

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

Mailed: April 18, 2011

Cancellation No. 92052260

Steven Westlake

v.

Edgar Alexander Barrera

**George C. Pologeorgis,
Interlocutory Attorney:**

This case now comes before the Board for consideration of respondent's motion (filed April 6, 2011) to extend by forty-five days his time to answer or otherwise respond to petitioner's amended petition to cancel.

Petitioner contacted the Board and suggested that the issues raised in respondent's motion should be resolved by telephonic conference with the Board as permitted by TBMP § 502.06 (2nd ed. rev. 2004). The Board contacted the parties to discuss the date and time for holding the phone conference.

The parties agreed to hold a telephone conference at 2:00 p.m. Eastern time on Friday, April 15, 2011. The conference was held as scheduled among Mark Levy, as counsel for petitioner, R. Emmett McAuliffe, as counsel for

respondent, and the above signed, as a Board attorney temporarily responsible for resolving interlocutory disputes in this case.

While petitioner did not file a response to respondent's motion to extend prior to the telephone conference, the Board nonetheless afforded petitioner the opportunity to respond to respondent's motion orally during the telephone conference which petitioner did by raising certain objections to respondent's request to extend. The Board carefully considered the arguments raised by the parties, as well as the supporting correspondence and the record of this case, in coming to a determination regarding the above matters. During the telephone conference, the Board made the following findings and determinations:

Respondent's Motion to Extend

By way of background, petitioner filed an amended petition to cancel on September 15, 2010. By order dated September 24, 2010, the Board accepted petitioner's amended pleading and set October 12, 2010 as the deadline for the answer.

On October 8, 2010, respondent filed a consented motion to extend his time to answer by ninety days in light of the fact that he was incapacitated due to a medical condition. The Board granted respondent's motion on October 19, 2010

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and reset the deadline to answer until January 12, 2011. Thereafter, on January 7, 2011, respondent filed another request to extend his time to answer maintaining that he is still recovering from his serious illness and therefore requires additional time to respond to petitioner's amended pleading. On January 13, 2011, the Board issued an order granting respondent's request to extend and reset the deadline for an answer until April 12, 2011. In the same order, the Board expressed its concern about this proceeding not moving forward due to the possibility that additional requests to extend beyond the ninety days could be filed by respondent based on his medical condition and, therefore, noted that further requests to extend will require additional supporting documentation from respondent.

We now turn to respondent's latest motion to extend.

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 cases cited therein. Generally, 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. Moreover, the moving party must demonstrate that the requested extension is not necessitated

by the moving party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted. Further, the moving party retains the burden of persuading the Board that it was diligent in meeting its responsibilities and should therefore be awarded additional time. See *Sunkist Growers, Inc. v. Benjamin Ansehl Company*, 229 USPQ 147 (TTAB 1985).

In this instance, the Board finds that respondent, in light of his ongoing serious medical condition that has been substantiated by a supplemental letter from his physician, has made the minimum showing necessary to establish good cause to support an extension of time to answer or otherwise respond to petitioner's amended petition to cancel.

Further, the Board finds there is no evidence of bad faith on the part of respondent and the respondent has not abused his extension privileges inasmuch as respondent's previous extension requests were necessitated due to his serious illness. Accordingly, respondent's motion to extend is granted.

By granting this motion, however, the Board has now afforded respondent seven and half months to file and serve an answer to petitioner's amended pleading. While the Board is sympathetic toward respondent and the serious illnesses he is combating, the Board, as well as petitioner, nonetheless have an interest in having this proceeding move

forward. Further, the Board recognizes that there is no guarantee that respondent will have sufficiently recovered to assist his counsel in defending this case by the next deadline and may, therefore, require an additional extension. The Board, however, will be reluctant to grant such an extension request again. Respondent must make a business decision as to whether he desires to continue to participate in this proceeding. To the extent respondent wishes to continue to participate in this case, the Board highly encourages respondent to enlist assistance from a family member or friend or, more preferably, execute a durable power of attorney in order to assist respondent's counsel of record herein in defending this matter in the event respondent has not sufficiently recovered to participate actively in this case.

Proceedings herein are resumed. Respondent's answer to the petition to cancel is due by the deadline set forth below. Trial dates are reset as follows:

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| Time to Answer | 5/27/2011 |
| Deadline for Discovery Conference | 6/26/2011 |
| Discovery Opens | 6/26/2011 |
| Initial Disclosures Due | 7/26/2011 |
| Expert Disclosures Due | 11/23/2011 |
| Discovery Closes | 12/23/2011 |
| Plaintiff's Pretrial Disclosures | 2/6/2012 |
| Plaintiff's 30-day Trial Period Ends | 3/22/2012 |
| Defendant's Pretrial Disclosures | 4/6/2012 |

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| Defendant's 30-day Trial Period Ends | 5/21/2012 |
| Plaintiff's Rebuttal Disclosures | 6/5/2012 |
| Plaintiff's 15-day Rebuttal Period Ends | 7/5/2012 |

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.