

UNITED STATES PATENT AND TRADEMARK OFFICE
Trademark Trial and Appeal Board
P.O. Box 1451
Alexandria, VA 22313-1451
General Contact Number: 571-272-8500

wbc

Mailed: October 6, 2014

Cancellation No. 92059425

Leonard Cocco

v.

John Dorta, Patrick DePrisco
and Richard Mercado TA The
Original Chimes

Wendy Boldt Cohen, Interlocutory Attorney:

On July 31, 2014, prior to its answer deadline,¹ John Dorta, one of the respondents filed a motion to extend time to answer.² On August 2, 2014,

¹ The Board's June 25, 2014 institution order set Respondents' answer deadline for August 4, 2014.

² Respondents' motion fails to include a certificate of service. A copy of the motion may be obtained at <http://ttabvueint.uspto.gov/ttabvue/v?pno=92059425&pty=CAN&eno=4>. Future filings must comply with the service requirements in Trademark Rule 2.119 and TBMP Section 113 (2013). Strict compliance with Trademark Rule 2.119 is required in all future submissions filed with the Board.

Respondents are advised, however, that the Board will look with disfavor upon any further failure to comply with Board rules or the Trademark Rules of Practice.

Respondents have indicated they intend to represent themselves in this proceeding. While Patent and Trademark Rule 10.14 permits any person to represent itself, it is generally advisable for a person who is not acquainted with the technicalities of the procedural and substantive law involved in inter partes proceedings before the Board 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 defending this cancellation, Respondents should review the Trademark Rules of Practice and the Trademark Board Manual of Procedure, online at <http://www.uspto.gov/trademarks/process/appeal/index.jsp>.

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.

Petitioner submitted its opposition to the motion. The Board determined that the motion should be resolved by telephone conference. *See* Trademark Rule 2.120(i)(1); TBMP § 502.06(a) (2014). On October 2, 2014,³ such conference was held between Petitioner’s attorney Angelo Notaro, John Dorta, Patrick DePrisco and Richard Mercado (collectively, “Respondents”), and Board interlocutory attorney Wendy Boldt Cohen.

The parties’ arguments are set forth in their respective briefs and will not be summarized herein except as necessary to explain the Board’s decision.

Because Respondents acted prior to the expiration of the time in which to answer, they need only show “good cause” for the extension sought. *See* Fed. R. Civ. P. 6(b)(1)(A); TBMP § 509.01(a). A motion to extend should include a recitation of specific facts constituting good cause for the extension sought. *See Fairline Boats plc v. New Howmar Boats Corp.*, 59 USPQ2d 1479, 1480 (TTAB 2000); *Instruments SA Inc. v. ASI Instruments Inc.*, 53 USPQ2d 1925, 1927 (TTAB 1999) *Luemme, Inc. v. D. B. Plus Inc.*, 53 USPQ2d 1758 (TTAB 1999). 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.⁴ *See*,

³ The Board attempted to conduct the conference call on September 24, 2014 but rescheduled the call for September 29, 2014 so all listed owners of Registration No. 4544774 could participate.

⁴ Because denial of a motion to extend time to answer could result in issuance of a notice of default, the Board tends to be particularly liberal in granting motions to extend time to answer. *See* TBMP § 312.

e.g., American Vitamin Products, Inc. v. Dow Brands Inc., 22 USPQ2d 1313 (TTAB 1992).

Notwithstanding the foregoing, Respondents' motion was signed by John Dorta, identified in Registration No. 4544774 as an individual. The parties confirmed in the telephone conference that John Dorta is not an attorney as defined by Patent and Trademark Rule § 11.1 or authorized to represent Respondents pursuant to Patent and Trademark Rule § 11.14(b) or (c) however, in the call Patrick DePrisco and Richard Mercado ratified the motion to extend by providing their consent to same.

In view thereof and as discussed in the telephone conference, the Board finds that Respondents' search for counsel constitutes good cause for the extension sought. Accordingly, the motion to extend is **granted** as modified below.

This proceeding is resumed. Dates herein are reset as follows:

Time to Answer	10/25/2014
Deadline for Discovery Conference ⁵	11/24/2014
Discovery Opens	11/24/2014
Initial Disclosures Due	12/24/2014
Expert Disclosures Due	4/23/2015
Discovery Closes	5/23/2015
Plaintiff's Pretrial Disclosures	7/7/2015
Plaintiff's 30-day Trial Period Ends	8/21/2015
Defendant's Pretrial Disclosures	9/5/2015
Defendant's 30-day Trial Period Ends	10/20/2015
Plaintiff's Rebuttal Disclosures	11/4/2015
Plaintiff's 15-day Rebuttal Period Ends	12/4/2015

⁵ Petitioner has requested Board participation in the parties' discovery conference. The discovery conference will be scheduled, as necessary, after the deadline for the time to answer.

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.