potential for settlement. Both parties agreed that Petitioner's counsel would memorialize the conversation, and that Petitioner's counsel would draft a settlement proposal, which Registrant's counsel stated Registrant would consider. After conferring with Petitioner, Petitioner's counsel subsequently drafted a settlement offer letter and delivered it to Registrant's counsel on February 23.

Registrant and Petitioner subsequently agreed by telephone in early March to postpone discovery, and instead to exchange initial disclosures in order to better assess each other's case and the potential for settlement. Petitioner duly served his initial disclosures by email on Registrant on March 9, the deadline for initial disclosures because the original deadline fell on a Sunday. Trademark Rule § 2.196. Registrant mailed his initial disclosures on March 9, which Petitioner's counsel did not receive until the week of March 16. After reviewing Registrant's initial disclosures, Petitioner once again made an offer of settlement to Registrant in an emailed letter dated and delivered on April 13.

After several weeks of exchanging telephone messages, both parties' counsel finally conferred by telephone on June 1 regarding the specifics of Petitioner's latest

proposal. After the call, Registrant's counsel immediately forwarded Registrant's own settlement proposal in a letter dated June 1. After reviewing Registrant's settlement proposal with Petitioner, Petitioner's counsel emailed a counteroffer for settlement to Registrant's counsel on June 19. At that time, Petitioner requested that Registrant stipulate to an extension of the upcoming discovery deadlines. After repeated attempts to contact Registrant's counsel, Registrant's counsel finally responded by telephone on the evening of July 2, when Registrant's counsel for the first time verbally withdrew all settlement offers and indicated a desire to proceed with the cancellation action.

After conferring with Petitioner regarding this change of events over the Independence Day holiday, Petitioner's counsel immediately proceeded to finalize Petitioner's first set of interrogatories, requests for documents, and requests for admissions, which Petitioner's counsel served on Registrant by email on July 10. On July 10, and then again on July 13, Petitioner's counsel called Registrant's counsel to request an extension of time and to confer regarding the remaining discovery period, leaving detailed voicemail messages that specifically asked for an extension each time. As of the service of this motion, Registrant's counsel has not responded to these requests, nor to the knowledge of Petitioner's counsel has attempted to serve any discovery requests upon Petitioner. Accordingly, due to the upcoming close of discovery, and because Petitioner has received no cooperation regarding the completion of discovery since settlement discussions have ended, Petitioner has filed this motion to extend time unstipulated before discovery closes.

ARGUMENT

Under Fed. R. Civ. P. 6(b)(1) and TBMP Section 509.01(a), the standard for allowing an extension of time is good cause. Good cause will ordinarily be found so long as the moving party has not been guilty of negligence or bad faith, and the privilege of extensions is not abused. American Vitamin Prods. Inc. v. DowBrands Inc., 22 U.S.P.Q.2d 1312, 1314 (T.T.A.B. 1992). Accordingly, the Board is liberal in granting reasonable extensions or suspension of trial dates when parties have been engaged in serious bilateral settlement discussions. Old Nutfield Brewing Co. v. Hudson Valley Brewing Co., 65 U.S.P.Q.2d 1701, 1703 (T.T.A.B. 2002).

Under this standard, Petitioner submits that this motion is made for good cause. As evidenced above, the parties were engaged in serious bilateral settlement discussions. Petitioner made two formal settlement offers; Registrant made one. At no time did Petitioner learn of Registrant's unwillingness to settle until July 2. The parties intentionally delayed discovery in order to pursue settlement. This is further demonstrated by the fact that neither party served interrogatories, requests for documents, requests for admissions, or scheduled a deposition until Petitioner served his First Set of interrogatories, requests for documents, and requests for admissions shortly after learning of Registrant's unwillingness to settle. Indeed, as of service of this motion, Petitioner has not received any discovery request from Registrant.

As further shown above, Petitioner has not been negligent or acted in bad faith, nor has Petitioner abused the privilege of obtaining extensions. At every point in this proceeding, Petitioner has been diligent and met every procedural deadline, but now faces a shortened discovery period in which to fully develop his case because of his

good-faith attempts to settle the matter amicably. Further, this is Petitioner's first request for an extension, which was submitted several weeks before discovery closes.

Accordingly, Petitioner believes that, because of the minimal amount of discovery that has been conducted in this case, the extreme distance between the parties and their witnesses (New Hampshire and Arizona respectively), and the lack of cooperation from Registrant since settlement talks ended, that an additional thirty days will be necessary for both parties to fully develop their case. In light of these and the aforementioned good-faith reasons for extending time by a modest thirty days, Petitioner respectfully requests that his motion be granted.

Respectfully submitted,



B. Brett Heavner
Scott Harlan

Date: July 14, 2009


FINNEGAN, HENDERSON, FARABOW,
GARRETT & DUNNER, L.L.P.
901 New York Avenue, N.W.
Washington, D.C. 20001
Telephone: (202) 408-4000
Facsimile: (202) 408-4400

Attorneys for Petitioner,
Patrick Klos

CERTIFICATE OF SERVICE

I hereby certify that a true copy of the foregoing MOTION FOR EXTENSION OF TRIAL CALENDAR was served on July 14, 2009 by first class mail and email, on the following attorney for Registrant:

Andrew Lahser
Law Office of Andrew P. Lahser, PLC
13239 N. La Montana Dr, Ste 215,
Fountain Hills, AZ, 85268
andrew@lahserpatent.com
andrew.lahser@azbar.org



Scott Harlan