

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

Baxley

Mailed: February 24, 2012

Cancellation No. 92053298

Tyler Perry Studios, LLC

v.

Kimberly Kearney

Andrew P. Baxley, Interlocutory Attorney:

Pursuant to the Board's January 4, 2012 order, respondent's answer was due by February 13, 2012. On the due date for respondent's answer, respondent filed a motion for a sixty-day of extension of time to answer.

In the interest of eliminating any possible uncertainty with regard to the schedule herein, the Board determined that the motion to extend should be resolved by telephone conference without full briefing. See Trademark Rule 2.120(i)(1); TBMP Section 502.06(a) (3d ed. 2011). On February 24, 2012, such conference was held between petitioner's attorney Victor K. Sapphire, respondent Kimberly Kearney, and Board attorney Andrew P. Baxley.

In her motion, respondent requests an extension of time to answer to consult with her "legal team" and consider her options in response to petitioner's claims herein.¹

In response, petitioner contends that respondent did not contact petitioner prior to filing the motion to extend and that the allegations in the petition to cancel are clear and do not require investigation.

In reply, respondent indicated that she wants to consult with a trademark attorney regarding this proceeding.

The standard for allowing an extension of a prescribed period prior to the expiration of that period is "good cause." See Fed. R. Civ. P. 6(b)(1)(A); TBMP Section 509.01(a) (3d ed. 2011). The Board is generally liberal in granting extensions before the period to act has lapsed, so long as the moving party has not been guilty of negligence or bad faith and the privilege of extensions is not abused. See, e.g., *American Vitamin Products, Inc. v. DowBrands*

¹ At least for the time being, respondent is representing herself herein. While Patent and Trademark Rule 11.14 permits any person to represent herself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in a cancellation proceeding to secure the services of an attorney who is familiar with such matters. The USPTO cannot aid in the selection of an attorney.

In this proceeding, the parties should review the Trademark Board Manual of Procedure (TBMP), online at <http://www.uspto.gov/trademarks/process/appeal/PrefaceTBMP.jsp>, and the Trademark Rules of Practice, online at <http://www.uspto.gov/trademarks/law/tmlaw.pdf>. The Board expects all parties appearing before it, whether or not they are represented by counsel, to comply with the Trademark Rules of Practice and where applicable, the Federal Rules of Civil Procedure, online at <http://www.law.cornell.edu/rules/frcp>.

Inc., 22 USPQ2d 1313 (TTAB 1992). As a practical matter, the Board tends to be most liberal in granting motions to extend time to answer because a denial of such a motion would place the defendant in default.

Keeping in mind the Board's practice of liberally granting extensions of time to answer, the Board finds that respondent's need for additional time to consult with attorneys to consider her options in response to the petition to cancel constitutes good cause to extend her time to answer, albeit for less time than respondent seeks. The petition to cancel consists of six paragraphs of allegations, most of which relate to respondent's activities and e-mail addresses in connection therewith. Respondent would appear to need to investigate only minimally to respond to the allegations set forth in the petition to cancel. Moreover, inasmuch as the earlier entry of default judgment in this proceeding was vacated nearly two months ago, respondent has already had a significant amount of time in which to retain counsel. Accordingly, the petition to cancel should be answered without undue delay.

Based on the foregoing, the motion to extend is granted to the extent modified by this order.² Dates herein are reset as follows.

² Each party should seek the consent of its adversary prior to filing any further motions to extend and should include in such motions a statement that the adversary either consented or

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Answer Due	3/14/12
Deadline for Discovery Conference	4/13/12
Discovery Opens	4/13/12
Initial Disclosures Due	5/13/12
Expert Disclosures Due	9/10/12
Discovery Closes	10/10/12
Plaintiff's Pretrial Disclosures Due	11/24/12
Plaintiff's 30-day Trial Period Ends	1/8/13
Defendant's Pretrial Disclosures Due	1/23/13
Defendant's 30-day Trial Period Ends	3/9/13
Plaintiff's Rebuttal Disclosures Due	3/24/13
Plaintiff's 15-day Rebuttal Period Ends	4/23/13

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.

If either of the parties or their attorneys should have a change of address, the Board should be so informed promptly.

decline to consent to the extension sought. Upon the filing of any further unconsented motions to extend in this case, the filing party must contact the Board attorney assigned to this case by telephone at 571-272-4253 so that the motions to extend can be resolved promptly by telephone conference.