

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

Mailed: October 29, 2012

Cancellation No. 92056125

U.S.A. Dawgs, Inc.

v.

James B. Sanders

Jennifer Krisp, Interlocutory Attorney

This proceeding is before the Board for consideration of respondent's motion (filed October 17, 2012) for an extension of time to file an answer. The motion has been fully briefed.¹

On the date on which his answer was due, respondent filed a motion seeking an extension of thirty days, that is, until November 16, 2012, in which to file an answer to the petition to cancel.

Analysis

A party may file a motion for an enlargement of the time in which an act is required or allowed to be done. If the request is filed prior to the expiration of the period as originally set or previously reset, the motion is a

¹ The Board, in its discretion, and to avoid further delay to this proceeding, considers the merits of respondent's motion prior to the time for filing a reply brief thereon. See TBMP § 502.02(b); Cf. TBMP § 502.06(a); *Johnston Pump/General Valve Inc. v. Chromalloy American Corp.*, 13 USPQ2d 1719, 1720 n.3 (TTAB 1989).

motion to extend, and the moving party need only show good cause for the requested extension. See Fed. R. Civ. P. 6(b).

A party moving to extend time must demonstrate that the requested extension is not necessitated by the party's own lack of diligence or unreasonable delay in taking the required action during the time previously allotted therefor. See TBMP § 509.01. 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 *National Football League v. DNH Mgt. LLC*, 85 USPQ2d 1852, 1854 (TTAB 2008). The movant must state with particularity the facts believed to constitute good cause for the requested extension of time; mere conclusory allegations lacking in factual detail are insufficient. See *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758, 1760 (TTAB 1999). Generally, the Board is liberal in granting extensions of time before the period to act has elapsed so long as the movant has not been guilty of negligence or bad faith, and the privilege of extensions is not abused. See *National Football League v. DNH Mgt. LLC*, 85 USPQ2d at 1854.

Respondent asserts, inter alia, that he believes there are legitimate defenses to each of petitioner's allegations, that he intends to fully defend the registration, that he is undergoing treatment for cancer and has not been fully

available to prepare a defense, that the parties are currently engaged in other litigation which is unrelated to the registration, that counsel for petitioner has been unwilling to extend the time to respond to discovery requests in said litigation, and that he did not believe counsel would grant an extension in the instant proceeding.

In opposing the motion, petitioner asserts, inter alia, that respondent did not seek petitioner's consent, that petitioner will be injured if respondent continues to make false claims to the public, that respondent does not explain his treatments, that respondent is familiar with the facts and issues involved in this petition to cancel, and that respondent waited until the last possible moment to file his motion to extend. Petitioner also sets forth various details relative to a pending lawsuit between the parties.

Turning to the merits of the motion, respondent provides sufficient detail regarding his reasons for seeking an extension, and his motion, although brief, states with sufficient particularity the facts underlying the request. The present record does not include assertions that suggest that the need for an extension was necessitated by respondent's own lack of diligence or unreasonable delay, and does not show indifference or inattentiveness to this proceeding. Both parties' references to other litigation between the parties do not support a finding that respondent has been guilty of

negligence in failing to file a timely answer in this proceeding, and the reasonableness of the requested extension is consistent with a finding that respondent is not acting in bad faith. The delay which has been occasioned is not of such a length as to prejudice petitioner or to hinder its ability to put on its case. Lastly, this is the first extension that respondent has sought in this proceeding.

In view of these findings, the Board finds that respondent has met the minimal good cause standard for a reasonable extension of time to file an answer. Accordingly, respondent's motion to extend is granted, and he is allowed until November 16, 2012 in which to file an answer to the petition to cancel. Conferencing, disclosure, discovery and trial dates are hereby reset as set forth below.

As a final matter, the Board must ascertain whether suspension of this proceeding pursuant to Trademark Rule 2.117(a) is appropriate. To that end, and as the Board stated in its September 7, 2012 order instituting this proceeding, if the parties are the parties in another Board proceeding, or any civil action involving the registered mark or related marks, or other issues of law or fact which overlap with this case, they are allowed until November 16, 2012 in which to notify the Board and to concurrently file herein a copy of the complaint and answer (and counterclaim, if any) filed in said proceeding(s). See TBMP § 510.

Schedule

Deadline for Required Discovery Conference	12/16/2012
Discovery Opens	12/16/2012
Initial Disclosures Due	1/15/2013
Expert Disclosures Due	5/15/2013
Discovery Closes	6/14/2013
Plaintiff's Pretrial Disclosures due	7/29/2013
Plaintiff's 30-day Trial Period Ends	9/12/2013
Defendant's Pretrial Disclosures due	9/27/2013
Defendant's 30-day Trial Period Ends	11/11/2013
Plaintiff's Rebuttal Disclosures due	11/26/2013
Plaintiff's 15-day Rebuttal Period Ends	12/26/2013

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.