

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

BUO

Mailed: November 29, 2013

Cancellation No.92056574

Frank Clegg Leatherworks LLC

v.

El Group, LLC

Benjamin U. Okeke, Interlocutory Attorney:

Extension of Time

On August 23, 2013, petitioner filed a motion to extend the discovery period and trial dates without respondent's consent. In support of its motion petitioner asserts that extension of the dates is appropriate because petitioner's current counsel was substituted into this case only five days before the close of discovery, and needs time to familiarize themselves with the tenor of the matter and to investigate any possibility of settlement.

Petitioner requests this extension additionally to allow petitioner's current counsel (i) to propound discovery, as none has been taken to this point, (ii) to review the responses received from respondent, and (iii) to conduct any necessary depositions. Petitioner cites, in support of

a showing of good cause for the extension, that this is the "first and only" extension of time petitioner has requested in this matter. Respondent, for its part, argues that petitioner's request is necessitated by its own "negligence and lack of diligence in pursuing discovery in this matter," and should be denied.

The Board has carefully considered the parties' arguments and the record of this proceeding.

Because petitioner filed its motion to extend prior to the close of the discovery period, petitioner need only establish "good cause" for the requested extension. Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509.01 (3d ed. rev. 2013). Generally, "the 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 extensions is not abused." *Am. Vitamin Prods. Inc. v. DowBrands Inc.*, 22 USPQ2d 1313, 1314 (TTAB 1992).

Petitioner's motion, while sparse, narrowly establishes good cause based on petitioner's recent substitution of counsel and its newly appointed counsel's need to familiarize themselves with the matter. It is the policy of the Board to allow parties a period of time to acclimate after the withdrawal of counsel, and consequently

the substitution of new counsel. See *Pro-Cuts v. Schilz-Price Enters. Inc.*, 27 USPQ2d 1224, 1224-25 (TTAB 1993); TBMP §§ 510.03(a).

Moreover, although it appears the parties waited until the waning days of discovery to propound discovery, this is less evidence of any negligence on petitioner's part, but more an illustration of the tenor of this matter, as respondent similarly did not propound discovery until the last day of the discovery period. Thus, there is no evidence that petitioner has acted negligently or in bad faith nor has petitioner abused the privilege of extensions, as this is its first extension request.

Therefore, despite the Board's misgivings regarding the efficacy of granting the motion at this time,¹ to avoid hardship and surprise, the motion is **GRANTED** in part, to the extent that the discovery period is extended for **SIXTY DAYS**.

Suspension - Motion for Summary Judgment

On October 22, 2013, petitioner filed a motion for summary judgment on its likelihood of confusion claim under

¹ Generally, a party will not be heard to complain about a lack of discovery in a proceeding when that party waits until the waning days of the discovery period to propound its discovery. See *Nat'l Football League v. DNH Mgmt. LLC*, 85 USPQ2d 1852 (TTAB 2008). However, as stated, the substitution of counsel presents an exigent circumstance in this proceeding, which merits an extension of time.

Trademark Act Section 2(d), 15 U.S.C. 1052(d), and its claim under Section 2(c), that the subject mark comprises the name of a living individual, and was registered without the written consent of such individual. In keeping with the Board's general practice, proceedings are otherwise suspended pending disposition of the motion for summary judgment. See Trademark Rule 2.127(d). Any paper filed during the pendency of this motion which is not relevant thereto will be given no consideration. *Id.*

Dates, including the extension granted by this order, will be reset upon resumption of the proceeding.