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

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Mailed: January 19, 2016

Cancellation No. 92056067
Cancellation No. 92056080

Ava Ruha Corporation dba Mother's Market & Kitchen

v.

Mother's Nutritional Center, Inc.

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

This case comes up on Petitioner's motion filed November 10, 2015 to extend discovery **for sixty days** for the purpose of conducting discovery depositions.[1] The motion is contested, and the Board held a phone conference with the parties on January 15, 2016. The participants were Steven Vegh, attorney for Petitioner, Paul Marks, attorney for Respondent, and Elizabeth Dunn, attorney for the Board. The parties were informed that the conference procedure is informal and the conference may not be recorded, but the summary order to follow would be part of the record. *See* Trademark Rule 2.120(i)(1).

[1] As discussed, the motion is titled as a more broad motion to extend general discovery, but the Board finds that Petitioner's arguments address only the need to extend discovery to conduct depositions which the parties discussed but did not schedule.

This case has been pending since 2012, and involves Petitioner's claims of likelihood of confusion and fraud. The record shows that on January 29, 2015, the Board granted Respondent's motion for summary judgment in part, and resumed proceedings with discovery scheduled to close March 14, 2015. On March 9, 2015, Petitioner served Respondent with notice of a Fed. R. Civ. P. 30(b)(6) deposition to take place on March 13, 2015. On April 10, 2015, the parties filed the first in a series of consented motions to extend the close of discovery.

On review of the correspondence between the parties submitted in support of Petitioner's motion, the Board finds that since the Board's resumption of proceedings, there has been only one instance where the parties did not communicate regarding outstanding discovery and the latest settlement proposals for more than a month, and that month preceded the substitution of new counsel for Respondent.

On September 1, 2015, Petitioner requested deposition dates for Richard Flores, Gloria Martinez, and Juan-Carlos Monnaco, and the next day new counsel for Respondent indicated available dates. The last consented motion filed October 5, 2015 (which was granted by the Board on October 21, 2015) scheduled discovery to close on November 10, 2015. There was no withdrawal of the notice of deposition by Petitioner or indication from Respondent that it wished to complete discovery on a speedier basis.

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). "[T]he 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 extension is not abused." *National Football League v. DNH Management LLC,* 85 USPQ2d 1852, 1854 (TTAB 2008). The Board finds that Petitioner has supported its

motion with a detailed account of its efforts to pursue both settlement and discovery, and, insofar as the parties agreed to several months of extensions, the Board disagrees with Respondent's argument that Petitioner caused "delay" to this proceeding.

Moreover, in none of the cases cited by Respondent in which an extension was denied were there analogous circumstances with early initiation of discovery and then regular communications regarding discovery concurrent with bilateral discussion of settlement. *See National Football League v. DNH Management LLC,* 85 USPQ2d at 1854 (no extension of discovery where no bilateral settlement discussions and discovery requests served on last day); *Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479, 1480 (TTAB 2000) (no extension of testimony where last settlement offer was five months earlier and movant failed to identify its witnesses before commencement of testimony period); *Baron Philippe de Rothschild S.A. v. Styl-Rite Optical Mfg. Co.*, 55 USPQ2d 1848, 1851 (TTAB 2000) (no extension of time to comply with Board order where counsel knew of pan for maternity leave a month before Board order received but waited until penultimate day of compliance period to seek extension); *Instruments SA Inc. v. ASI Instruments Inc.*, 53 USPQ2d 1925, 1928 (TTAB 2000) (no extension of discovery where no bilateral settlement discussions, and opposer had time after rejection of its unilateral settlement offer to seek discovery); and *Lemma Inc. v. D.B. Plus Inc.*, 53 USPQ2d 1758 (TTAB 1999) (no extension of discovery where discovery served on last day based on vague assertions rather than detailed information regarding delay in initiating discovery).

After review of the parties' arguments, the Board finds that Petitioner has not been dilatory in seeking the extension, that Petitioner has not abused the privilege of extensions, and that Respondent has indicated no specific prejudice, and the Board finds none, which would result from the extension. In view thereof, the Board finds that these circumstances constitute good cause for the extension sought. Petitioner's motion to extend discovery for sixty days for the purpose of conducting the discovery depositions of Petitioner's Fed. R. Civ. P. 30(b)(6), Richard Flores, Gloria Martinez, and Juan-Carlos Monnaco is hereby granted.

General discovery remains closed, and the reference to discovery in the new schedule is limited to discovery for conducting the discovery depositions of Petitioner's Fed. R. Civ. P. 30(b)(6), Richard Flores, Gloria Martinez, and Juan-Carlos Monnaco. Dates are reset as follows:

Discovery Opens	**3/18/2015**
Initial Disclosures Due	**4/17/2015**
Expert Disclosures Due	**8/15/2015**
Discovery Closes	**9/14/2015**
Plaintiff's Pretrial Disclosures	**10/29/2015**
Plaintiff's 30-day Trial Period Ends	**12/13/2015**
Defendant's Pretrial Disclosures	**12/28/2015**
Defendant's 30-day Trial Period Ends	**2/11/2016**
Plaintiff's Rebuttal Disclosures	**2/26/2016**
Plaintiff's 15-day Rebuttal Period Ends	**3/27/2016**

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.