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

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Mailed: August 31, 2012

Cancellation No. 92053945

Darlington Apple Festival, Inc.

v.

Stephen Smith

**Elizabeth A. Dunn, Attorney (571-272-4267):**

This case now comes up on petitioner's motions to extend for thirty days discovery and all subsequent dates (filed June 12, 2012) and to compel respondent to answer petitioner's first set of interrogatories and first set of document requests (filed June 28, 2012). Respondent opposed the motion to extend and failed to file a brief in response to the motion to compel. Proceedings are considered to have been suspended with the filing of the motion to compel.

MOTION FOR EXTENSION GRANTED

On November 26, 2011, the Board reset discovery to close July 4, 2012. On June 12, 2012, petitioner moved for a thirty-day extension on the ground that third party

witness Jennifer Tisch was unavailable for deposition before the scheduled close of discovery. In opposition to the motion respondent, acting pro se, alleges that the extension is "open-ended and a perpetual delay of a fair evaluation of their complaint" and that petitioner should be "considered unprofessional not to be prepared at this time."[1]

The standard for allowing an extension of a prescribed period prior to the expiration of that period is "good cause." See Fed. R. Cir. P. 6(b); National Football League v. DNH Management LLC, 85 USPQ2d 1852, 1854 (TTAB 2008). 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. Procyon Pharmaceuticals Inc. v. Procyon Biopharma Inc., 61 USPQ2d 1542, 1543 (TTAB 2001).

Here, the parties stipulated to one extension and this is the first extension requested by petitioner. Depositions must be both noticed and taken prior to the expiration of the discovery period (unless the parties stipulate that the deposition may be taken outside of the period). Trademark Trial and Appeal Board Manual of Procedure (TBMP) §404.01

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[1] Respodnet is advised that including a "cc:" at the end of its filing is insuffcient proof of service. Applicant is referred to Trademark Trial and Appeal Board Manual of Procedure (TBMP) §113.03 (3rd ed. 2011).

(3rd ed., rev. 2012). While more detail as to when petitioner initiated its efforts to depose the witness would have been welcome, petitioner's motion does indicate the importance of the witness, who is knowledgeable about respondent's use of the mark, and that petitioner unsuccessfully attempted to depose the witness within the existing discovery period. In addition, respondent's opposition to the extension as "open-ended" ignores that the requested extension is limited to thirty days. Accordingly, there is no evidence of abuse of extensions, negligence or bad faith. Petitioner's motion to extend discovery is granted.

MOTION TO COMPEL GRANTED

In support of its motion to compel, petitioner alleges that its first set of document requests was served May 14, 2012; that its first set of interrogatories was served May 22, 2012; and that respondent did not serve responses or respond to petitioner's email inquiries of June 22, 2012 and June 27, 2012. Inasmuch as both discovery requests were served on respondent by mail, responses were not due until June 18, 2012 and June 26, 2012. If accompanied by a certificate of mailing with those dates, responses could have been received several days later and still been timely. If any but these exact circumstances were present, we would

find that petitioner had not made the requisite good faith effort to resolve this matter before filing its motion to compel on June 28, 2012.

However, if respondent had served any discovery responses after that date, petitioner was under an obligation to so inform the Board. Further, respondent has not filed a response indicating that he has met his discovery obligations or that he opposes the grant of the motion to compel. In view of the circumstances set forth in petitioner's motion to compel, and because respondent has not responded to the motion, petitioner's motion to compel discovery is granted. *See* Trademark Rule 2.120(e).

Respondent is allowed until 20 days from the mailing date of this order in which to respond to petitioner's first set of interrogatories and first set of document requests, without objection, failing which a motion for sanctions will be entertained by the Board. See Trademark Rule 2.120(g)(1).

Inasmuch as proceedings have been suspended, the grant of petitioner's requested extension is reflected in the dates reset below.

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| Discovery Closes | **9/29/2012** |
| Plaintiff's Pretrial Disclosures | **11/13/2012** |
| Plaintiff's 30-day Trial Period Ends | **12/28/2012** |
| Defendant's Pretrial Disclosures | **1/12/2013** |
| Defendant's 30-day Trial Period Ends | **2/26/2013** |
| Plaintiff's Rebuttal Disclosures | **3/13/2013** |

Plaintiff's 15-day Rebuttal Period Ends **4/12/2013**

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.l25.

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.l29.