

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

Mailed: October 28, 2013

Cancellation No. 92057484

Cancellation No. 92057506

Shirley's World, L.P.

v.

Earl C. J. Prater

**M. Catherine Faint,
Interlocutory Attorney:**

This case now comes before the Board for consideration of respondent's motions for extension of time to answer without consent, filed August 12 and 20, 2013.¹ The motions are contested.

Respondent filed his motions in these two cancellation proceedings prior to the due date for answer, but did not include certificates of service with the filings. On September 10, 2013, the Board issued an order in Cancellation No. 92057484 noting that any future filings must contain a certificate of service, providing an electronic link to the document for petitioner, allowing petitioner fifteen days to file its response to the motion, and suspending that

¹ Respondent's change of correspondence address has been entered into the record for both Board proceedings. Respondent should

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proceeding. On September 20, 2013 respondent filed copies of his certificates of service in Cancellation Nos. 92057484 and 92057506. Respondent requests a sixty day extension of time to answer while he seeks legal counsel.² Petitioner filed responses on September 24, 2013 and October 3, 2013 respectively in each cancellation proceeding, opposing the extensions of time, arguing respondent is in default and that respondent fails to show good cause for the requested extensions.

Consolidated

Inasmuch as the above-captioned proceedings involve the same parties and common questions of law and fact, the Board consolidates these proceedings. See Fed. R. Civ. P. 42(a); see also, *8440 LLC v. Midnight Oil Co.*, 59 USPQ2d 1541, 1541 n.1 (TTAB 2001); *Regatta Sport Ltd. v. Telux-Pioneer Inc.*, 20 USPQ2d 1154 (TTAB 1991).

The consolidated cases may be presented on the same record and briefs. See *Helene Curtis Industries Inc. v. Suave Shoe Corp.*, 13 USPQ2d 1618 (TTAB 1989) and *Hilson Research Inc. v.*

note, however, that changes of address have not been entered in the registration files.

² Respondent also filed informal reply briefs on Oct. 15, 2013, but has not attached certificates of service to them. Petitioner may view the reply here:

<http://ttabvue.uspto.gov/ttabvue/v?pno=92057484&pty=CAN&eno=6>.

Respondent is reminded that a certificate of service must be attached to all filings with the Board. Petitioner filed objections to the reply briefs on Oct. 24, 2013. The Board has given the reply briefs no consideration, but even if the briefs were considered, it would not affect the decision herein.

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Society for Human Resource Management, 26 USPQ2d 1423 (TTAB 1993).

The Board file will be maintained in Cancellation No. 92057484 as the "parent" case. As a general rule, from this point onward, only one copy of any submission should be filed herein; but that copy should include both proceeding numbers in its caption in ascending order. Because the involved proceedings, however, are consolidated prior to answer, respondent should file **a separate answer for each petition to cancel** before commencing the practice of filing a single copy of any paper in the parent case.

Despite being consolidated, each proceeding retains its separate character. The decision on the consolidated cases shall take into account any differences in the issues raised by the respective pleading; and a copy of the decision shall be placed in each proceeding file.

Motions for Extension of Time

The standard for allowing an extension of a prescribed period prior to the expiration of that period is good cause. See Fed. R. Civ. P. 6(b)(1) and TBMP Section 509.01 (2d ed. rev. 2004). Ordinarily, 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. *American Vitamin*

Products Inc. v. DowBrands Inc., 22 USPQ2d 1312, 1314 (TTAB 1992).

In this instance, we find that respondent has shown good cause for the extensions of time he seeks. Respondent sought the extensions before his answers were due, thus there is no default, there is no evidence he is acting in bad faith, and there have been no other extension requests in this proceeding. To the extent respondent is acting pro se, general information is provided later in this order concerning the expectations of the parties and directing the parties to available resources.

Finally, in a situation as presented here with respect to an extension of time to answer, the Board is mindful of its policy to decide cases on their merits where possible. To deny the motions to extend time would effectively require issuance of notice of default. Any response presumably would set forth the same set of circumstances as provided here and likely result in discharge of the notices of default. Consequently, the case would be delayed. As the parties are aware, the Board only reluctantly enters judgment by default for failure to timely answer. See TBMP § 312.02 (3d ed. rev. 2 2013).

Accordingly, respondent's motions to extend time to answer are **granted** to the extent that respondent's time to answer is reset as set out below.

NATURE OF BOARD PROCEEDINGS

Respondent is advised that an *inter partes* proceeding before the Board is similar to a civil action in a Federal district court. There are pleadings, a wide range of possible motions; discovery (a party's use of discovery depositions, interrogatories, requests for production of documents and things, and requests for admission to ascertain the facts underlying its adversary's case), a trial, and briefs, followed by a decision on the case. The Board does not preside at the taking of testimony. Rather, all testimony is taken out of the presence of the Board during the assigned testimony, or trial, periods, and the written transcripts thereof, together with any exhibits thereto, are then filed with the Board. No paper, document, or exhibit will be considered as evidence in the case unless it has been introduced in evidence in accordance with the applicable rules.

