

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

Baxley

Mailed: November 18, 2013

Cancellation No. 92053298

Tyler Perry Studios, LLC

v.

Kimberly Kearney

Andrew P. Baxley, Interlocutory Attorney:

In a September 23, 2013 order, the Board granted respondent's motion (filed August 12, 2013) to extend her testimony period and reset her testimony period to close on October 19, 2013. This case now comes up for consideration of respondent's motion (filed October 4, 2013) to further extend her testimony period. The motion has been fully briefed.¹

The standard for allowing both an extension of a prescribed period prior to the expiration of a time to act or a suspension is "good cause." See Fed. R. Civ. P. 6(b)(1)(A); Trademark Rule 2.117(c); TBMP Sections 509.01(a) and 510 (3d ed. rev. 2 2013). Generally, the Board

¹ Respondent filed an original and a corrected motion on October 4, 2013. The Board will treat the original motion as having been withdrawn by the corrected motion. See Trademark Rule 2.127(a).

Respondent also timely filed two reply briefs. The Board will treat the first reply brief as having been withdrawn by the filing of the second reply brief. See *id.*

liberally grants 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. However, the moving party retains the burden of persuading the Board that she was diligent in meeting her responsibilities and should therefore be awarded additional time. See *National Football League v. DNH Management LLC*, 85 USPQ2d 1852 (TTAB 2008); *Sunkist Growers, Inc. v. Benjamin Ansehl Co.*, 229 USPQ 147 (TTAB 1985).

Respondent contends that she seeks an unspecified extension of her testimony period or suspension of this proceeding because she has just been made aware that in the State of Georgia, where most of her intended witnesses reside and work, a *pro se* litigant, such as herself, must commence a civil action there before a judge will approve the issuance of a subpoena for any witness that resides or works there. Accordingly, respondent asks the Board to extend her testimony period or suspend this proceeding to allow her time in which to go through the necessary procedures to obtain the subpoenas for her intended witnesses.²

² Petitioner's request that respondent's motion be struck is not well-taken and therefore denied. See TBMP Section 517.

Nonetheless, the Board notes the personal attacks upon respondent's principal and attorney that respondent has included in her submissions herein. Respondent is reminded that she is expected to conduct her business with decorum and courtesy. See Trademark Rule 2.192; TBMP Section 115.01.

The Board finds that respondent has failed to meet her burden of persuading the Board that she was diligent in meeting her responsibilities and should therefore be awarded either an extension of her testimony period or a suspension of this proceeding. Although this proceeding has been pending for three years, respondent contends that she only just became aware of the procedures for obtaining subpoenas in the State of Georgia as a *pro se* litigant. Respondent should long since have been cognizant of what evidence she would need to defend this cancellation proceeding and should have long ago taken appropriate steps to make herself aware of the procedures for obtaining that evidence. Respondent's motion gives the impression that she only fully considered how she would obtain the subpoenas at issue after the issuance of the September 23, 2013 order. To grant the extension or suspension that respondent seeks would require the Board to excuse respondent's inadequate trial preparation.³ In view thereof, respondent's motion to extend is denied. Respondent's testimony period closed on October 19, 2013.

Remaining dates are reset as follows.⁴

³ The Board expects all parties, including *pro se* litigants, to comply with applicable procedural rules.

⁴ Evidence submitted in connection with the motion to extend is of record for the consideration of that motion only. To be considered at final hearing, any evidence must be properly introduced in evidence during the appropriate trial

Plaintiff's Rebuttal Disclosures Due	11/29/2013
Plaintiff's 15-day Rebuttal Period Ends ⁵	12/29/2013

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.

period. See *Levi Strauss & Co. v. R. Josephs Sportswear Inc.*, 28 USPQ2d 1464 (TTAB 1993); *Pet Inc. v. Bassetti*, 219 USPQ 911 (TTAB 1983); *American Meat Institute v. Horace W. Longacre, Inc.*, 211 USPQ 712 (TTAB 1981).

⁵ Petitioner may not make of record during its rebuttal testimony period evidence that should have been part of its case in chief; any rebuttal evidence submitted by petitioner should be confined to that which denies, explains or discredits respondent's evidence. See *Wet Seal Inc. v. FD Management Inc.*, 82 USPQ2d 1629 (TTAB 2007); *The Ritz Hotel Limited v. Ritz Closet Seat Corp.*, 17 USPQ2d 1466 (TTAB 1990).