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

Mailed: July 19, 2010

Cancellation No. 92051006

Couch/Braunsdorf Affinity, Inc.

v.

12 Interactive, LLC

Frances S. Wolfson, Interlocutory Attorney:

On June 9, 2010, petitioner filed a motion to extend its time to serve expert disclosures and to reset discovery, disclosure and trial dates in this proceeding. Respondent filed a response to petitioner's motion. For the reasons discussed below, the motion is denied.

The appropriate standard for allowing an extension of a prescribed period prior to the expiration of the term is "good cause." *See* Fed. R. Civ. P. 6(b); and Trademark Trial and Appeal Board Manual of Procedure (TBMP) § 509 (2d ed. rev. 2004) and authorities cited therein. "Ordinarily, the Board 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." *American Vitamin Products Inc. v. DowBrands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992).

Following joinder of the pleadings, the parties first requested an extension of time to allow them to continue settlement discussions on November 9, 2009. The request was granted. On January 11, 2010, petitioner's counsel sent an e-mail to respondent's counsel requesting an extension of all dates as the parties had failed to reach an amicable settlement. Respondent agreed, and the Board approved petitioner's motion (filed January 13, 2010) to extend dates, including the discovery period and the due date for expert disclosures. By the Board's order, the discovery period was set to close July 9, 2010 and expert disclosures were due on June 9, 2010.

On June 9, 2010, petitioner filed the present motion to extend, noting that "this is the first extension request since the settlement discussions ended." However, petitioner's counsel acknowledged, by e-mail addressed to respondent's counsel on January 11, 2010, that settlement negotiations had already ended, stating "I have just heard from my client that settlement negotiations have not been successful." Petitioner has not shown cause for the approximately six-month delay since January, or explained why it failed to prepare for trial after it was clear that an amicable settlement would not be reached, or why it

waited until the day its expert disclosures were due before seeking to extend the deadline.

While engaging in settlement negotiations with the expectation of reaching settlement may constitute good cause for granting an extension of time, here there was no expectation of reaching settlement any time after January 11, 2010. *Cf. Instruments SA, Inc. v. Asi Instruments, Inc.*, 53 USPQ2d 1925 (TTAB 1999)(opposer's motion to extend discovery on grounds of pending settlement talks denied where no evidence that applicant would seriously consider settlement offer). The moving party bears the burden of persuading the Board that it was diligent in satisfying its responsibilities and should therefore be awarded additional time. *See Luemme Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999); *see also*, 4A C.A. Wright and A.R. Miller, *Federal Practice and Procedure*, § 1165 (1987); and *Miscellaneous Changes to Trademark Trial and Appeal Board Rules*, 63 Fed. Reg. 48081, 48086 (1998) (cautioning that the Board "will scrutinize carefully any such motions" in determining whether good cause has been shown, including the diligence of the moving party during the discovery period).

In view of the above, the Board finds that petitioner has not shown good cause for an extension of the discovery period. Accordingly, petitioner's motion is denied to the extent that it requests an extension of the discovery

period. The discovery period has now closed. The motion is granted, however, to the extent that the parties are allowed to make their expert disclosures outside the close of the discovery period. Allowing the parties time to comply with the expert disclosure requirements prevents undue prejudice to either party as it eliminates the possibility of a surprise witness and unnecessary motion practice during trial. Expert disclosures are due **August 15, 2010**. Any party disclosing plans to use an expert must notify the Board that it has made the required disclosure. The Board may then suspend proceedings to allow for discovery limited to experts. *Miscellaneous Changes to Trademark Trial and Appeal Board Rules,* 72 Fed. Reg. 42242, 42246 (2007).

Remaining trial dates are reset as follows.

Plaintiff's Pretrial Disclosures Due	September 15, 2010
30-day testimony period for plaintiff's testimony to close	October 30, 2010
Defendant/Counterclaim Plaintiff's Pretrial Disclosures Due	November 14, 2010
30-day testimony period for defendant and plaintiff in the counterclaim to close	December 29, 2010
Counterclaim Defendant's and Plaintiff's Rebuttal Disclosures Due	January 13, 2011
30-day testimony period for defendant in the counterclaim and rebuttal testimony for plaintiff to close	February 27, 2011
Counterclaim Plaintiff's Rebuttal Disclosures Due	March 14, 2011
15-day rebuttal period for plaintiff in the counterclaim to close	April 13, 2011

Brief for plaintiff due	June 12, 2011
Brief for defendant and plaintiff in the counterclaim due	July 12, 2011
Brief for defendant in the counterclaim and reply brief, if any, for plaintiff due	August 11, 2011
Reply brief, if any, for plaintiff in the counterclaim due	August 26, 2011

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.