REQUIREMENT FOR SERVICE OF PAPERS

The service requirements are set forth in Trademark Rule 2.119. Trademark Rules 2.119(a) and (b) and require that every paper filed in the Patent and Trademark Office in a proceeding before the Board must be served upon the attorney for the other party, or on the party if there is no attorney, and proof of

such service must be made before the paper will be considered by the Board.

Consequently, copies of all papers which either party may subsequently file in this proceeding, including applicant's answer to the notice of opposition, must be accompanied by a signed statement indicating the date and manner in which such service was made. Strict compliance with Trademark Rule 2.119 is required in all further papers filed with the Board.

The Board will accept, as *prima facie* proof that a party filing a paper in a Board *inter partes* proceeding has served a copy of the paper upon every other party to the proceeding, a statement signed by the filing party, or by its attorney or other authorized representative, clearly stating the date and manner in which service was made. This written statement should take the form of a "certificate of service" which should read as follows:

The undersigned hereby certifies that a true and correct copy of the foregoing [insert title of document] was served upon petitioner by forwarding said copy, via first class mail, postage prepaid to: [insert name and address].

The certificate of service must be signed and dated. See also TBMP §113 (3d ed. rev. 2 2013).

OPTION OF E-MAIL SERVICE

The parties may agree to the email service option now available under Trademark Rule 2.119(b)(6) ("Electronic

transmission when mutually agreed upon by the parties.").³

Should the parties decide to continue using traditional service options, the parties may consider agreeing at least to courtesy email notification when any paper is served.

THE BOARD'S STANDARDIZED PROTECTIVE ORDER IS IN PLACE

The Board's standard protective order is in place in this case governing the exchange of confidential and proprietary information and materials. The parties may substitute a stipulated protective agreement (signed by both parties). However, the Board will not become involved in a dispute over any substitution in view of the existence of the Board's standardized protective order.

REPRESENTATION

The Board notes respondent is representing himself. Respondent may do so. However, it should also be noted that while Patent and Trademark Rule 11.14 permits any person to represent himself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in an opposition proceeding to secure the services of an attorney who is familiar with such matters. The Patent and Trademark Office cannot aid in the selection of an attorney. In addition, as the impartial

³ The additional five days available under Trademark Rule 2.119(c) for traditional service modes (e.g., First Class Mail) is not available for email service.

decision maker, the Board may not provide legal advice, though may provide information as to procedure.

ELECTRONIC RESOURCES

All parties may refer to the Trademark Trial and Appeal Board Manual of Procedure (TBMP) and the Trademark Rules of Practice, both available on the USPTO website, www.uspto.gov. The TTAB homepage provides electronic access to the Board's standardized protective order, and answers to frequently asked questions. Other useful databases include the ESTTA filing system⁴ for Board filings and TTABVUE for status and prosecution history.

⁴ Use of electronic filing with ESTTA, available through the USPTO website, is strongly encouraged. This electronic file system operates in real time. The filing party is also provided with a confirmation number that the filing has been received.

A party may also use first class mail. Correspondence required to be filed in the Office within a set period of time will be considered as being timely filed on the date of deposit in the mail if accompanied by a certificate of mailing.

Certificate of Mailing

I hereby certify that this correspondence is being deposited with the United States Postal Service with sufficient postage as first-class mail in an envelope addressed to:

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

The certificate of mailing must be signed and dated. The actual date of receipt by the Office will be used for all other purposes, including electronically filed documents. The certificate of mailing must be signed and dated.

The Board's records are public records. Thus, respondent may use the TTABVUE database to view other cases to get an idea of the course of Board proceedings.

Strict compliance with the Trademark Rules of Practice, and where applicable the Federal Rules of Civil Procedure, is expected of all parties before the Board, whether or not they are represented by counsel.

Dates Reset

Dates for this consolidated proceeding are reset as set out below.

Time to Answer (to be filed separately in each Cancellation proceeding)	12/3/2013
Deadline for Discovery Conference	1/2/2014
Discovery Opens	1/2/2014
Initial Disclosures Due	2/1/2014
Expert Disclosures Due	6/1/2014
Discovery Closes	7/1/2014
Plaintiff's Pretrial Disclosures Due	8/15/2014
Plaintiff's 30-day Trial Period Ends	9/29/2014
Defendant's Pretrial Disclosures Due	10/14/2014
Defendant's 30-day Trial Period Ends	11/28/2014
Plaintiff's Rebuttal Disclosures Due	12/13/2014
Plaintiff's 15-day Rebuttal Period Ends	1/12/2015

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

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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.
